

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



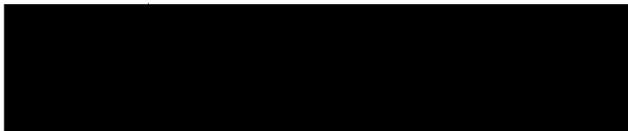
D-7

FILE: SRC 06 060 50983 Office: TEXAS SERVICE CENTER Date: **APR 19 2007**

IN RE: Petitioner: 
Beneficiary:

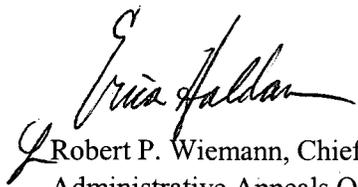
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned
to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a Florida corporation, claims to be engaged in the import, export, sales, and distribution of beach and sports apparel. The petitioner states that it is a subsidiary of Confecciones Edera, C.A., located in Venezuela. The U.S. entity petitioned Citizenship and Immigration Services (CIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner seeks to employ the beneficiary's services as the general manager of its new office in the United States for a one-year period.

The director denied the petition on June 9, 2006 concluding that there is insufficient evidence to demonstrate that a sufficient financial investment had been made in order to establish the new office.

The petitioner subsequently filed an appeal on September 28, 2006.¹ On appeal, counsel for the petitioner states that the petitioner provided evidence that the funds for the new U.S. entity were provided by the beneficiary "as a loan to the company," due to the "currency restrictions imposed by the Venezuelan government in 2003." Counsel asserts that the Venezuelan currency restrictions made it "extremely difficult for any person or legal entity to transfer funds outside Venezuela." Counsel acknowledges the director's concern as to why the beneficiary was able to take money out of the country, while the foreign entity was unable to do so. Counsel explains that the beneficiary transferred money to "a personal account in the United States prior to the restrictions being imposed." Counsel submits a brief and additional documentation in support of the appeal.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) further states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

¹ The denial decision is dated June 9, 2006. However, the petitioner submits evidence that the decision was mailed by the Texas Service Center on August 25, 2006. Therefore, the petitioner submitted a timely filed appeal on September 28, 2006.

- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

In addition, the regulation at 8 C.F.R. § 214.2(l)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

The primary issue to be discussed in this matter is whether the petitioner established that a sufficient financial investment has been made in the United States company, as required by 8 C.F.R. § 214.2(l)(3)(v)(2).

As outlined in 8 C.F.R. § 214.2(l)(3)(v), if a petition indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is ready to commence doing business immediately upon approval. At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to commence business, that it has the financial ability to commence doing business in the United States, and that it will support the beneficiary in a managerial or executive position within one year of approval. *See generally*, 8 C.F.R. §

214.2(l)(3)(v). The regulations specifically require the petitioner to disclose the new office's business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year. *Id.*

The nonimmigrant petition was filed on December 16, 2005. As evidence of a financial investment for the U.S. company, the petitioner submitted a letter from the Bank of America, dated November 16, 2005, stating the U.S. entity has an account with the bank and a current balance of \$20,000. The petitioner also submitted a deposit receipt, dated November 14, 2005, indicating that \$20,000 was deposited into an account at the Bank of America.

On January 23, 2006, the director requested further documentation in order to proceed with the processing of the pending petition. Specifically, the director requested clear evidence of the transfer of funds from the foreign entity to the U.S. entity.

In the response to the director's request, counsel for the petitioner asserts the following:

As you may know, Venezuela is enforcing control of currency exchange. Therefore, we have used [the beneficiary's] personal funds to start up operations in the U.S. These funds will be repaid to [the beneficiary] in national currency (In Venezuela) with the applicable interest rate as agreed between the parties.

In addition, the petitioner submitted a letter from the administrator of the foreign entity, who stated that the foreign entity established an affiliate company in the United States in August 2005, and a company account was opened with a starting balance of \$20,000. The letter also stated that this amount was a loan granted by the beneficiary, who is also a stockholder of the foreign entity. The letter further stated that the loan was made due to Venezuela's currency restrictions, and the loan will be repaid to the beneficiary. The petitioner also submitted a letter from the foreign entity's accountant, which confirmed the same information.

The petitioner also submitted a copy of the U.S. Department of State's Consular Information Sheet for Venezuela and highlighted certain sections that discuss currency restrictions for Venezuela. The Consular Information Sheet does not specifically discuss a restriction in taking money out of the country of Venezuela.

The director denied the petition on the ground that the petitioner failed to submit sufficient evidence that the foreign entity had made a financial investment in the United States company, as required by 8 C.F.R. § 214.2(l)(3)(v)(2). The director noted that the U.S. entity's funds were loaned from the beneficiary due to the currency restrictions imposed by Venezuela. The director further stated, "the petitioner fails to explain, and to submit evidence in support, why the currency restrictions allow the beneficiary to transfer money out of the country, yet it prevents the foreign entity from doing the same."

On appeal, counsel for the petitioner explains that the foreign entity loaned the beneficiary's money because the beneficiary made the transfer of money in 2001, prior to the currency restrictions imposed by Venezuela in 2003. Counsel further asserts that although the \$20,000 is from the beneficiary's personal

funds, the foreign entity and the beneficiary entered into a loan agreement and the foreign entity will repay the beneficiary the amount of money loaned.

In the instant matter, the petitioner has not provided sufficient evidence of the foreign entity's financial investment of the United States operation, as required by 8 C.F.R. § 214.2(l)(3)(C)(2). The petitioner asserts that the foreign entity and the beneficiary entered into a loan agreement and the beneficiary deposited \$20,000 of his personal funds into the U.S. entity's bank account. However, the petitioner failed to provide a copy of the claimed loan agreement, and failed to provide documentation evidencing that the beneficiary made the deposit into the U.S. entity's bank account. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition, the petitioner has not documented the source of the funds deposited in the U.S. entity's bank account. On appeal, the petitioner submitted a copy of the beneficiary's personal bank statement, for the period from November 21, 2001 through December 10, 2001, showing \$25,000 in the beneficiary's personal bank account. However, the petitioner did not present any documentation to evidence that the U.S. entity's \$20,000 came from the beneficiary's personal bank account. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

As noted above, the petitioner asserts that the funds for the U.S. entity originated from the beneficiary, an owner and shareholder of the parent company. The funding did not originate from the foreign parent company. A corporation is a separate and distinct legal entity from its owners or stockholders. See *Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Thus, the petitioner has not submitted sufficient evidence to establish that the foreign company invested in the U.S. entity. The petitioner has not submitted evidence on appeal to overcome the director's decision.

Furthermore, the petitioner has not submitted a business plan or other documentation to establish the U.S. company's anticipated start-up expenses and it is therefore not possible to determine what investment amount would be sufficient. Therefore, even assuming, *arguendo*, that the \$20,000 deposited into the U.S. entity's bank account was intended to be used as capitalization for the new U.S. company, the AAO could not conclude that this amount is adequate for the U.S. company to commence doing business in the United States. See *Matter of Soffici*, 22 I&N Dec. at 165. For the foregoing reasons, the appeal will be dismissed.

Beyond the decision of the director, the record is not persuasive in demonstrating that the intended U.S. operation, within one year of the approval of the petition, will support an executive or managerial position. When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed

enterprise will support an executive or managerial position within one year of the approval of the petition. See 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. The petitioner has not submitted sufficient evidence to establish that the intended United States operations, within one year of approval, will support an executive or managerial position.

The petitioner indicated in a support letter dated December 8, 2005, that the beneficiary will "generate new business for our company"; "supervise the development of new projects"; and "have the day-to-day authority in coordinating and directing the marketing plans of our new subsidiary as well as developing strategies to be implemented." When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). On review, the petitioner failed to provide a detailed description of the beneficiary's duties that demonstrates what the beneficiary will do on a day-to-day basis. The petitioner did not define the beneficiary's goals and policies, or clarify the role of the marketing and business development activities that the beneficiary will supervise. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Furthermore, the petitioner submitted a vague economic plan for the U.S. entity. As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. See *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefore. Most importantly, the business plan must be credible.

Id.

The petitioner submitted a vague business plan that outlined the general "phases" of the U.S. entity. The business plan does not state dates of when the goals will be achieved and does not specifically indicate the proposed personnel that will be employed by the U.S. entity or the proposed timeline for hiring additional employees. The submitted plan fails to outline how the U.S. entity will reach the listed goals and plans and if it is financially feasible to do so. The plan is vague and not credible. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). For this additional reason, the petition cannot be approved.

Beyond the decision of the director, the evidence does not demonstrate that the petitioner has secured sufficient physical premises to house the new office in the United States as required under the regulations 8 C.F.R. § 214.2(l)(3)(v).

At the time of filing the original petition, the petitioner submitted a sublease agreement for the lease of an office space. In the director's request for evidence, the director requested a copy of the lessor's underlying lease. In reviewing the original lease agreement, the agreement states that the lessor may not assign or sublet any part or his interest in the lease without first obtaining the written consent of the owner. The petitioner did not submit any evidence of a written consent and thus the evidence does not establish that the petitioner has validly secured any physical premises. For this additional reason, the appeal will be dismissed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The petitioner will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.