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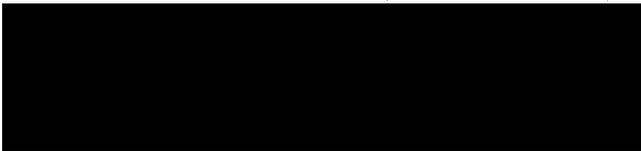
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File: SRC 05 229 51855 Office: TEXAS SERVICE CENTER Date: **MAR 06 2007**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

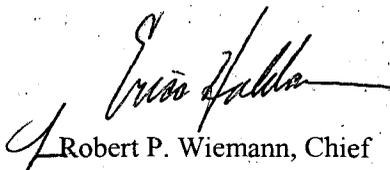
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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 AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of president as an L-1A nonimmigrant intracompany transferee 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, a Texas limited liability company, states that it is in the construction business. The petitioner claims to be an affiliate of [REDACTED] located in Pakistan. The petitioner seeks to employ the beneficiary for a period of one year to open a new office in the United States.

The director denied the petition on December 7, 2005, concluding that the record contains insufficient evidence to demonstrate that sufficient funding or capitalization was provided to the U.S. entity from the foreign entity.

The petitioner filed a timely appeal on January 9, 2006. On appeal, counsel for the petitioner explained that the beneficiary brought \$20,000 in cash when he entered the United States. In addition, counsel states that an "additional \$14,000+ was transferred by August 2005 to the U.S. company." Counsel further states that the funds are sufficient for the United States company to commence business, and the foreign company has a net worth of \$2 million dollars and can transfer additional funds to the U.S. entity if needed. The petitioner submits a brief and copies of previously submitted documents 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.
- (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 issue in this proceeding is whether sufficient funding or capitalization was provided to the U.S. entity from the foreign entity. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(2) requires the petitioner to submit evidence of the size of the United States investment and the ability to commence doing business in the United States.

The nonimmigrant petition was filed on August 17, 2005. The petitioner submitted with the original petition two statements from the Bank of America indicating two wire transfers were deposited into the U.S. company's bank account. One wire transfer was made on July 6, 2005 and originated from an "██████████" in the amount of \$4,975.00. The second wire transfer was made on July 11, 2005, which also originated from "██████████" in the amount of \$8,975.00. Both wire transfers originated from ██████████. The petitioner also submitted a Union Bank statement, dated May 19, 2005, the beneficiary's foreign savings deposit account in Pakistan.

On August 24, 2005, the director requested additional information in order to proceed with this petition. In part, the director requested: evidence of sufficient funding for the U.S. entity such as copies of wire transfers showing transfers of fund from the foreign organization, evidence of financial resources committed by the foreign company, copies of bank statements for checking and savings accounts, profit and loss statements, or other accountants' reports.

In the petitioner's response dated November 22, 2005, the petitioner submitted: (1) one copy of a statement from the Bank of America that indicated a wire transfer on November 17, 2005 from "[REDACTED]" and credited to the beneficiary, in the amount of \$8,965.00; (2) one copy of a statement from the Bank of America in the U.S. company's name, dated July 2005, indicating two wire transfers in July 2005. One wire transfer occurred on July 6, 2005, in the amount of \$4,975.00. The second wire transfer occurred on July 11, 2005 in the amount of \$8,975.00. Both wire transfers originated from "[REDACTED]" (3) a copy of the letter by Union Bank, in Karachi, Pakistan, which is the foreign entity's bank, indicating the details of a "Term Deposit in Favor of [the beneficiary]"; and (4) a copy of the deposit certificate in the name of the beneficiary and the foreign company. The petitioner indicated that the term deposit is due to mature on May 22, 2006, and noted that the RS 4,000,000.00 deposit is equivalent to \$92,000. The petitioner provided partial copies of its business checking account statements for the month of May through October 2005, with a deposit of \$20,000. The account balance as of the date of filing appears to have been slightly less than \$4,000.

The director denied the petition concluding that the petitioner failed to provide sufficient evidence that sufficient funding or capitalization of the United States company has been provided by the foreign company.

On appeal, counsel for the petitioner asserts that \$20,000 was deposited in the U.S. company's account. On the Form I-290B, Notice of Appeal, counsel states that the beneficiary "brought \$20,000 in cash, which he cleared with Customs upon entry to the U.S." In addition, counsel asserts "two wire transfers were made by the corporate accountant of the foreign entity to the U.S. company account in July 2005." Furthermore, counsel states that the foreign entity has a net worth of "approximately \$2 million USD." In addition, the petitioner re-submits the bank statement from the Bank of America for the period ending May 31 2005, which indicates an ending balance for the U.S. company's account of \$20,000. The petitioner also submits the bank statement for the Bank of America for the period ending July 31, 2005, indicating two wire transfers originating from "[REDACTED]" In addition, the petitioner submits information of property investments, agreements, and bank statements for the foreign company.

The petitioner submitted a one-page business plan that does not establish the U.S. company's anticipated start-up expenses and its it therefore not possible to determine what investment amount would be sufficient. Therefore, even assuming, *arguendo*, that the approximately \$33,059 transferred into the U.S. company's bank account as of August 2005, the date the instant petition was filed, 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 U.S. The petitioner has not disclosed the size of the U.S. investment, as required by 8 C.F.R. § 214.2(1)(3)(v)(C)(2). 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)).

Furthermore, on appeal, counsel for the petitioner states that the beneficiary entered the United States with the \$20,000 in cash. However, when the instant petition was filed on August 17, 2005, the bank statement for the U.S. company's account indicates a balance of \$2,717.48. The petitioner did not present evidence that the majority of the \$20,000 was utilized for start-up expenses. Since the petitioner has not explained how the funds were used, and since the petitioner did not provide a business plan with anticipated start-up costs for the U.S. entity, it is not clear if the petitioner has secured sufficient funding or capitalization from the foreign company. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, in reviewing the two wire transfers made on July 6, 2005 and July 11, 2005 in the amounts of \$4,975.00 and \$8,975.00, respectively, is insufficient to establish funding to the U.S. entity from the foreign company or the beneficiary since the wire transfers originated from "Amin Ali," rather than from the foreign company, Defence Builders. Without further documentation, the information provided indicates funding from "Amin Ali" and does not indicate the required funding from the foreign company or the beneficiary. In addition, on appeal, counsel for the petitioner asserts that "two wire transfers were made by the corporate accountant of the foreign entity." However, in reviewing the organizational chart for the foreign company, the accountant is "Amin Ali" and the chart does not list an "Amin Ali" as the originator of the two wire transfers, as employed by the foreign company. Furthermore, the petitioner stated that the foreign company's bank is Union Bank. However, the two wire transfers originated from Soneri Bank Limited. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Upon review, the documentation submitted by the petitioner is insufficient to establish that funding to the U.S. entity was provided by the foreign company. The petitioner fails to submit documentation of funding from the foreign company such as evidence of wire transfers from the foreign company or the beneficiary into the U.S. entity's company bank account, cancelled checks, or deposit receipts. In addition, the petitioner did not submit a business plan indicating the estimated business costs in establishing the new U.S. office. 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. Based on the insufficiency of the information furnished, it cannot be concluded that the petitioner has secured a sufficient financial investment from the foreign company.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to demonstrate that the intended U.S. operation, within one year of the approval of the petition, will support an executive or managerial position. Specifically, the petitioner has not adequately defined the proposed nature of the office, and has not realistically described the scope of the entity, its organizational structure and its financial goals. See 8 C.F.R. § 214.2(l)(3)(v)(C).

Accordingly, if a petitioner 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 so that it will support a manager or executive within the one-year timeframe. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). 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 house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, the petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.* After one year, CIS will extend the validity of the new office petition only if the entity demonstrates that it had been doing business in a regular, systematic, and continuous manner "for the previous year." 8 C.F.R. § 214.2(l)(14)(ii)(B).

Furthermore, 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. at 213. 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 one-page business plan that states that the goal is to start a new business in the United States "concentrating in the construction industry" and "to focus on remodeling existing properties such as homes, shopping centers, and condominiums." The business plan fails to outline the intended scope of the U.S. entity, its funding requirements and financial objectives, and how the U.S. entity will reach the listed goals and plans and if it is financially feasible to do so. 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.

In addition, the record is not persuasive in demonstrating that the beneficiary would be employed in a managerial or executive capacity as defined at section 101(a)(44) of the Act. On the Form I-129, the

petitioner stated that the U.S. company plans to hire ten to twelve employees. However, the petitioner did not explain when the U.S. company plans to hire the estimated employees, and did not explain the position titles and job duties of the proposed employees. In addition, the petitioner did not explain the anticipated structure of the U.S. organization at the end of the first year of operations. Based upon the lack of comprehensive job descriptions for the proposed employees, the lack of evidence of the company's staffing levels, and the lack of a hiring plan, the AAO cannot determine if the beneficiary will be employed in a managerial or executive capacity within one year.

The petitioner's minimal evidence regarding its proposed business, the lack of job descriptions for the beneficiary and his proposed subordinates, and the lack of evidence to establish the funding of the new entity, collectively, fail to demonstrate a realistic expectation that the proposed enterprise will succeed and rapidly expand as it moves away from the development stage to full operations, where there would be an actual need for a manager or executive who will perform primarily qualifying duties. For this additional reason, the appeal will be dismissed.

Another issue not addressed by the director is whether the petitioner had secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A). The petitioner submitted a signed lease agreement dated August 16, 2005. The term of the lease is for only six months, commencing in October 2005 and ending in March 2006. In addition, the lease will commence nearly two months after the date the instant petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Moreover, the petitioner has not described its anticipated space requirements for the new business, and the lease in question does not specify the amount or type of space secured. Based on the insufficiency of the information furnished, it cannot be concluded that the petitioner had secured sufficient space to house the new office. For this additional reason, the appeal is dismissed.

Beyond the decision of the director, it does not appeal that the foreign company is a qualifying organization currently doing business as required by 8 C.F.R. § 214.2(l)(3). The director specifically requested evidence of the viability of the foreign entity. In the petitioner's response, the petitioner submitted several bills and invoices that were issued to unknown individuals, rather than to the foreign company. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. The petitioner did not submit any documentation that the foreign company is current doing business as required by the regulations. 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 petition will be denied for the above stated reasons, with each considered as an independent and

alternative basis for the decision. 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.