

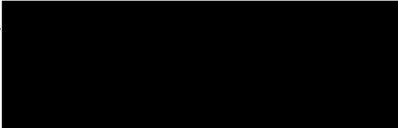
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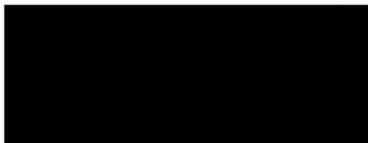
FILE: SRC 06 056 53566 Office: TEXAS SERVICE CENTER

Date: MAY 02 2007

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

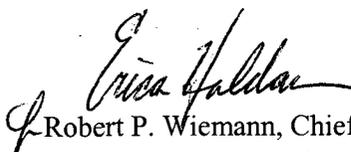
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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 appeal will be dismissed.

The petitioner, a Texas limited liability company, claims to be an affiliate of Lubricacion Acapulco, S.A. De C.V., located in Mexico. The petitioner states that the United States entity is engaged in the business of real estate investment. Accordingly, the United States entity petitioned CIS to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner seeks to employ the beneficiary as president for a period of one year to open a new office in the United States.

The director denied the petition, 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 subsequently filed an appeal on April 30, 2006 and asserted on Form I-1290B that the Service is "applying a very narrow and radical interpretation of the federal regulations by requiring that the foreign entity has to issue the wire transfers to the U.S. company at the moment of the filing of the petitioner." Counsel contends that the Service must focus on the foreign company's ability to provide funding to the U.S. company. Counsel indicated on Form I-1290B that he would submit a brief and/or evidence to the AAO within 30 days. As no additional evidence has been incorporated into the record, the AAO contacted counsel by facsimile on February 6, 2007 to request that counsel acknowledge whether the brief and/or evidence were subsequently submitted, and, if applicable, to afford counsel an opportunity to re-submit the documents. Counsel for the petitioner responded via facsimile on February 6, 2007 indicating that counsel did not file a brief or evidence in support of the appeal. Accordingly, the record will be considered complete.

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.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

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)(C)(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.

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). If approved, the beneficiary is granted a one-year period of stay to open the "new office." 8 C.F.R. § 214.2(l)(7)(i)(A)(3).

The nonimmigrant petition was filed on December 12, 2005. The petitioner submitted a business plan for the U.S. company which outlined a "start-up summary" of the U.S. company. The business plan stated that the U.S. company will "receive initial funding from the [beneficiary] and Ana Livia Castrejon in the form of

capital contribution and short-term loans." The business plan also indicated that the start-up expenses will be approximately \$10,000. The petitioner did not submit documentation to demonstrate that the initial contribution of \$10,000 was deposited in the U.S. company's bank account.

On December 19, 2005, the director requested documentary evidence of the funding or capitalization of the U.S. company such as copies of wire transfers showing the transfer of funds from the foreign company. In the petitioner's response dated March 17, 2006, the petitioner submitted one copy of a statement from Chase Bank that indicated a wire transfer on March 13, 2006 from the foreign affiliate company credited to the U.S. company, in the amount of \$908.00; and a second wire transfer on March 3, 2006 from the foreign company credited to the U.S. company in the amount of \$8,505.00. It appears that the two wire transfers were made in March 2006, nearly three months after 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).

Furthermore, in reviewing the business plan, it is unclear why the plan indicated that the initial funding for the U.S. company will derive from the beneficiary and "██████████" when the monies were eventually transferred from the claimed foreign affiliate 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).

Upon review, the documentation submitted by the petitioner is insufficient to establish that funding to the U.S. entity was provided by either its individual members or by the foreign company as of the date of filing. The wire transfers from the foreign affiliate company occurred three months after the instant petition was filed. The petitioner fails to submit documentation of funding from the foreign company or from the U.S. company's two individual members, such as evidence of wire transfers from the foreign company into the U.S. entity's company bank account, cancelled checks, or deposit receipts, when the petition was filed in December 2005. 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 for the purpose of commencing operations in the United States.

On the Form I-290B, Notice of Appeal, counsel for the petitioner asserts that the regulations do not require that the "foreign entity has to issue the wire transfers to the U.S. company at the moment of the filing of the petition." Counsel contends that CIS must focus on the foreign company's ability to capitalize the U.S. company rather than the timing of the bank transactions. As noted, counsel indicated on Form I-1290B that he would submit a brief and/or evidence to the AAO within 30 days. As no additional evidence has been incorporated into the record, the AAO contacted counsel by facsimile on February 6, 2007 to request that counsel acknowledge whether the brief and/or evidence were subsequently submitted, and, if applicable, to afford counsel an opportunity to re-submit the documents. Counsel for the petitioner responded via facsimile on February 6, 2007 indicating that counsel did not file a brief or evidence in support of the appeal.

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).

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 business plan that states that the goal is to start a new business in the United States "to invest in distressed properties that require rehabbing for retail or rental." The business 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 within the first year of operation. In addition, according to the financial plan listed in the business

plan, the U.S. company will “seek additional financing from investor friendly lenders,” however, the petitioner has not provided any documentation that the U.S. company already obtained financing from these lenders. 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 four to five employees. However, the petitioner did not explain when the U.S. company plans to hire the proposed employees, and did not explain the 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. 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.