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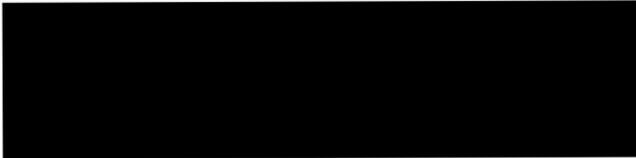
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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FILE: WAC 05 221 50242 Office: CALIFORNIA SERVICE CENTER Date: **FEB 19 2008**

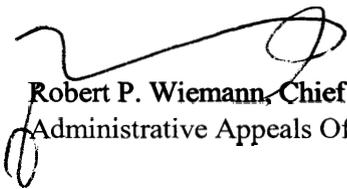
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

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, California Service Center, initially approved the nonimmigrant visa petition. Upon subsequent review, the director issued a notice of intent to revoke approval and ultimately revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary 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 California corporation, states that it is engaged in the wholesale of electrical appliances. The petitioner claims to be an affiliate of Shenzhen Huali Science & Technology Development Co., Ltd., located in China. The petitioner seeks to employ the beneficiary as its general manager for a three-year period.

The petitioner filed the nonimmigrant petition on August 8, 2005 and it was approved on August 15, 2005 for a three-year period commencing on September 15, 2005. On February 22, 2007, the director issued a notice of intent to revoke the approval, noting that the petition had been returned to U.S. Citizenship and Immigration Services (USCIS) by the U.S. Consulate in Shanghai. The director advised the petitioner that questions were raised by the Consulate as to whether the U.S. company has been doing business as required in the regulations. The director instructed the petitioner to submit additional evidence or arguments in rebuttal of the issues raised in the notice of intent to revoke. The petitioner submitted rebuttal evidence on March 20, 2007.

The director revoked the approval of the petition on March 29, 2007, concluding that the petitioner had not established that the U.S. company has been doing business as required in the regulations. Specifically, the director found that the petitioner had failed to establish that it had physical premises from which to conduct business.

The petitioner subsequently filed an appeal. On appeal, counsel for the petitioner asserts that the director ignored and failed to consider "abundant evidence that established beyond any doubt that the L1 visa should not have been revoked." Counsel asserts that the evidence submitted shows that the U.S. company does substantial business in the United States, has leased business premises, and pays rent on the leased premises. Counsel further contends that the director's decision contains misstatements of fact and penalizes the petitioner for failing to submit evidence and information that USCIS never requested. Counsel submits a brief in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, 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.

Under CIS regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).

In the present matter, the director provided a detailed statement of the grounds for the revocation but incorrectly referenced the regulation at 8 C.F.R. § 214.2(h)(11)(iii), rather than the regulations governing the revocation of intracompany transferee petitions. Upon review, the director revoked the approval on the basis of 8 C.F.R. § 214.2(l)(9)(iii)(A)(4): "The statement of facts contained in the petition was not true and correct."

Upon review, and for the reasons discussed herein, the AAO will withdraw the director's decision revoking the approval of the petition and sustain the petitioner's appeal. The petition will be approved.

The regulation at 8 C.F.R. § 214.2(l)(3) 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 issue in this matter is whether the petitioner established that the U.S. company is a qualifying organization doing business in the United States.

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
 - (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and,
 - (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.
- (H) *Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States or abroad.

The petitioner filed the nonimmigrant petition on August 8, 2005 and it was approved on August 15, 2005. The beneficiary was subsequently interviewed in connection with his application for an L-1 visa at the U.S. Consulate in Shanghai, China. The U.S. Consulate reviewed the file and returned the petition to the director for further review and possible revocation.

The director advised the petitioner of the U.S. Consulate's findings and concerns in a notice of intent to revoke dated February 22, 2007. The notice quoted verbatim portions of the U.S. Consulate's letter, and noted in part the following:

[T]he applicant has not provided adequate proof that an actual U.S. office exists. We are unable to confirm that the petitioner has secure[d] sufficient physical presence/premises to house the company, per 9 FAM 41.54 N12.3. It appears that all lease[s] have been signed only by friends, or [the petitioner] is merely sharing space with another company. There is no evidence that [the petitioner] is directly paying rent on any actual office space.

It was noted that no direct employee of the U.S. company had signed any lease agreement, and that one address included in the petition filing was a private residence of a [REDACTED] whose connection to the U.S. company was uncertain, and whose name and address were associated with another, apparently un-related L-1 petition. It was also noted in the Consulate's letter that one of the petitioner's leased premises appeared to be shared with another unaffiliated company, [REDACTED]

The director advised the petitioner that, based on the information contained in the U.S. Consulate's letter, it had "failed to submit convincing evidence to establish that the company had been engaged in business in a regular and systematic fashion that include the physical premises." The director further advised that this conclusion was based on the petitioner's failure to show that it leased the place of business and the fact that it was sharing office space with another company.

The director advised the petitioner that it had 30 days in which to submit additional evidence before USCIS would make a final decision regarding revocation of the petition approval.

The petitioner, through counsel, submitted a rebuttal dated March 16, 2007, in which it sought to clarify the company's lease arrangements and other questions raised in the notice of intent to revoke. Counsel explained that [REDACTED] is the petitioner's corporate secretary and a close friend of one of the petitioner's executives. Counsel noted that at the time the company was formed, and for several years thereafter, [REDACTED]'s residential address was utilized as an official mailing address for the petitioning company. The petitioner attached documentation identifying [REDACTED] as the company secretary and contact person as of 1999 when the company was incorporated. Counsel further clarified that [REDACTED] **had assisted another friend in the same manner**, which is why his name and address are connected to an unrelated company.

With respect to the petitioner's lease agreements, counsel stated that [REDACTED] assisted the petitioner by signing the lease for the company's premises located at [REDACTED] in La Puente, California because the landlord required the lease to be signed by a U.S. citizen. The petitioner provided a cover letter from the property manager confirming that [REDACTED] "was leasing the property through June 2006, as well as copies of invoices for rent, copies of the petitioner's checks used to pay rent for this location, photographs of the premises, and utility bills for the location, issued to the petitioning company.

Counsel explained that the petitioner's warehouse facility located at [REDACTED] in City of Industry, California is shared with [REDACTED]. Counsel stated that the petitioner pays its half of the rent in goods supplied to [REDACTED]. The petitioner submitted a letter from the president of [REDACTED], who identified the petitioner as his company's supplier. He stated that the petitioner paid \$6,340.50 in rent in 2004, and \$8,454 in 2005. The petitioner provided a copy of the lease agreement and e-mail correspondence confirming the sublease arrangement and its approval by [REDACTED]'s landlord.

The director revoked approval of the petition on March 29, 2007, concluding that the evidence submitted in rebuttal to the notice of intent to revoke was insufficient to overcome the proposed grounds for revocation. The decision contained little discussion of the evidence and explanation submitted in rebuttal to the notice of intent to revoke. The director questioned the validity of an e-mail message submitted to establish that Broada Inc.'s landlord has approved the space-sharing arrangement with the petitioning company. Specifically, the director thought the e-mail was suspicious due to the appearance of two different fonts within the two different messages. The director further stated:

Finally, the information presented by the petitioner's counsel makes it impossible to determine if it has enough square footage for a sufficient premises to conduct business. Moreover, the e-mail submitted is over 2 years old and fails to establish the petitioner[s] current lease arrangements. Further it is not clear as to why the petitioner did not submit [sic] all these documents in the original petition. In conclusion, the petitioner presented no evidence from property managers showing that the petitioner continue[d] to lease premises in the United States.

On appeal, counsel asserts that the director's decision is based on multiple erroneous statements of fact and ignores abundant evidence that the petitioner leases two premises, pays rent for those premises, and conducts substantial business in the United States. Counsel contends that the consular officer's conclusion that the petitioner does not have an office in the United States was based upon "faulty inferences drawn from irrelevant facts."

Counsel reviews the issues raised in the notice of intent to revoke and the petitioner's responses thereto, noting that the petitioner's explanations were reasonable and accompanied by evidence that the petitioner does in fact pay rent for its own office and warehouse facility and another warehouse facility shared with another company. Counsel contends that the director ignored the evidence submitted and instead emphasized some perceived font irregularities in an e-mail which counsel states "amounts to unacceptable and unwarranted nitpicking." Finally, counsel notes that the decision inappropriately "complains of a failure to provide information concerning business operations outside the time period when the petition was filed," and which was never requested by USCIS.

Upon review, counsel's assertions are persuasive. The petitioner has established that it has been doing business in the United States as required by the regulations. Accordingly, the director's decision dated March 29, 2007 will be withdrawn and the petition will be approved.

The director's singular focus on the perceived irregularities in the petitioner's lease agreements, to the exclusion of all other evidence in the record showing that the U.S. company is an active business, was misplaced. At the time the petition was filed, the petitioner submitted the following: (1) a copy of its 2004 IRS Form 1120, U.S. Corporation Income Tax Return, date stamped as timely submitted to the IRS, and showing gross receipts of \$1.2 million and rent payments in excess of \$10,000; (2) copies of state and federal wage reports showing payments to employees from January 2004 through June 2005; (3) copies of 2004 IRS Forms W-2; (4) bank statements; (5) utility bills showing payments for service at the beneficiary's proposed worksite; (6) copies of leases, letters from landlords, and rent invoices; (7) invoices and customs documentation for the U.S. company dating from 2003 through 2005; and (8) color photographs of the petitioner's premises. Based on this extensive evidence, the director's initial approval of the petition was warranted. The evidence submitted showed a small but growing company conducting substantial business in the United States.

Furthermore, the AAO finds the petitioner's explanations regarding its lease agreements to be credible. The petitioner has adequately explained [REDACTED] association with the company and the reason his name appears on the lease agreement. With respect to the shared premises with [REDACTED], the director's comments regarding perceived font irregularities in a photocopy of an e-mail message were unsupported. The AAO can find no valid basis to doubt the authenticity of the e-mail message in question. The director's decision otherwise identifies no legitimate basis for the revocation of the petition approval.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). A review of the totality of the record establishes that the petitioner had been actively doing business in the United States as defined in the regulations at the time the petition was filed. While the petitioner's lease

arrangements may be characterized as unconventional, overall, the evidence submitted supports the petitioner's claim that it is actively engaged in the import and wholesale of lighting appliances and other electronic goods, and that it does in fact have physical premises from which to conduct this business.

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 been met. Accordingly, the director's decision dated March 29, 2007 is withdrawn.

ORDER: The appeal is sustained.