



U.S. Citizenship
and Immigration
Services

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[REDACTED]

07

Date: DEC 16 2011

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

PETITION: Petition for a Nonimmigrant Worker under 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed the petitioner's subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The petitioner filed this nonimmigrant petition to employ the beneficiary pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), as an intracompany transferee employed in a managerial or executive capacity. The petitioner, a Florida corporation engaged in the import and distribution of specialty foods, seeks to employ the beneficiary as its general manager for a period of three years.

The director denied the petition on October 30, 2008 concluding that the petitioner failed to establish that the beneficiary has been and will be employed in the United States in a primarily managerial or executive capacity. The AAO dismissed the petitioner's appeal in a decision dated November 18, 2009.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G) states that a *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.

The term doing business is defined at 8 C.F.R. § 214.2(l)(1)(ii)(H) as follows:

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 and abroad.

In the present matter, the AAO finds that the petitioner is no longer eligible to file a Form I-129, Petition for a Nonimmigrant Worker, on behalf of the beneficiary. During the course of verifying the validity of the petitioning entity, the AAO reviewed the Florida Department of State Division of Corporations database.¹ The search showed that as of September 23, 2011, the petitioner's active corporate status ceased and the petitioner was shown as "ADMIN DISSOLUTION FOR ANNUAL REPORT." As indicated above, in order to seek employment of the beneficiary as an intracompany transferee, the petitioner must be a United States legal entity that is the same employer as the firm, corporation, or other legal entity that employed the beneficiary abroad or the U.S. petitioner must be a subsidiary or affiliate of that foreign entity. As the petitioner's corporate status is shown as administratively dissolved dating back to September 23, 2011, the petitioner is no longer a legal entity that is qualified to file a nonimmigrant petition in the beneficiary's behalf.

¹ Florida Department of State Division of Corporations. Web. 17 Nov. 2011
<<http://www.sunbiz.org/search.html>>. (A copy of the information found has been incorporated into the record of proceeding.)

The administrative dissolution of the corporation effectively terminates the employer's business. Where there is no active and legal U.S. entity, no legitimate job offer exists, and the request that a foreign worker be allowed to fill the position offered in the petition has become moot. While the petitioner has not withdrawn the motion in this proceeding, its dissolved corporate status renders the issues in this proceeding moot. Therefore, the motion will be dismissed.

Further, the AAO notes that the petitioner's submission does not satisfy the requirements of a motion to reopen.

Pursuant to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.²

A review of the evidence that the petitioner submits on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). The petitioner's motion is based on claimed changes in its corporate marketing, sales and distribution strategies which took place on or after April 2009, subsequent to the denial of the petition. 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). Accordingly, this evidence is not properly submitted on a motion to reopen. Furthermore, the petitioner's motion is accompanied by only a statement from the petitioner and is not supported by affidavits or other documentary evidence.

As the evidence submitted on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2), the petitioner has not established a proper basis for a motion to reopen. For this additional reason, the motion will be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

In addition, in order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires that the motion must be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding." Furthermore, the regulation at 8 C.F.R. § 103.5(a)(4) requires that "[a] motion that does not meet applicable requirements shall be dismissed." In this case, the petitioner failed to submit a statement regarding if the validity of the decision of the AAO has been or is subject of any judicial proceeding. As such, the motion must be dismissed pursuant to the regulation at 8 C.F.R. § 103.5(a)(4).

ORDER: The motion is dismissed.

² The word "new" is defined as "1. having existed or been made for only a short time . . . 3. just discovered, found, or learned <new evidence> . . ." *Webster's II New College Dictionary* 736 (2001) (emphasis in original).