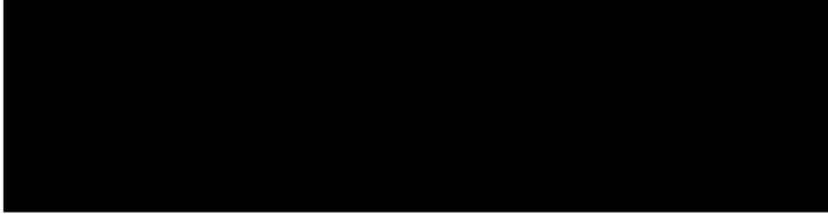




U.S. Citizenship  
and Immigration  
Services



D7

DATE: **DEC 20 2012**

Office: VERMONT SERVICE CENTER

FILE: 

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:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition. 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 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 claimed corporation in Puerto Rico, states it will be engaged in the food industry. It claims to be the parent company of Exotic Gauchas also located in Puerto Rico. The petitioner seeks to employ the beneficiary as the Manager of a "new office" in the United States.

The director denied the petition on multiple grounds, concluding that the petitioner failed to establish: (1) that it has a qualifying relationship with the beneficiary's foreign employer or that the foreign employer is or will be doing business as a qualifying organization abroad; (2) that the petitioner has secured sufficient physical premises to house the new office; (3) that a qualifying foreign entity employed the beneficiary in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition; (4) that the beneficiary would be employed in a primarily managerial or executive capacity within one year of the approval of the petition; and (5) the size of the United States investment and the financial ability of the foreign company to commence doing business in the United States.

On appeal, the petitioner contends that the director misunderstood the evidence submitted with respect to the qualifying relationship. The petitioner asserts that the foreign employer is not a foreign corporation as stated by the director, but in fact "a subsidiary of [the petitioner]." In addition, the petitioner submits a slightly modified business plan in support of the appeal.

### **I. The Law**

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.

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 regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides 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.*

## **II. Discussion**

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker on August 13, 2010. The petitioner did not fully complete the Form I-129, nor did it submit any of the initial evidence required pursuant to the regulation at 8 C.F.R. § 214.2(l)(3). Specifically, the petitioner failed to critical information

[REDACTED]

regarding the name of the beneficiary's foreign employer or the beneficiary's current and proposed job duties. The petitioner stated that the beneficiary has been and would be a "business woman" and indicated that the proposed U.S. business "will be a subsidiary part of [the petitioner], because it will occupy the top floor of said business."

Accordingly, on September 27, 2010, the director issued a lengthy Request for Evidence (RFE). Specifically, the director requested evidence to establish that the petitioner qualified as a new office under the regulations, including but not limited to the following: (1) proof that the petitioner and the beneficiary's foreign employer are qualifying organizations; (2) evidence of sufficient physical premises, such as a lease agreement and photographs of the interior and exterior of the premises secured to house the new office; (3) documentation to confirm that the beneficiary was employed abroad in an managerial or executive capacity for at least one year, including payroll documentation and position descriptions for the beneficiary and her beneficiary's foreign subordinates; (4) evidence of how the petitioner would grow to a size to sufficient support the beneficiary in a managerial or executive role within one year, including detailed description of staff planned for the petitioner; and (5) documentary evidence of the size of the investment in the petitioner and financial information related to the foreign employer to show an ability to invest in the petitioner.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The petitioner did not submit a complete respond to the director's RFE. In fact, the petitioner provided little other than a brief business plan for the petitioner; blueprints and a map print out for an unidentified property; an un-translated resume for the beneficiary; a letter from the petitioner's president expressing support for the beneficiary's business proposal; and corporate documentation of the petitioner that is also not translated.

According to the beneficiary's resume, the beneficiary has been employed as the proprietor of [REDACTED] since 2002, and therefore the, petitioner must establish that it has a qualifying relationship with this entity. The petitioner did not provide any evidence of the existence and ownership of this foreign employer, such as articles of incorporation, stock certificates, or any evidence to show that the foreign employer has been continuously conducting business as required by the Act, or that it has a qualifying relationship with the petitioning company. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

On appeal, the petitioner states: "We are appealing the decision because we believe that there has been a misunderstanding. [REDACTED] is not a foreign corporation, but is a subsidiary of [the petitioner] the parent corporation. [REDACTED] to [the petitioner]. . . ." Based on this explanation, it appears that the petitioner is attempting to establish a qualifying relationship between two U.S. entities, namely the petitioning company, a Puerto Rican company, and its division or fictitious name [REDACTED] [REDACTED]" The petitioner still has not provided evidence related to the beneficiary's foreign employer

located in Argentina and therefore has not established the existence of a qualifying relationship between the U.S. and foreign employer, or evidence of a qualifying organization abroad. *See* 8 C.F.R. § 214.2(l)(3)(i).

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must establish with a preponderance of the evidence that the beneficiary was employed abroad full-time for at least one continuous year with a foreign employer that is a parent, branch, affiliate, or subsidiary of the petitioning company. 8 C.F.R. § 214.2(l)(1)(i). Here, the petitioner has not submitted any evidence on the record to establish the existence of the beneficiary's foreign employer or evidence that the beneficiary was employed in a managerial or executive role with a foreign employer.

Further, the petitioner has not submitted any evidence to show that the petitioner exists as a corporation beyond a certificate of incorporation, a letter of good standing, and other corporate documents that are not translated. Because the petitioner failed to submit certified translations of these documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Additionally, on appeal, the petitioner does not contest the director's finding, or offer additional arguments, related to the following issues: (1) the beneficiary's employment capacity in the United States or abroad; (2) the finding of insufficient premises for a new office; and (3) the conclusion that the petitioner failed to establish the size of the investment in the new office or the financial status of the foreign employer. The AAO, therefore, considers these issues to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

Further, the AAO concurs with the director's findings on the above issues. The petitioner has not provided a detailed description of job duties for the beneficiary with the petitioner or foreign employer but only generally describes the beneficiary as a businesswoman that has a special recipe for empanadas. 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). As such, without a sufficiently detailed description of the beneficiary's job duties it is impossible to determine whether the beneficiary has, or will, primarily perform duties consistent with a manager or executive according to the Act.

Additionally, the petitioner has not provided adequate evidence to establish that it has secured sufficient premises to house the claimed new office. 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 immediately upon the beneficiary's entry into the United States. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). Inherent to this definition, the petitioner must not only provide proof of the lease or acquisition of space, but also tie such space directly and specifically to the planned scope of the entity, its organizational structure, and its financial goals. Further, the space must typically be a definitive and legally enforceable property interest memorialized in a lease agreement or deed to a property, such that the use of the physical space is

continuous and uninterrupted during the one year new office period. However, as noted, the petitioner has only provided blueprints for, and internet map pictures of, a property left unexplained on the record. Also, the petitioner has not provided a valid lease or title to property to establish that it has secured premises for the new office during the first year. As such, the AAO concurs with the director's decision as to this issue.

The AAO also concurs with the director's conclusion that the petitioner has not established 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. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(2). The petitioner has not provided any evidence on the record that states any definitive investment on the part of the foreign employer in the petitioner. Indeed, the petitioner has provided no evidence that a foreign employer even exists to invest in the petitioner despite the director's specific request for this information. Again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Therefore, due to the lack of required initial evidence in the record, the overall insufficiency of the record, and the petitioner's failure to address these deficiencies on appeal, the petitioner has not established any of the evidentiary requirements to establish the beneficiary as eligible for the L-1 non-immigrant classification. *See generally* 8 C.F.R. § 214.2(l)(3) and 8 C.F.R. § 214.2(l)(3)(v). Further, the petitioner failed to submit a complete response to the director's properly-issued request for additional evidence. 8 C.F.R. § 103.2(b)(14). Accordingly, the appeal must be dismissed.

### **III. Conclusion**

The petition will be denied and the appeal dismissed 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. The petitioner is not precluded from filing a new visa petition on the beneficiary's behalf that is supported by competent evidence that the beneficiary is now entitled to the status sought under the immigration laws.

**ORDER:** The appeal is dismissed.