



U.S. Citizenship
and Immigration
Services

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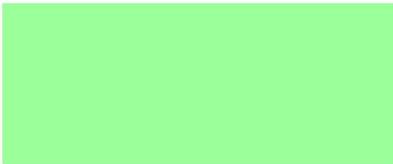


DATE: **JUN 28 2013** Office: VERMONT SERVICE CENTER FILE:

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:



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 extend the beneficiary's employment 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 Florida limited liability company established in November 2003, states that it is engaged in insurance and financial services as well as the operation of coffee shops and "new business development." The petitioner claims to be a subsidiary of [REDACTED], located in Saudi Arabia. The petitioner seeks to extend the beneficiary's employment as President and Chief Executive Officer for two years.

After issuing a request for evidence (RFE), the director denied the petition, concluding that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or an executive capacity. The director noted that the petitioner submitted the 2007 IRS Form 1120, but that it was of little probative value because it was dated after the filing of the petition. The petitioner failed to submit the requested 2008 IRS Form 1120 for the petitioning company.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review.

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.

Upon review, the AAO agrees with the director's decision and will affirm the denial of the petition.

The petitioner filed the petition on September 9, 2009. On September 22, 2009, the director put the petitioner on notice of the required evidence and gave a reasonable opportunity to provide it for the record before the visa petition was adjudicated. *See* 8 C.F.R. § 103.2(b)(8). The director issued an RFE requesting, *inter alia*, signed and certified copies of the U.S. company's federal income taxes, to include IRS Forms 1120, 2220, 4562, and 5472, as appropriate, specifically for the 2008 tax year. The director requested the 2008 tax returns as that evidence would demonstrate the petitioner's eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

In response, the petitioner failed to provide the requested evidence. Instead, the petitioner submitted a 2007 IRS Form 1120 and a 2008 IRS Form 7004, Application for Automatic Extension to File Certain Business Income Tax, Information, and Other Returns, along with the related Florida state forms. The petitioner indicated that it was requesting an extension of time to file its income tax returns for 2008. The petitioner's 2008 tax year ended on July 31, 2009 and the petitioner signed and dated the extension request on October 13, 2009, or 21 days after the director's request for evidence.

The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically requested by the director, the petitioner did not provide the requested evidence. Despite the additional opportunity to submit this evidence on appeal, the petitioner further declined to provide the petitioner's 2008 tax returns on appeal.¹ The petitioner's failure to submit this information cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

The absence of the 2008 tax evidence is critical because it precludes USCIS from reviewing whether the petitioner was conducting business at the time of filing such that the beneficiary would be employed in a primarily managerial or executive capacity. As noted by the director, the petitioner did submit a 2007 IRS Form 1120 but even this form was signed on September 29, 2009, after the date of filing and the director's RFE.

The AAO agrees with the director that the initial evidence and the petitioner's incomplete response to the request for evidence do not support a finding that the beneficiary will be employed in a primarily managerial or executive capacity. The petitioner did not submit all of the requested evidence; the unsupported assertions and explanations provided on appeal are insufficient to overcome the evidentiary deficiencies noted in the director's decision. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The record contains significant unexplained inconsistencies regarding the petitioner's business activities which undermine the claimed executive duties. In the original Form I-129, Petition for a Nonimmigrant Worker, at Part 5, the petitioner described its operations as "insurance and financial services as well as cafes and new business development." The petitioner's vice president signed the form under penalty of perjury. Additionally, in the accompanying letter dated September 1, 2009, the petitioner listed its holdings as including [REDACTED] and identified the companies as "insurance businesses." Finally, in describing the beneficiary's job duties, the petitioner stated in the letter that the beneficiary's

¹ On appeal, the petitioner submitted a 2008 IRS Form 1120 for [REDACTED] a coffee shop located in [REDACTED] New York, but not the requested returns for the petitioner itself. While the petitioner claims that this entity is a 51%-owned subsidiary, it is not clear that the petitioner has ownership and control over the business. The submitted annual report for [REDACTED] describes the shop as a "jointly-controlled entity."

The regulation and case law confirm that ownership *and control* are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. 8 C.F.R. § 214.2(l)(1)(ii)(K); *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988). In the context of this visa petition, control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

“duties would remain largely the same, which includes management of the [redacted] entities,” naming the insurance business as integral to the beneficiary’s duties.

However, in response to the director’s RFE, the petitioner revealed for the first time that the beneficiary had closed [redacted] in May 2009, more than four months before the filing of the petition. Specifically, the petitioner submitted a letter from its accountant, [redacted] dated October 21, 2009, who stated that “as a result of the poor performance of the insurance business and of [redacted] and [redacted] [the beneficiary] made the decision to close the insurance arm of [redacted] in May of 2009.”

The petitioner’s failure to reveal the closure of its insurance business at the time of filing, and the reliance on this business in describing the beneficiary’s executive duties, casts serious doubt on the petitioner’s claims. Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Additionally, the record contains conflicting evidence of the staffing of the primary U.S. company. At the time of the beneficiary’s previous extension, filed August 21, 2007, the petitioner claimed that the beneficiary was its sole employee (although it provided evidence of other employees at its two subsidiary companies). At the time of filing the instant petition, on September 9, 2009, the petitioner claimed that it had six employees at the primary U.S. company. The petitioner submitted copies of its IRS Form 941 for the first quarter of 2009, indicating that it had one employee in January, February, and March 2009; the second quarter of 2009, indicating that it had one employee in April and May 2009, and two employees in June 2009; and the third quarter of 2009, indicating it had six employees in July 2009, six employees in August 2009, and five employees in September 2009. The petitioner also provided an organizational chart for the U.S. company illustrating that it employs the beneficiary as the president and one vice president who supervises a bookkeeper, an administrative assistant, an office manager, and a business development consultant.

Based on the evidence in the record, it appears that the vice president was hired in June 2009, and the remaining staff was hired in July 2009, merely two months prior to filing the instant petition. This information raises doubts as to the beneficiary performing in a managerial or executive capacity and having sufficient staff to relieve him from performing non-qualifying operational and administrative duties.

Again, the evidence cast doubt on the petitioner’s proof and leads the AAO to a question the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. at 591. 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. *Id.*

Finally, the AAO observes that the “physical premises” requirement that applies to new offices serves as a safeguard to ensure that a newly established business will be able to do business and support a managerial or

executive position within one year. *See* 52 FR 5738, 5740 (February 26, 1987). After one year, USCIS "will determine, in [its] discretion, whether the new office is 'doing business' when an extension of the petition is adjudicated." *Id.*; *see also* 8 C.F.R. § 214.2(l)(14)(ii). A petitioner is not absolved of the requirement to maintain "sufficient physical premises" simply because it has been in existence for more than one year. In order to be considered a qualifying organization, a petitioner must be doing business in a regular, systematic and continuous manner. 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (H). Inherent to that requirement, the petitioner must maintain sufficient physical premises to conduct business.

As previously discussed, the petitioner claims to employ a staff of six persons in its headquarters office, but submitted evidence to show that it possessed a 107 square foot space in a virtual office. The lease for this space reflects that it is for one person. The lack of sufficient business premises and the conflicting evidence of record fails to establish that the petitioner has been and will be doing business in a manner that will support the beneficiary's claimed position.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the petitioner's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* In adjudicating the present visa petition, the evidence is neither probative nor credible, both individually and within the context of the totality of the evidence.

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.