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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

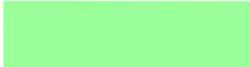


U.S. Citizenship  
and Immigration  
Services

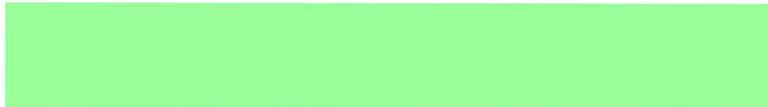


DATE: **MAY 30 2013**

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:

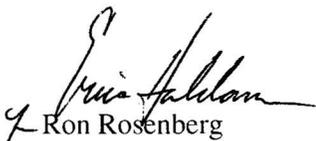


INSTRUCTIONS:

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 classify the beneficiary as an L-1B 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 New York corporation, states that it operates an ayurvedic health spa. The petitioner claims to be an affiliate of [REDACTED] located in New Delhi, India. The beneficiary, an ayurvedic panchakarma technician, was previously granted L-1B status for one year to be employed in a new office and the petitioner now seeks to extend her L-1B status for an additional three years.

The director denied the petition concluding that the petitioner failed to establish that it is or has been doing business in the United States. The director cited the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B), which requires that any petition seeking to extend a petition that involved a new office must be accompanied by evidence that the U.S. entity has been doing business for the previous year. The director further found that the petitioner failed to establish that it had full-time employment available for the beneficiary at the time the petition was approved. The director granted the petitioner's subsequent motion to reopen and reconsider and affirmed his decision to deny the petition.

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. On appeal, counsel for the petitioner asserts that the U.S. entity is currently doing business in the United States and that the beneficiary will be employed in a specialized knowledge capacity at the U.S. company. Counsel submits a brief and additional evidence on 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)(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 addressed by the director is whether the petitioner established that it is doing business in the United States, as that term is defined at 8 C.F.R. § 214.2(l)(1)(ii)(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 and abroad.

## II. THE ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the U.S. company is doing business in the United States. 8 C.F.R. §§ 214.2(l)(1)(ii)(H). As this petition seeks to extend a petition that involved the beneficiary's employment in a "new office," the petitioner is required to submit evidence that it has been doing business for the previous year. 8 C.F.R. § 214.2(l)(14)(ii)(B).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on May 8, 2008. The petitioner is a New York corporation established in June 2006. It states that it operates an ayurvedic health spa with 12 current employees and a gross annual income of "\$700,000 (Estimated)." The record reflects that on March 20, 2007, USCIS approved a nonimmigrant petition granting the beneficiary a one-year period in L-1B classification, from May 15, 2007 to May 14, 2008.

The petitioner's initial supporting evidence included, among other items, the following:

- The beneficiary's pay stubs for the months of March and April 2008, which indicated that the petitioner began paying her wages as of March 1, 2008.
- A signed and executed "Agreement" dated October 30, 2007 between the foreign entity and [REDACTED] for an initial period of three months with automatic extensions in three-month increments. The agreement states that the foreign entity will provide specialized equipment and one qualified and experienced Ayurvedic practitioner, four qualified and experienced Ayurvedic Panchakarma technicians, and one Yoga teacher "with proper work permit and visa" and [REDACTED] will provide the facilities for the foreign entity to conduct its business, among other things.
- A signed and executed "Agreement" dated December 17, 2007 between the U.S. company and [REDACTED] owner of [REDACTED] in Edison, NJ for an initial period of three years with automatic extensions in one-year increments. The agreement states that the U.S. company will provide specialized equipment and "consultancy" by qualified and experienced Ayurvedic practitioners and to undertake the therapies by qualified and experienced Ayurvedic Panchakarma therapists "with proper work permit and visa" and [REDACTED] will provide the facilities for the U.S. company to conduct its business, among other things. The agreement also prohibits the U.S. company from operating any other Ayurvedic Center within the state of New Jersey without the written consent of [REDACTED]
- Multiple press releases and media coverage dated in November 2007 for the opening of the petitioner's first Ayurvedic and Yoga Center in New York (related to the foreign entity's "Agreement" with [REDACTED] in November 2007).
- Multiple press releases and media coverage dated between January 2008 and April 2008 for the opening of the petitioner's second Ayurvedic and Yoga Center in New Jersey (related to the U.S. company's "Agreement" with [REDACTED] in December 2007).

The director issued a request for additional evidence ("RFE") on September 4, 2008, instructing the petitioner to submit, *inter alia*, the following: (1) a complete copy of its IRS Form 941 for the second, third, and fourth quarters of 2007; (2) a complete copy of its IRS Form 941 for the first and second quarters of 2008; (3) a copy of the latest U.S. Income Tax Return filed, including copies of all schedules; (4) copies of the beneficiary's Form W-2 and/or Form 1099 and her 2007 U.S. Income Tax Return; (5) copies of all the beneficiary's pay stubs from May 2007 to the present; and (6) copies of the petitioner's appointment books for the previous year indicating the appointments taken by the beneficiary.

In response to the RFE, the petitioner explained that "[t]he company could start the business only in November 2007 and as such there was no employees or activity in the second and third quarters." The petitioner further stated that the "beneficiary was not in employment of the US entity during 2007 and has only joined the company in December 2008 and as such there was no taxable income for the year 2007 and no tax return was filed." The petitioner explained that the beneficiary currently works in its New Jersey Center

which opened in January 2008, and therefore, it could not provide evidence of her appointment book for the previous year. The petitioner provided documentary evidence that it commenced business activities in November 2007, and evidence of wages paid to the beneficiary beginning in March 2008.

The director denied the petition on December 18, 2008 concluding that the petitioner failed to establish that it has been doing business in the United States and that it is able to support the beneficiary's full-time employment in specialized knowledge position. In denying the petition, the director found that petitioner failed to submit the requested IRS Forms 941 and appointment book for 2007, which should have been available. The director granted the petitioner's subsequent motion and affirmed his decision to deny the petition.

On appeal, counsel for the petitioner contends that the petitioner's delay in commencing its business operations was due to an unforeseen change in corporate structure that was out of the petitioner's control. Counsel submits a brief and additional evidence on appeal.

Upon review, the petitioner has not established that the U.S. company has been doing business for the previous year as required by the regulations. *See* 8 C.F.R. § 214.2(l)(14)(ii)(B).

The evidence of record reflects that, in the year immediately preceding the filing of the petition, the petitioner has had one contract dated October 30, 2007 for an initial period of three months, and a second contract dated December 17, 2007 for an initial period of three years. Both of the contracts are for the petitioner to provide spa services at existing spa locations.

The only provision that allows for the extension of a "new office" visa petition requires the petitioner to demonstrate that it has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii).

At the time of filing the petition for an employee to open or be employed in a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office, that the new office will be a qualifying organization as defined at 8 C.F.R. § 214.2(l)(1)(ii)(G) and that the petitioner has the financial ability to remunerate the beneficiary and commence doing business in the United States. 8 C.F.R. § 214.2(l)(3)(vi). After one year, USCIS will extend the validity of the new office petition only if the entity demonstrates that it has been doing business in a regular, systematic, and continuous manner "for the previous year." 8 C.F.R. § 214.2(l)(14)(ii)(B).

Upon review of the current petition, it is apparent that the petitioner was not prepared to commence doing business or remunerate the beneficiary upon approval of the initial petition authorizing her employment in its new office. The petitioner's first contract was executed six months after commencement of the beneficiary's one-year period of L-1B classification and appears to have commenced in January 2008, seven months after approval of the first petition. Counsel and the petitioner explain that the delay in commencing its operations in the United States was due to unforeseen circumstances; however, there is no provision in USCIS regulations that allows for an extension of the one-year period. The petitioner was required to have physical premises to conduct its spa services and the funding required to commence operations at the time it filed the new office petition, and the current record reflects that neither the funding nor the physical premises were actually in place. Further, if the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension.

Based on the foregoing evidence and the petitioner's statements that it did not open for business until November 2007, the AAO will uphold the director's determination that the petitioner has not been doing business for the previous year. Accordingly, the appeal will be dismissed.

While the appeal will be dismissed, the petitioner may file a new petition on the beneficiary's behalf with evidence that it currently meets all eligibility requirements for the requested classification.

### III. CONCLUSION

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.

**ORDER:** The appeal is dismissed.