U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: LIN 00 013 53379 Office: Nebraska Service Center Date: JAN 8 2001

IN RE: Petitioner: [redacted]
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)

Public Copy

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition remanded for further consideration.

The petitioner, a trading company, seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that the U.S. entity is doing business.

On appeal, counsel argues that "the facts found do not support a decision that the U.S. employer is not doing business."

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. 214.2(l)(14)(ii) states that a visa petition under section 101(a)(15)(L) 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 U.S. petitioner states that it was established in 1997 and that it is an affiliate of [redacted] located in Russia. The petitioner declares three employees and a gross annual income of approximately $1.1 million. It seeks to extend the petition's validity and the beneficiary's stay for two years at an annual salary of $40,000.

At issue in this proceeding is whether the petitioner has submitted sufficient evidence to establish that the U.S. entity is doing business.

8 C.F.R. 214.2(l)(1)(ii)(G) states:

> *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.

8 C.F.R. 214.2(l)(1)(ii)(H) states:

> *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.

The director found that the petitioner's documentation consisting of copies of invoices for merchandise shipped to the foreign entity in Russia was insufficient evidence to establish that it is doing business. The director noted that it appeared that the petitioner was an agent for shipping goods to the foreign entity in Russia.

On appeal counsel argues that:

> The petitioner in this case is registered to do business in Washington State, employs staff, makes sales, files tax returns and pays tax on net income. Business license, tax returns, invoices and shipping documents

have been submitted to substantiate activity. This goes considerably beyond the mere presence of an agent office.

The record contains a copy of the petitioners 1998 U.S. Corporation Income Tax Return which shows gross receipts of $198,842. In addition, the petitioner has submitted financial reports, balance sheets and invoices, which are sufficient in demonstrating that the petitioning entity is doing business. The petitioner has submitted sufficient evidence to establish that it is engaged in the regular, systematic, and continuous provision of goods and/or services. The petitioner has overcome the objections of the director, however, the petition may not be approved as it has not been established that the beneficiary has been or will be employed in a primarily managerial or executive capacity.

This case will be remanded to the director to determine whether the petitioner has met the eligibility requirements discussed under section 101(a)(15)(L) of the Act.

The director may request any additional evidence deemed necessary to assist him with his determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision of May 1, 2000, is withdrawn. The petition is remanded to the director for further consideration in accordance with the foregoing and entry of a new decision.