U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

File: EAC 99 217 54313 Office: Vermont Service Center Date: JAN 03 2002

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]

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is described as an international trading company manufacturing wooden floors and related items. It seeks to employ the beneficiary temporarily in the United States. The petitioner seeks to extend its authorization to employ the beneficiary temporarily in the United States as president of its office. The director determined that the petitioner had not established that the new office would support an executive or managerial position within one year.

The director in his Notice of Denial, dated January 27, 2000, stated several reasons for his determination that it is highly questionable that the new office would support an executive or managerial level position within one year. The director states, in pertinent part, that:

> The record contains a business plan for the U.S. entity. The business plan describes the company's sales forecast and projected financial statements in detail. However, the company's location, product description, short-term and long-term goals, and target customers are vaguely described. The business plan identifies start-up costs of $225,000.00. However, there is no evidence in the record to show that the U. S. Company has the funds available for the start-up costs or the resources to pay the beneficiary and the other 10 employees that the company intends to hire. Though requested, the record contains no bank statements for the U.S. organization. Nor does the record contain sufficient documentary evidence to show that the foreign organization has the resources to pay the beneficiary's salary and implement the business plan in the U.S. organization. The record contains evidence that the U.S. organization has acquired a leased property. However, the lease merely states the location of the premises and does not indicate the type or size of the premises. Therefore, the Service is unable to determine whether you have acquired premises of sufficient size to conduct your business.

On appeal, counsel states that bank statements and telephone bills are being submitted to demonstrate that the company exists and is "viable." The petitioner submitted a photocopied bank statement for KPF Enterprise, Inc. covering the period September 25-October 26, 1999 (page 1 of 2). This statement indicated that the opening

balance for the period was $3,108.38 and an ending balance of $1,395.85. Deposits for the period totaled $8,944.50 and checks paid $8,558.30. The petitioner submitted a second photocopied bank statement covering the period October 29 through November 22 [1999], which reflected an opening balance of $1,295.85 and an ending balance of $4,166.37, with deposits for the period totaling $18,400.00 and checks paid $14,360.37. No cancelled checks were submitted, therefore the record contains no specific transactional data. The petitioner also submitted a photocopied telephone bill for an unidentified subscriber indicating that from September 29, 1999 to October 10, 1999, a total of twenty seven (27) telephone calls were made, 19 of which were made to "Hungary". It is noted that, of those nineteen (19) telephone calls, 12 were one (1) minute in duration.

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)(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 performed.

8 C.F.R. 214.2(l)(3)(vi) states that if the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity 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 business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and

C) The petitioner has the ability to remunerate the beneficiary and to commence doing business in the United States.

According to the documentary evidence contained in the record, the petitioner is a wholly owned subsidiary of a Hungarian trading company. The petitioner states that a partnership agreement was entered into on October 30, 1997 and that the beneficiary is an "Associate Partner." The U.S. petitioner was incorporated on June 3, 1999. The petitioner seeks the beneficiary's services in order to open the new office and to render services in a managerial or executive capacity for a period of three years. The petition was filed July 9, 1999. The record indicates that the beneficiary has been Vice-President of Farkas Familia since 1997 and will assume the position of President of KPF Enterprise, Inc. The beneficiary arrived in the United States July 7, 1998 as a B-2 visitor.

The first issue in this matter is whether the petitioner has established that it has secured sufficient physical premises.

The record contains a Certificate of Incorporation for KPF Enterprise, Inc. executed on June 3, 1999; a Partnership Agreement between Farkas Familia BT. and the beneficiary executed October 30, 1997; a stock certificate number 1 designating Farkas Familia BT. as the owner of 200 shares of KPT Enterprise, Inc.; a letter of business intent, dated November 10, 1999, signed by the beneficiary as Vice-President of "K.P.F. Enterprise Inc."; and a lease agreement between KPF Enterprise, Inc. and N. A. de Flora effecting the leasing of property located in Maspeth, New York beginning June 6, 1999, for the sum of $800.00 monthly. The record does not reflect that the lease is a commercial lease or that business may be conducted from such premises. It is noted that article #13 of the lease prohibits the erection of advertisements or other signage on the property.

Based on the foregoing it has not been demonstrated that the United States entity has acquired sufficient physical premises to house the new office. 8 C.F.R. 214.2(l)(3)(vi).

A second issue in this proceeding is whether the petitioner has established its financial ability to remunerate the beneficiary and to commence doing business.

The record contains a letter signed by the President of Farkas Familia BT. stating that the corporation has sufficient money to launch foreign operations and that bank statements are included. The record contains submissions consisting of company generated financial statements, various vouchers and bills of lading. In addition, the petitioner furnished a "Business Plan" containing "projected" start-up growth and earnings, reflecting net sales of two (2) million dollars during fiscal year 2000 as well as projections for additional growth during 2001 and 2002. The plan also indicates that start-up costs amounted to $225,000.00 and were "financed by direct owner investment." Cost breakdown documents indicate that an unidentified investor "investor 1" invested a sum of $400,000.00 in the operation.

However, on review, the record contains no contemporaneous documentation of the foreign parent's or of the U.S. subsidiary's having corroborated the aforementioned financial statements. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Accordingly, there is insufficient evidence in the record to persuade the Service that the petitioner has sufficient financial ability to remunerate the beneficiary and to commence doing business. Therefore, the petition may not be approved.

Although not explicitly addressed in the decision, the record contains no documentation to persuade the Service that the beneficiary has been or would be employed in a managerial or executive capacity as defined at section 101(a)(44) of the Act, 8 U.S.C. 1101(a)(44), or that the petitioner would support such a position within one year of approval of the petition.

Beyond the decision of the director, the record indicates that the beneficiary is part owner of the petitioning company. 8 C.F.R. 214.2(l)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. Further, the petitioner has not established that the beneficiary was continuously employed by the parent organization for one (1) year during the three (3) years immediately prior to the filing of the petition. As the appeal will be dismissed, this issue need not be examined further.

In visa petition proceedings, the burden of proof 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.