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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: SRC 99 095 53304 Office: TEXAS SERVICE CENTER Date: 11 JAN 2002

IN RE: Petitioner
Beneficiary: [redacted]

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:

SELF-REPRESENTED

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. Weimann, Director
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Texas 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 importer and exporter of jewelry. The petitioner seeks to employ the beneficiary in the United States as its director of sales and marketing. The director determined that the petitioner had not submitted sufficient evidence to establish the beneficiary qualified for the L-1 classification.

On appeal, the petitioner disagrees with the director's interpretation of the submitted evidence and submits additional evidence for review.

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 to be performed.

The petitioner was incorporated in the state of Florida in January of 1999 and the petition was filed in February of 1999. The petition requests an L-1A nonimmigrant visa for the beneficiary in order to set up a new office for the petitioner in Florida. The petitioner qualifies under the new office definition in 8 C.F.R. 214.2(l)(1)(ii) that states in pertinent part that:

> (F) New office means an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

The issue in this proceeding is whether the petitioner has provided sufficient evidence to comply with the requirements set forth in 8 C.F.R. 214.2(l)(3)(v).

8 C.F.R. 214.2(l)(3)(v) states that if a 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.

The petitioner initially submitted a letter from Joyeria Artex Joyartex C. Ltda. (Joyeria), an Ecuadoran limited liability company. The letter indicated that Joyeria had been in business since 1980, and had employed the beneficiary as an export and import manager since 1996. The petitioner also submitted a document filed in April of 1995 with the Registry of Public Instruments in Ecuador that increased the capital and amended the by-laws of Joyeria. The petitioner, in addition, submitted its articles of incorporation.

The director requested that the petitioner supply additional evidence establishing a qualifying relationship between the petitioner and the foreign entity. The director also requested the petitioner provide evidence that the beneficiary's prior year of employment abroad had been in a position that was managerial or

executive in nature. The director further requested evidence that established the size of the foreign entity's investment and ability to commence doing business in the United States. The director finally requested evidence that the foreign entity was conducting business.

In reply, the petitioner submitted two share certificates, one showing 80 shares of the petitioner had been issued to Artex JoyArtex C. Ltd. and a second showing 20 shares of the petitioner had been issued to the beneficiary. In addition, the petitioner submitted a list showing three employees of the petitioner. The employee list included the beneficiary as president as well as a supervisor and secretary. The petitioner also submitted untranslated documents stating the documents were pay stubs for the beneficiary. Further, the petitioner submitted a copy of a certificate of use and occupancy for an import and export warehouse in the United States, a copy of an occupational license issued to the petitioner and a copy of an authorization for the petitioner to collect sales tax. Finally, the petitioner submitted a copy of an untranslated document claiming the document provided evidence that the foreign entity was conducting business.

The director determined that the petitioner had not submitted the evidence requested and found that the petitioner had failed to establish a qualifying relationship with a foreign company, had failed to provide evidence the foreign entity was conducting business, had failed to show that the foreign entity had committed any resources to the United States company and had failed to demonstrate that the United States company was a bona fide import and export company.

On appeal, the petitioner submits its by-laws, two purchase orders, a United States Customs Form 7525-V (Shipper's Export Declaration) issued to it and its unaudited balance sheet as of April 1999. The petitioner also submits an unaudited profit and loss statement of Joyeria.

The petitioner's additional evidence submitted on appeal is insufficient to overcome the director's determination. The record as presently constituted does not contain an adequate description of the foreign entity. The structure of the foreign entity's organization has not been provided and it is not clear who is authorized to act on behalf of the foreign entity. In addition, the corporate shareholder of the petitioner has a different name than the entity initially requesting that the beneficiary set up a new office. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988). The evidence does not establish that the petitioner has a qualifying relationship with a foreign entity.

In addition, a complete business plan setting out concrete details of the nature of the United States office and describing the scope of the office, its organizational structure, and its financial goals has not been provided. The financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States has not been established. The foreign entity's unaudited profit and loss statement and the April 1995 document increasing its capital are insufficient to demonstrate that the foreign entity is able to support the beneficiary while setting up a new office. The evidence is not sufficient to conclude that the petitioner will be able to support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, within one year of the approval of the petition.

Further, the petitioner has not provided sufficient evidence to show that 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 involves executive or managerial authority over the new operation. The untranslated pay stubs are not sufficient to show that the beneficiary was employed in a managerial or executive capacity. 8 C.F.R. 103.2(b)(3) requires that any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Without a translation the Service cannot find that the pay stubs indicate the beneficiary was employed by the foreign entity. Furthermore, pay stubs without a description of the beneficiary's day-to-day activities are insufficient to allow a conclusion that the beneficiary was employed in a managerial or executive capacity. The statement of the foreign entity, Joyeria, that the beneficiary was employed as an import and export manager is also insufficient to establish the beneficiary's actual duties for the foreign entity. The statement also contradicts information in the body of the petition that indicates the beneficiary was employed by Plaza Trinugulo Local 115 from 1996 to present. As stated above, the petitioner must resolve any inconsistent statements. Matter of Ho, at 582.

Beyond the decision of the director, the record does not contain sufficient evidence to establish that the petitioner has secured sufficient physical premises. The use and occupancy certificate for an import and export warehouse is not sufficient to show that the petitioner has secured physical premises for the new office. As the appeal will be dismissed, this issue will not be examined further.

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.