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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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

[redacted]

JAN 09 2003

File: SRC-02-045-52640 Office: Texas Service Center Date:

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)

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

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and 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 The decision of the director will be withdrawn and the petition remanded for further consideration.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 is an investor in real estate properties. It seeks authorization to employ the beneficiary temporarily in the United States as its business development manager. The director determined that the petitioner had not established that "a business was being set up in Florida" and was therefore, not doing business.

On appeal counsel argues that the U.S. entity is a viable operation and submits, in pertinent part, the following documents to demonstrate that it is doing business.

Florida Department of State, Articles of Organization of MINC Property Enterprises, LLC;

Operating Agreement of MINC Property Enterprises, LLC;

Florida Certificate of Mahmood Incorporated Limited's ownership of MINC Property Enterprises, LLC; and,

Stock Subscription for MINC Property Enterprises, LLC.

In thoroughly reviewing the director's decision, it appears that the director failed to consider significant documentary evidence submitted in response to the Service's request for additional evidence on December 20, 2001. That request asked that the petitioner submit evidence of a license to do business, evidence of the lease/purchase of facilities in which to conduct business, evidence of funding or capitalization, a statement regarding the proposed staffing level and, evidence that business is currently being conducted.

In response to the Service's request on January 9, 2001, the petitioner submitted:

documentation regarding the purchase of a residence and an investment condominium;

a 2000 annual report for the foreign entity;

evidence that the foreign entity is doing business;

an investment plan for the United States entity;

stock certificate number 1, (dated August 1, 2001) indicating that Mahmood Incorporated Limited (the foreign entity) owns 1000 shares

of MINC Property Enterprises, LLC, a Florida limited liability company;

Articles of Incorporation reflecting that MINC Property Enterprises, LLC, was incorporated in the State of Florida on July 26, 2001.

The record as presently constituted does not corroborate the director's findings. The record indicates that the petitioner did, in fact, submit some evidence that it was established and licensed to do business in the State of Florida. The record indicates that the director may have inadvertently failed to consider such evidence already in the record prior to rendering his decision. The record provides no elaboration as to what other criteria the director may have used in reaching his conclusions. It appears, however, that the petitioner is doing business. The case will be remanded for the director to determine whether the petitioner has met the other eligibility requirements under section 101(a)(15)(L) of the Act to classify the beneficiary as an L-1 intracompany transferee.

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 is withdrawn. The petition is remanded to the director for further consideration in accordance with the foregoing and entry of a new decision.