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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass. Ave., 3rd Floor
Washington, D.C. 20536

[redacted]

File: LIN 00 228 50031 Office: NEBRASKA SERVICE CENTER Date: MAY 14 2003

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]

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is described as a precision machines and parts supplier. It seeks to extend its authorization to employ the beneficiary temporarily in the United States in a capacity involving specialized knowledge, namely as its chief engineer. The director determined that the petitioner had not established that it has been doing business in the United States.

On appeal, counsel asserts that the director erred as a matter of law and submits a brief and documentation in support thereof.

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 meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year. Furthermore, the beneficiary must seek 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.

Under 8 C.F.R. § 214.2(l)(3), 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 regulations at 8 C.F.R. § 214.2(l)(14)(ii) state 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 United States petitioner claims to be a branch of [redacted] located in Kyoto, Japan. The petitioner neither declares the number of employees it has in the United States nor does it indicate the amount of its gross revenues.

The issue in this proceeding is whether the petitioner has been and will be doing business in the United States.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

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.

Pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(H), the phrase "doing business" is defined as:

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.

In the original petition, the petitioner stated that it is a branch office which is the U.S. representative of the foreign entity. Counsel indicated, in a separate statement, that the foreign entity "continues to have the financial ability to support *fully* the activities of the Representative Office." (Emphasis added.) Counsel states that the petitioner is engaged in the regular course of business. Specifically, counsel explained that the beneficiary has concentrated his efforts on answering applications questions of customers of the distributor company that purchases the petitioner's products.

On August 31, 2000 the Bureau sent the petitioner a notice requesting that additional evidence be submitted. The petitioner was instructed, in part, to submit its Form 941, employer's quarterly federal tax return and the petitioner's monthly bank statement which explains the petitioner's ability to pay its monthly rent. The petitioner was also asked to provide a detailed explanation of its business activities, including how its leased office space is being used, and how it is being compensated for services rendered.

In response to the above, the petitioner submitted a 1999 Form 1120-F, income tax return for a foreign corporation. However, the tax return was submitted in virtually blank form, containing only the foreign entity's name, location and the address of the foreign entity's representative agent office. The form contained no information regarding income earned.

The petitioner also submitted its quarterly tax return for the quarter that ended September 30, 2000, accompanied by a Michigan wage detail report. Taken together, those forms indicate that the beneficiary's earnings totaled $49,757.15. Although the petitioner also submitted a bank statement for June and July of the year 2000, the bank account is in the beneficiary's name and therefore does not belong to the petitioner. Therefore, it cannot be concluded that the account belongs to the petitioner or that the amounts indicated in the copies of the two checks (from the same account), one made out to the Internal Revenue Service and the other check made out to [redacted] (the petitioner's distributor) are debited from an account belonging to the petitioner.

Although the record contains two facsimiles, both of which refer to the same product order, the more recent facsimile indicates that the beneficiary originally received the order which he passed on to the sales office of the foreign company. The petitioner submitted no documentation which would explain how, if at all, it receives payment for products sold.

The director denied the petition, noting that "the branch office and the beneficiary primarily serve as operational 'agents' of the Japanese parent organization." The director concluded that the petitioner is not directly involved in the sale and distribution of the foreign entity's products and, therefore, is not "doing business" as defined above.

On appeal, counsel asserts that the Bureau cannot require the petitioner to actually sell products or services in order to establish that it is "doing business." Counsel further states that even though the U.S. branch is not engaged in the sales aspect of the business, it does provide customers with "technical consultative, engineering drawing, and equipment specification services which facilitate the sales process." However, even though previously requested, the petitioner has provided no documentation to explain how, if at all, it gets paid for the services provided. While the tax documents in the record indicate that the beneficiary was getting paid, there is no evidence that the U.S. petitioner paid his salary. In fact, the petitioner previously admitted that it is the foreign entity, not the U.S. branch, that pays the branch's expenses, including the beneficiary's salary and business expenses. Therefore, the petitioner has failed to provide evidence that it is doing business, per 8 C.F.R. § 214.2(l)(14)(ii)(B), as well as evidence of its financial status, per 8 C.F.R. § 214.2(l)(14)(ii)(E). For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary possessed specialized knowledge or had been and will be employed in a capacity which requires specialized knowledge. *See* section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B); 8 C.F.R. § 214.2(l)(1)(ii)(D). However, as the appeal will be dismissed, these issues need 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.