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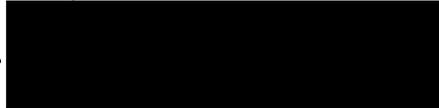


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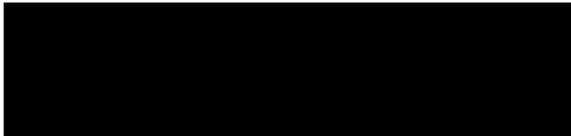
Date: DEC 26 2007

IN RE: Petitioner:
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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the nonimmigrant petition seeking to extend the employment of its executive managing director pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Florida limited liability company, is described as a provider of educational materials. It claims to be a subsidiary of [REDACTED], located in Botswana. The beneficiary was initially granted a one-year period in L-1A status in order to open a new office in the United States and the petitioner now seeks to extend her status for three years.

The director denied the petition on April 18, 2007, concluding that the petitioner had not established: (1) that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition; (2) that the petitioner has been doing business as defined in the regulations; or (3) that the U.S. company has secured sufficient physical premises to operate the business.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director improperly disregarded the petitioner's request that the petition be "converted" for consideration under the L-1B visa category. Counsel also contends that the director placed undue emphasis on the fact that the petitioner utilizes a virtual office, and incorrectly stated that the beneficiary only supervises four individuals. Counsel asserts that the petitioner functions as the agent of its parent company, and it is irrelevant that its invoices are processed through the foreign company. Counsel stated that a brief and additional evidence would be submitted within 30 days of filing the appeal on May 17, 2007, and the AAO subsequently granted counsel a 30-day extension, until July 16, 2007. As of this date, no additional evidence has been submitted by counsel or the petitioner and the record will be considered complete.¹

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 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.

¹ The AAO contacted counsel by facsimile on October 15, 2007 to inquire as to whether the brief and/or evidence had been submitted on or prior to July 16, 2007. Counsel has not responded to this inquiry.

- (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.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that, after one year, a visa petition 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 nonimmigrant petition was filed on January 10, 2007. In a letter dated January 9, 2007, counsel for the petitioner described the beneficiary's duties as follows:

As the Executive Managing Director, [the beneficiary] is responsible for managing [the petitioner's] operations in the U.S. and supervising shipping and distribution for the company internationally.

In the course of start up operations, [the beneficiary] has successfully established relationships with vendors and freight service companies which has allowed [the petitioner] to provide educational products to the expanding market in Botswana. [The beneficiary] has established and maintained an exclusive supplier agreement with the Rosen Publishing

Group, Inc., a major producer of educational materials. She is also responsible for managing dealings with GTCO Calcomp Peripherals

In addition to managing dealings with suppliers and freight companies in the U.S., [the beneficiary] is responsible for overseeing the international distribution network for [the foreign entity] and [the petitioner]. She reviews the performance of distribution and sales managers in Botswana and the Caribbean to ensure efficient performance and compliance with company policies and procedures. She develops sales strategies and marketing plans for implementation by [the foreign entity's] personnel internationally.

* * *

[The petitioner's] business plan, in keeping with the global strategy of the company has focused on outsourcing non core functions to subcontractors. [The beneficiary] supervises and manages the work of these subcontractors which include management consultants, accountants, lawyers, information technology consultants and office services specialists. [The beneficiary] has the authority to commit [the petitioner] financially by hiring and contracting with these subcontractors. She reviews their work for accuracy and compliance with specifications. She has the authority to terminate their contracts should their work prove below standard and has the power to enter into new and ongoing contracts.

The beneficiary will continue to supervise professional and managerial employees of the company internationally. She will continue to have authority to hire and fire and to take personnel actions such as terminations, promotions and leave authorizations. [The beneficiary] will continue to function at a senior level. She will exercise discretion over the day to day operations of the activities and functions of [the petitioner's] U.S. operations and for shipping and distribution of products to Africa and to the Caribbean.

The petitioner submitted an organizational chart for its corporate group, which depicts the beneficiary as supervising contractors identified as freight service, IT specialist, legal counsel, CPA and "office service," as well as maintaining relationship with four different suppliers. The chart indicates that she manages the managers of related companies in Botswana, Antigua, Jamaica and Namibia "with respect to distribution and delivery."

The petitioner provided an unaudited financial statement for the period ending November 30, 2006, which shows that the petitioner paid \$22,000 in payroll expenses, \$2,500 in professional fees, and \$249 for contract services through its first eleven months in operation.

The director issued a request for additional evidence on January 19, 2007, in part requesting: (1) a complete position description for all employees in the United States, including one for the beneficiary, to include a breakdown of the number of hours devoted to each job duty on a weekly basis; (2) additional evidence regarding the management and personnel structure of the U.S. company; (3) if applicable, evidence documenting the number of contractors the petitioner has utilized and the duties they perform; and (4) copies

of the petitioner's IRS Form 941, Employer's Quarterly Federal Tax Return, for the third and fourth quarters of 2006.

In a response dated April 12, 2007, counsel for the petitioner requested that the "petition be converted for consideration under the L-1B" visa category and addressed the beneficiary's qualifications as a "specialized knowledge" employee.

Counsel further stated that the beneficiary also qualifies as a manager or executive based on her responsibility for "managing and supervising the work of supervisory, professional and managerial employees" located in Botswana, Namibia, Antigua and Jamaica. Counsel described the beneficiary's role as follows:

[The beneficiary's] position as Executive Managing Director in charge of international client development and product distribution and delivery requires her to manage our international team of distribution and delivery managers and professionals.

* * *

With respect to her functions, [the beneficiary] supervises and manages the work of the operations, sales manager and administrative manager for Botswana. These managers, in turn, oversee a professional workforce in Botswana of 29 employees. [The beneficiary] also supervises, with respect to her function, the work of the country managers for Antigua, Jamaica and Namibia, who, in turn, manage a professional staff of 15 additional employees.

These positions all currently respond to [the beneficiary]. [The beneficiary] reviews their work to ensure compliance with the company's policies and goals for achieving a coordinated and efficient international distribution and delivery system. [The beneficiary] maintains regular contact with the international managers to monitor their work as it relates to distribution and delivery. [The beneficiary] reviews periodic status reports from the country managers on distribution information and client relationship maintenance activities.

As part of her supervisory activities, [the beneficiary] makes reports and recommendations to the Board of Directors in Botswana Apart from her periodic reports to the Board, [the beneficiary] has full discretion in the supervision and management of company employees with respect to the activities for which she is responsible. [The beneficiary] receives only general supervision and guidance from the Board.

The petitioner re-submitted the organizational chart submitted at the time of filing, as well as a letter from Republic Shipping Consolidators, which confirms that the foreign entity has been its customer for many years, and utilizes its services for freight consolidation and shipment of goods to the Caribbean and Africa. The petitioner also provided the requested payroll records. As noted by the director, the petitioner appears to have employed "Malcolm Sondock" in addition to the beneficiary, during the third quarter of 2006, but the petitioner has not identified what position he held or what duties he performed, nor does the petitioner claim

that he was employed by the U.S. company as of the date the petition was filed. The petitioner did not submit documentary evidence of payments to contractors.

The director denied the petition on April 18, 2007, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director acknowledged the petitioner's statement that the beneficiary would manage four managerial employees within the petitioner's group, but observed that the petitioner had failed to establish that the beneficiary would be supervising any employees or contractors in the United States office. The director found insufficient evidence that the beneficiary would be relieved from performing the day-to-day duties of providing a service of producing a product.

On appeal, counsel for the petitioner asserts that the director improperly disregarded the petitioner's request that the petition be "converted" for consideration under the L-1B visa classification. Counsel asserts that the director should have considered and addressed this request because the evidence submitted clearly establishes the beneficiary's eligibility for L-1B status.

With respect to the petitioner's claim that the beneficiary qualifies for an extension of her L-1A status as a manager or executive, counsel asserts that the director incorrectly stated that the beneficiary only supervises four individuals. Counsel states that the beneficiary manages over a dozen individuals worldwide "as their work relates to distribution and delivery of products and client relationship management."

Counsel's assertions are not persuasive. The petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition.

As a preliminary matter, the AAO will address counsel's request that the petition be "converted" to a request for L-1B classification. The AAO concurs with counsel that the director should have acknowledged this request in the notice of decision. However, the petitioner clearly indicated on Form I-129 that it was seeking to continue to employ the beneficiary in a managerial or executive capacity. The regulations at 8 C.F.R. § 214.2(l)(7)(i)(C) state:

The petitioner shall file an amended petition, with fee, at the service center where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (i.e. from a specialized knowledge position to a managerial position), or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act.

The request to reconsider the original petition as a petition for L-1B specialized knowledge classification was properly rejected by the director. If the petitioner now believes that the beneficiary meets the qualifications for both the L-1A and L-1B visa classifications, the petitioner must file a separate L-1B classification petition, with appropriate supporting documentation, rather than seek approval of a petition that is not supported by the facts in the record.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The petitioner's initial description of the beneficiary's duties was vague and did not identify with any specificity the managerial or executive duties to be performed by her under the extended petition. For example, the petitioner indicated that the beneficiary will be "managing dealings with suppliers and freight companies," and "overseeing the international distribution network." However, the petitioner did not clarify what tasks the beneficiary would perform to "manage" or "oversee" these activities, or identify any personnel within the petitioning company who would be responsible for directly purchasing products for export from U.S. suppliers, or making shipping arrangements with freight companies. Given that the primary purpose of the U.S. company is negotiating and contracting with U.S. suppliers and exporting educational materials, the beneficiary's responsibility for maintaining relationships with suppliers and freight companies suggested that she is in fact directly involved in performing these non-managerial functions. Similarly, although the petitioner stated that the beneficiary will "manage the operations in the U.S.," the petitioner did not specify what qualifying managerial duties the beneficiary would perform on a day-to-day basis. The fact that the beneficiary is the sole employee of the U.S. office and has been given a managerial job title is insufficient to meet the petitioner's burden to establish that the beneficiary's actual duties are primarily managerial in nature. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner failed to provide any detail or explanation of the beneficiary's activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner further indicated that the beneficiary manages and supervises the work of various subcontractors who perform "non-core functions," including management consultants, accountants, lawyers, information technology consultants and office service specialists. However, the petitioner did not submit documentation specifically identifying or evidencing the nature and scope of the services provided by the claimed contractors. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, the petitioner's financial statements for the first year of operations showed that the petitioner had paid a total of less than \$3,000 for professional and contract services during an eleven-month period, thus raising questions as to how much of the beneficiary's time would realistically be devoted to supervising the claimed contractors.

Finally, the petitioner's statements that the beneficiary will "supervise professional and managerial employees," "have the authority to hire and fire and to take personnel actions," "function at a senior level," and "exercise discretion over the day to day operations of the activities and functions" of the petitioning company merely paraphrased the statutory definition of managerial capacity. See section 101(a)(44)(A) of the Act. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin*

Bros. Co., Ltd. v. Sava, 724 F. Supp. at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

The director specifically requested that the petitioner clarify the beneficiary's duties and role within the organization by providing a complete position description that included specific duties and an indication as to how much time the beneficiary spends on each of her duties on a weekly basis. The petitioner's response to the director's request did not assist in establishing that the beneficiary would perform primarily managerial or executive duties. Rather than clarifying the duties listed initially, the petitioner focused solely on the beneficiary's responsibility for overseeing "supervisory, managerial and professional employees," specifically, an "international team of distribution and delivery managers and professionals," located in Botswana and in claimed affiliate companies in Namibia, Antigua and Jamaica. The petitioner noted that the beneficiary has authority over nearly 50 employees in total, and monitors the work of foreign employees "as it relates to distribution and delivery." Although requested by the director, the petitioner did not provide job titles and job descriptions for the beneficiary's claimed subordinates. The organizational chart provided does not include job titles for the majority of the employees and does not identify any employees who are engaged in "distribution and delivery" functions. Moreover, the petitioner did not clarify exactly what duties the beneficiary performs related to managing these functions, or indicate how she supervises the work of the foreign employees while located in the United States. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Furthermore, the petitioner's second iteration of the petitioner's job duties omitted all previous references to the beneficiary's responsibilities for maintaining relationships with suppliers and freight companies and supervising subcontractors. For this additional reason, it was non-responsive to the director's request for a "complete position description." Nevertheless, counsel emphasized that the U.S. company "procures educational materials for clients in Africa and the Caribbean and arranges for delivery of the U.S. products to overseas affiliates," and noted that "most of the company's business in the U.S. is conducted through phone conversations and in person meetings with supplier representatives." As the petitioner did not indicate that the foreign entities' employees are involved in the procurement of goods for export, and as the beneficiary is the sole employee of a company whose primary purpose is to purchase and arrange for the export of goods, it is reasonable to assume that the beneficiary directly performs these non-qualifying duties. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Intn'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. Although specifically requested by the director, the petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. See *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act. Whether the beneficiary is a "function" manager turns in part on whether the petitioner has sustained its burden of proving that her duties are "primarily" managerial. The record does not establish that a majority of the beneficiary's duties will be primarily managing an essential function of the petitioning organization. While the purchasing and export coordination duties undertaken by the U.S. company may be critical to the foreign organization, the record suggests that a preponderance of the beneficiary's duties will continue to be personally providing these services, rather than primarily managing procurement and export operations.

While it is true that a beneficiary employed by a small company or even as the sole employee of a company can qualify for L-1A classification, such petitioning companies are not exempt from establishing that the beneficiary will perform primarily managerial or executive duties. The fact that the beneficiary manages a business, regardless of its size, does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. See 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987).

Generally, a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require USCIS to examine the organizational structure and staffing levels of the petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

At the time of filing, the petitioner was a one-year old company engaged in purchasing educational materials from U.S. suppliers and arranging for their export to Botswana and the Caribbean. The petitioner employed the beneficiary as executive managing director and no other payroll staff. The petitioner claims to utilize contractors for "non-core" functions but has not provided documentation to corroborate this claim. The petitioner claims that the beneficiary oversees approximately 50 staff located in Africa and the Caribbean with respect to "the distribution and delivery" function, but has not identified this function with specificity, clearly described the beneficiary's duties or those of her claimed subordinates, or indicated how the foreign staff would obviate the need for the beneficiary to primarily perform the day-to-day duties of purchasing goods from U.S. suppliers and making routine arrangements with U.S. freight and shipping companies. The petitioner also has not identified any U.S. or foreign employees or contract staff who would perform the routine administrative, clerical and financial tasks associated with operating the business. The absence of a subordinate staff sufficient to perform the non-qualifying duties of the petitioner's business is a proper consideration in the analysis of the beneficiary's employment capacity. See *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 25, 29 (D.D.C. 2003). Given the absence of employees who would perform many of the non-

managerial or non-executive operations of the company, it is reasonable to conclude, and has not been shown otherwise, that the beneficiary would need to spend a significant portion of her time directly performing non-qualifying duties associated with the company's day-to-day operations. Again, an employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l.*, 19 I&N Dec. at 604. The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties at the end of the first year of operations.

The director clearly noted the lack of a subordinate staff to perform the routine duties of the petitioner's day-to-day operations; however, counsel has not addressed this deficiency on appeal or otherwise attempted to clarify who is responsible for purchasing goods from suppliers and making arrangements with freight and shipping companies, if not the beneficiary. Counsel simply states that the director misstated the number of foreign employees working under the beneficiary's supervision and states that the beneficiary manages "over a dozen individuals throughout the world." This statement is not sufficient to overcome the deficiencies that were discussed in detail in the director's decision. Counsel still has not specifically identified these individuals or the duties they perform, nor explained how they relieve the beneficiary from primarily providing the petitioner's services. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Based on the foregoing discussion, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity under the extended petition. For this reason, the appeal will be dismissed.

The second issue addressed by the director is whether the petitioner has established that it has been doing business for the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). Pursuant to the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) "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 support of the petition, the petitioner provided a copy of the U.S. company's un-audited financial statements for the eleven-month period ended on November 30, 2006. Based on the statement of income and expenses, the company received income in the amount of \$107,000 in "fees." The petitioner submitted voluminous supporting documentation, including price quotes, purchase orders, invoices, delivery slips, and shipping documentation, for educational materials shipped to Botswana and the Caribbean from U.S. suppliers. However, none of the documentation referenced the U.S. company as purchaser, seller, or shipper or otherwise suggested the involvement of the U.S. company in any of these transactions.

Accordingly, the director requested bank statements, and additional evidence that the U.S. company has been engaged in the regular, systematic and continuous provision of goods or services. In response, the petitioner stated that the documents submitted with the initial petition provided evidence of the petitioner's business activities, and submitted two additional invoices billed to the petitioner's foreign parent and affiliate companies, as well as several bank statements.

The director denied the petition concluding that the petitioner failed to establish that it was doing business as required by the regulations. The director noted that all of the submitted invoices referenced the overseas offices and the petitioner's bank statements do not show sufficient transactions to establish ongoing business activities.

On appeal, counsel states the following:

USCIS improperly emphasizes that the numerous invoices submitted in evidence of business activity relate to the parent company in Botswana. [The petitioner] functions in many ways as the agent of its parent company in Botswana. Whether the invoices are processed through [the petitioner] or through its parent company is irrelevant.

Upon review, counsel's assertions are not persuasive. The petitioner has not submitted sufficient documentation to establish that the U.S. company has been doing business for the previous year. If the petitioner is purchasing goods from suppliers and making shipping arrangements as claimed by the petitioner, it is unclear why the company has not been able to produce any documentation of these activities. The fact that the suppliers are shipping products directly overseas and invoicing the foreign entities does not necessarily prohibit a finding that the U.S. company is doing business. However, the petitioner's involvement in the transactions evidenced in the record cannot be assumed. It is reasonable to expect the petitioner to document the services it claims to provide to its international group by submitting some concrete evidence, such as copies of correspondence between the petitioner and the U.S. suppliers and freight companies, or evidence demonstrating who paid the petitioner the \$107,000 in "fees" indicated on the company's financial statement. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). For this additional reason, the appeal will be dismissed.

The third and final issue addressed by the director is whether the petitioner had secured sufficient physical premises from which to operate the U.S. business. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(A) requires a petitioner that seeks to open a new office to submit evidence that it has acquired sufficient physical premises to commence doing business. Although not specifically mentioned in the regulations governing the extension of a new office petition at 8 C.F.R. § 214.2(l)(14)(ii), this requirement does not expire at the end of the first year of operations.

At the time of filing, the petitioner indicated that the beneficiary's worksite would be located at 4406 NW 111 Court in Miami, Florida. This address was also identified as the beneficiary's residential address in the United States. Accordingly, the director requested photographs of the interior and exterior of all of the premises secured for the U.S. entity, and a copy of a commercial lease showing a facility of sufficient size to conduct an import/export business.

In response to the director's request, the petitioner submitted an agreement for a "virtual office," signed on December 1, 2006. The agreement provides for a telephone answering service, a mail service, and the option of using a conference room or office space provided that the petitioner provides two weeks notice. The petitioner did not submit photographs depicting the operation of its business as requested by the director.

In his letter dated April 12, 2007, counsel for the petitioner explained that the petitioner procures materials from U.S. suppliers and arranges for their export to its affiliate companies overseas, but does not warehouse goods in the United States or ship items from a company-owned central location. Counsel stated that the "virtual office" provides sufficient support for the U.S. company's operations, as most business is conducted through telephone and in-person meetings with suppliers.

The director denied the petition, concluding that the petitioner did not establish that it has acquired sufficient office space for the U.S. entity.

On appeal, counsel contends that the director "placed improper emphasis in its decision on the fact that [the petitioner] uses a virtual office for basic office functions."

Upon review, counsel's assertions are not persuasive. The petitioner has not established that it has secured sufficient physical premises to house the U.S. entity. Rather, it appears that the company primarily operates out of the beneficiary's residence, and signed its "virtual office" agreement only one month prior to the expiration of the initial L-1 visa petition. As noted above, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(A) requires a petitioner that seeks to open a new office to submit evidence that it has acquired sufficient physical premises to commence doing business. In the present matter, either the petitioner did not comply with this requirement, misrepresented that they had complied, or the director committed gross error in approving the petition without evidence of the petitioner's physical premises. Regardless, the approval of the initial petition may be subject to revocation based on the evidence submitted with this petition. See 8 C.F.R. § 214.2(l)(9)(iii).

The AAO acknowledges that the regulations do not specify the type of premises to be secured by a petitioner seeking L-1 classification as a new office, and observes that there may be cases in which a home office would satisfy the regulatory requirements. However, the petitioner bears the burden of establishing that its physical premises should be considered "sufficient" as required by the regulations. The petitioner has not met this burden. For this additional reason, the appeal will be dismissed.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.