



U.S. Citizenship
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Services

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File: SRC 04 073 51595 Office: TEXAS SERVICE CENTER Date: MAY 04 2006

IN RE: Petitioner:
Beneficiary:



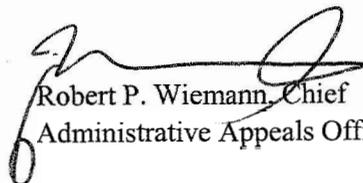
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president as an L-1A intracompany transferee 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 is a limited liability company organized in the State of Texas in October 2002 and claims to be engaged in importing, exporting and wholesaling electronics products. It claims to be an affiliate of Vision Apparel, a partnership located in Karachi, Pakistan. The beneficiary was initially granted a one-year period of stay in L-1A status to open a new office in the United States, and the petitioner now seeks to extend his status for a three-year period.¹

The director denied the petition, concluding that the petitioner did not establish: (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) that the petitioner has been doing business in the United States for the previous year.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, counsel for the petitioner asserts that the director's decision was contrary to the evidence submitted. Counsel emphasizes that the petitioning company experienced certain economic setbacks during the first year of operations, but was able to support the beneficiary in a managerial or executive capacity that does not require him to participate in the day-to-day operations of the petitioner's business. Counsel asserts that the petitioner was able to commence business operations "before conclusion of the start-up year." Counsel submits a brief and additional evidence in support of the appeal.

Upon review and for the reasons discussed herein, counsel's assertions are not persuasive. To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, 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.

¹ The petitioner stated on the L classification supplement to Form I-129 that the beneficiary is coming to the United States to open a new office. The beneficiary was previously granted L-1A status in order to open a new office for the instant petitioner (SRC 03 043 51444) with validity dates from January 16, 2003 to January 15, 2004. Under the governing regulations at 8 C.F.R. § 214.2(l)(3)(v), a U.S. petitioner that has been doing business for less than one year may petition for a manager or executive if it can be expected that the new office will, within one year, support a managerial or executive position. After one year, the regulations require the petitioner to file for an extension with supporting documentation evidencing that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii). The director appropriately adjudicated the petition under the governing regulations for a petition involving an extension of a petition that involved a "new office."

According to 8 C.F.R. § 214.2(l)(1)(ii)(F), a "new office" is defined as "an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year." Doing business is defined as "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." 8 C.F.R. § 214.2(l)(1)(ii)(H).

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 first issue in this matter is whether the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The nonimmigrant petition was filed on January 14, 2004. The petitioner indicated on the Form-129 petition that it had two employees, and attached the following job description for the beneficiary's role as president:

Direct and coordinate activities of the organization and formulate and administer company policies: In consultation with the management and the Pakistan Company develop long range goals and objectives of the company. Be responsible for corporate planning, general administration, marketing-sales and purchasing activities for the subsidiary. Direct and coordinate activities of managers and employees in the production, operations, purchasing and marketing departments for which responsibility is delegated for further attainment of goals and objectives. Review and analyze activities, costs, operations, and forecast data to determine progress toward stated goals and objectives. Review with management and employees company's achievements and discuss required changes in goals or objectives of the company.

In a January 13, 2004 letter, the petitioner stated that the company had begun to conduct business as a wholesale distributor and exporter of small electronics, cellular phones and accessories, had employed two people, and anticipated hiring three or four additional employees in the coming year. The petitioner submitted copies of its IRS Forms W-2, Wage and Tax Statement, issued to the beneficiary in the amount of \$18,000, and to two other individuals, in the amounts of \$4,500 and \$3,000, for the 2003 year. The petitioner's Texas quarterly wage report for the last quarter of 2003 showed that the beneficiary's two subordinate employees each earned a monthly salary of \$500.

The director issued a request for evidence on February 28, 2004, in part instructing the petitioner to submit an organizational chart for the U.S. entity and a definitive statement regarding the beneficiary's U.S. employment, to include: a list of all duties and the percentage of time spent on each duty; the number of

subordinate managers/supervisors or other employees who report to the beneficiary and their job titles, duties and educational background; or if the beneficiary does not supervise employees, an explanation regarding what essential function he manages; and an indication regarding who provides the product sales/services or produces the product of the business.

In a response dated May 28, 2004, the petitioner submitted the U.S. company's organizational chart, which depicts the beneficiary as president supervising a secretary and an accounts assistant. The petitioner indicated that the beneficiary allocates his job duties as follows:

1. Program, Product and Service Delivery – Oversees marketing, purchasing, promotion, delivery, quality of programs, products and services and running of everyday business. Time spent: 80%
2. Financial, Tax, Risk and Facilities management – Prepares yearly budget and prudently manages organization's resources within those budget guidelines according to current laws and regulations. Time spent: 15%
3. Human Resource management – Effectively manages the human resources of the organization according to authorized personnel policies and procedures that conform to current laws and regulations. Time spent: 3%
4. Community and Public Relations – Assures the organization and its mission, programs, products and services are consistently presented in strong, positive image to relevant stakeholders. Time spent: 2%

The petitioner indicated that the account assistant is responsible for monitoring expenditures and preparing monthly expenditures and administration reports, including analyzing financial data, maintaining up-to-date records and receipts of all transactions, auditing expenditures to ensure compliance with accounting procedures, balancing and reconciling accounts, and compiling data and preparing reports of income and expenditures. The petitioner stated that its secretary performs a variety of general clerical duties, types letters, memoranda and reports, organizes and maintains "district files and records," answers telephones, and supervises the work of "Clerk-Typist" positions.

The director denied the petition on July 21, 2004, concluding that the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity under the extended petition. The director observed that the beneficiary's subordinates are employed on a part-time basis and determined that the beneficiary would have to engage in the day-to-day business activities of the company given the current organizational structure. The director also noted that there was no evidence that the beneficiary's subordinates would be employed in managerial, supervisory or professional positions, or evidence that the beneficiary would be primarily managing or directing a function.

The petitioner filed the instant appeal on August 23, 2004. On appeal, counsel for the petitioner concedes that the U.S. company has "struggled to set up a viable business" and experienced "unusual difficulties" but claims that the beneficiary has been working in a "managerial/executive" capacity throughout the first year of operations. Counsel provides examples of duties performed by the beneficiary during the company's start-up phase, such as incorporating the company, contacting business brokers for the purchase of a business,

reviewing business opportunities, deciding product lines, negotiating and contracting to purchase inventory from suppliers, negotiating a lease, overseeing remodeling, setting up a new retail business, and managing the business through a "store manager." Counsel contends that the petitioner's retail business, while operating on a very small scale, has a formal structure and does not require the beneficiary to engage in the day-to-day activities of the petitioner. Rather, counsel asserts that the beneficiary "is engaged in planning strategic objectives and promotions, reviewing new products, negotiating with suppliers, and overseeing the performance of the store manager." In support of these assertions, counsel submits copies of previously submitted documents, including the petitioner's organizational chart that depicts the beneficiary supervising only an accounts assistant and a secretary.

Upon review of the petition and evidence, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity under the extended petition.

Upon review of the petition and evidence, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity under the extended petition. 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.*

On review, the petitioner's description of the beneficiary's job duties fails to demonstrate how he will engage in primarily managerial or executive duties under the extended petition. For example, the petitioner initially stated that the beneficiary will be responsible for "general administration, marketing-sales and purchasing activities," but did not indicate whether he would personally perform these administrative and operational tasks, or whether he would direct others to do so. The petitioner also stated that the beneficiary would direct "managers and employees" in the company's production, operations, purchasing and marketing departments. Since the petitioner does not employ any other "managers" and has not submitted evidence that it is organized into four distinct departments, this portion of the beneficiary's job description does not appear to be credible. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In response to the director's request for a comprehensive description of the beneficiary's duties, the petitioner again indicated that he "oversees marketing, purchasing, promotion, delivery, quality of products, products and services, and running over everyday business," and indicated that these duties would require 80 percent of the beneficiary's time. Again, the petitioner failed to demonstrate that the beneficiary is managing or supervising the performance of these routine duties by other subordinate employees, rather than personally performing the non-qualifying purchasing, marketing and sales duties himself. There are only three employees working for the petitioner's business and only the beneficiary maintains a full-time position. There is no mention in the record of any subordinate staff performing duties associated with sales, marketing, purchasing or import/export functions working for the U.S. company. Collectively, this brings into question how much of the beneficiary's time can actually be devoted to managerial or executive 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 Int’l*, 19 I&N Dec. 593, 604 (Comm. 1988).

On appeal, counsel asserts that the petitioner has a “formal structure” and claims that the beneficiary oversees a “store manager” and is therefore relieved from performing the day-to-day activities of the business. Neither counsel nor the petitioner provide evidence that the petitioner employs or has employed a store manager, and in fact, counsel resubmits the previously provided organizational chart depicting the beneficiary’s subordinates as a secretary and accounts assistant. 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).

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The test is basic to ensure that a person not only has the requisite authority, but that a majority of his or her duties related to operational or policy management, not to the supervision of lower level employees, performance of the duties of another type of position, or other involvement in the operational activities of the company.

In the instant matter, the petitioner has failed to show that non-qualifying duties will not constitute the majority of the beneficiary’s time. While the AAO does not doubt that the beneficiary exercised discretion in establishing the U.S. business during its start-up year, the petitioner must establish that his job duties as of the date of filing and moving forward will be primarily managerial or executive in nature. Based on the record of proceeding, it is evident that the beneficiary’s job duties at the end of the first year of operations are principally composed of non-qualifying duties that prohibit him from functioning in a primarily managerial or executive role. The general oversight exercised by the beneficiary as a partner in the business is not sufficient to establish his employment in a managerial or executive capacity as defined at section 101(a)(44) of the Act. The actual duties themselves 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).

Although the petitioner asserts that the beneficiary is managing a subordinate staff, the record does not establish that the subordinate staff is composed of supervisory, professional, or managerial employees. *See* section 101(a)(44)(A)(ii) of the Act. At the end of its first year of operations, the petitioner employed the beneficiary, a part-time secretary and a part-time accounts assistant. A review of the job descriptions provided for these employees, in light of the totality of the evidence, does not support a conclusion that the beneficiary’s subordinates at the time of filing were supervisors, managers, or professionals. Instead, the record indicates that the beneficiary’s subordinates perform day-to-day clerical tasks and routine bookkeeping functions. The petitioner has not provided evidence of an organizational structure sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees.

Pursuant to section 101(a)(44)(A)(iv) of the Act, the beneficiary's position does not qualify as primarily managerial under the statutory definitions.

Similarly, the record does not establish that the beneficiary will be employed as a function manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)). In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function.

Finally, the record does not establish that the beneficiary will be employed in a primarily executive capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* The petitioner has not established that the beneficiary will "direct the management" of the organization or primarily focus on broad goals and policies. Rather, as discussed above, the record demonstrates that the beneficiary continues to be involved in the day-to-day operations of the company as of the date of filing.

The AAO notes that the director based his decision partially on the petitioner's staffing levels. Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS 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 CIS 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. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

The AAO acknowledges the petitioner's claim that the U.S. company intends to expand its operations and hire additional employees in the future. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Even though the enterprise remains in a preliminary stage of organizational development, the petitioner is not relieved from meeting the statutory requirements. Based on the evidence furnished, it cannot be found that the beneficiary will be employed by the petitioner in a primarily managerial or executive capacity. For this reason, the appeal will be dismissed.

The second issue in this matter is whether the petitioner established that it has been doing business in the United States for the year preceding the filing of the petition, as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) states: "*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 its January 14, 2004 letter submitted in support of the petition, the petitioner stated that the company had obtained commercial space in a "wholesale district" and had begun to "conduct transactions such as wholesale distribution and export of small electronics, cell phones and accessories." The petitioner stated that it had received its IRS employer identification number in September 2003 and conducted transactions after this date. The petitioner provided supporting documentation including bank statements for the petitioner and beneficiary for the last three months of 2003; a commercial sublease agreement for premises to be used as a "trade office" valid for a one-year period commencing on December 1, 2003; two sales invoices and numerous purchase invoices dated between September and December 2003; and a 2003 profit and loss statement showing \$98,378 in sales for the year.

On February 28, 2004, the director instructed the petitioner to submit evidence of business conducted by the petitioner during the past year, such as sales contracts, bills of lading, shipping receipts, orders, and customs documentation.

In response, the petitioner submitted: a total of three sales invoices issued by the petitioner, dated February 2004, December 2003 and May 2003, amounting to \$12,643 in goods sold; and approximately eleven purchase invoices issued to the petitioner by various suppliers, dated January 2004, September 2003, March 2003 and January 2003; and three sales invoices issued by [REDACTED] on February 20, 2003 for goods amounting to \$636.96.

The director denied the petition on July 21, 2004, in part concluding that the petitioner had not established that it has been doing business for the previous year. The director observed that the evidence submitted showed that the petitioner had conducted business operations for only five of the last twelve months, and was insufficient to show that the business operations could financially support the business.

On appeal, counsel for the petitioner asserts that the petitioner “struggled to set up a viable business in the start-up year” but is now successfully operating its retail business at the location identified in the previously submitted lease agreement. Counsel notes that since the petitioner’s start up, the beneficiary has been searching for a suitable business, entered into negotiations and proposed purchases of several businesses, decided to open a new business, signed a lease agreement, and oversaw the remodeling of the premises in preparation for opening of a retail business. Counsel claims that the petitioner “commenced its business before conclusion of the start-up year.”

Upon review, the AAO finds insufficient evidence to establish that the petitioner has been engaged in the regular, systematic, and continuous provision of goods and /or services for the year preceding the filing of the petition. In the January 13, 2004 letter submitted in support of the petition, the petitioner indicated that it had commenced its business operations in September 2003, eight months after the beneficiary was granted L-1A status in order to open a new office in the United States. On appeal, counsel implies that the petitioner did not begin doing business until after it signed its current lease agreement, which is valid for a one-year period commencing on December 1, 2003. There is no evidence in the record to establish that the petitioner was operating the claimed “retail business” at the time the petition was filed or at any time during the previous year, and counsel has not explained why the petitioner previously claimed to operate an import/export and wholesale distribution business. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As noted by the director, the minimal documentation submitted with the initial petition and in response to the request for evidence, considered in light of the petitioner’s and counsel’s statements regarding the petitioner’s delays in commencing operations, does not establish that the petitioner was engaged in the regular systematic and continuous provision of goods and/or services at any time during the previous year. It is apparent that the petitioner was not prepared to do business and did not commence doing business upon approval of its initial new office petition. The petitioner has not submitted evidence on appeal to overcome the director’s decision on this issue. For this additional reason, the appeal will be dismissed.

Beyond the decision of the director, the record reflects that the U.S. entity did not secure a commercial lease until December 1, 2003, nearly eleven months after the approval of the original new office petition. 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 petition will be denied 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.