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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



D7.

DATE: **AUG 13 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: 

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner filed this petition to classify the beneficiary as a nonimmigrant 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, a Delaware corporation established in 2010, states that it is a subsidiary of Dexu Group OY, located in Finland. The petitioner intends to engage in the manufacture of food flavorings and related products. It seeks to employ the beneficiary in the position of chief executive officer of its new office in the United States for a period of one year.

The director denied the petition concluding that the petitioner failed to establish: (1) that the U.S. company will employ the beneficiary in a qualifying managerial or executive capacity within one year of the approval of the petition; and (2) that it has secured sufficient physical premises to house the new office.

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 asserts that the director's decision contains factual inaccuracies and contends that the director erred by denying the petition without requesting additional evidence regarding the beneficiary's proposed managerial or executive duties in the United States. Counsel states that the evidence of record establishes by a preponderance of the evidence that the new office will support an executive or managerial position within one year of approval of the petition.

I. THE LAW

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.

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.
- (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)(3)(v) further provides that if the 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 director denied the petition based on two alternative grounds, concluding that the petitioner failed to establish: (1) that the intended U.S. operation will employ the beneficiary in a qualifying managerial or executive capacity within one year of the approval of the petition; and (2) that it has secured sufficient physical premises to house the new office.

II. EMPLOYMENT CAPACITY IN THE UNITED STATES

The first issue to be addressed is whether the petitioner established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

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 one-year "new office" provision is an accommodation for newly established enterprises, provided for by U.S. Citizenship and Immigration Services (USCIS) regulation, that allows for a more lenient treatment of managers or executives that are entering the United States to open a new office. When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. In an accommodation that is more lenient than the strict language of the statute, the "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position.

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). The petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

A. Facts and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on August 25, 2010. In a letter submitted in support of the petition, the foreign entity's chairman described the beneficiary's proposed role as chief executive officer of the new U.S. subsidiary as follows:

[The petitioner] has an immediate need for an individual to serve as Chief Executive Officer ("CEO") in order to execute the company's strategy, business development, marketing, investments, pricing, hiring and other general management issues for the entire company. The CEO will have the following specific job responsibilities:

- Plan, direct and coordinate the manufacturing, supply chain, financial and growth strategies for [the petitioner] in the United States;
- Develop company strategy for expanding the manufacturing capability of the business in the United States;
- Build a management team for [the petitioner] in the U.S. ensure compliance with [the foreign entity's] business strategies and objectives;
- Develop company marketing strategies to grow the company's U.S. customer base;
- Manage [the company's] investment strategy and financial affairs;
- Develop plans and lead efforts to build manufacturing plant in the U.S.;
- Support operations and administration of the Board of Directors of [the foreign entity] by advising and informing Board members of the progress of U.S. operations towards meeting strategies for company growth in the U.S.

The CEO will be an executive level position for [the petitioner] in the U.S. in that the CEO will direct the management of the entire organization in the U.S., in communication with the Board of Directors, establish all goals and policies of [the company] in the U.S., and will exercise wide latitude in discretionary decision-making.

The petitioner's supporting evidence included a business plan for the United States entity for the introduction of the company's food flavorings to the U.S. market. The petitioner indicates that it intends to market its food flavoring products to meat processors, prepared food manufacturers, milk processors, the baking and milling industry, and the fast food industry, with the goal of becoming "a significant actor in the U.S. food-flavoring market within ten (10) years."

The petitioner's business plan discussed its short- and long-term plans as follows:

Our operational efficiency in the United States is based on initially running a thin organization and using a local partner to blend our flavoring mixes. Within two (2) years following the commencement of our operations in the US market, we plan to construct our own plant. From there we estimate that our distribution network will cover the entire continental United States within five (5) years. Within ten (10) years we plan on operating at least five (5) plants at full capacity. During the first full calendar year of our operations we expect to generate revenue of approximately one (1) million USD, projecting a growth of up to ten (10) million per annum by 2015.

The petitioner stated that its initial team will include the beneficiary and [REDACTED] who will serve as Research and Product Development Director for the U.S. company. The petitioner further described its plans for the company's organization as follows:

Upon our entry in the U.S. market, our initial approach is to utilize a local partner in Illinois, known in the food industry as a "blender," that manufactures our flavoring mixes based on our proprietary recipes, thereby enabling us to avoid heavy investment in manufacturing facilities as we commence our operations here. Our blender is [REDACTED] located in Beecher, Illinois. By utilizing a blender, we can commence our operations in the US market by simply securing an office space in the vicinity of our blender and we can avoid hiring our own manufacturing staff until our growth warrants it. We will also aggressively outsource other business processes such as legal services, financial controls, and logistics, operating with minimal staff and cash outlays until the growth in our customer base warrants investing in our own manufacturing facilities.

The petitioner identified the names of its ingredient suppliers in the United States as well as a number of potential customers. The petitioner indicated that [REDACTED] will initially distribute products to its U.S. customers, and that products will be tailor-made for its individual customers. The petitioner emphasized that it will need to obtain liability insurance coverage and regulatory clearance for its ingredients to ensure that they are labeled correctly and legal for consumption.

In addition to the business plan, the petitioner submitted a copy of its Confidentiality and Non-Disclosure Agreement with [REDACTED]. The agreement provides that [REDACTED] will manufacture and/or blend specific recipes using ingredients and methods as instructed by the petitioner. The petitioner submitted a second identical agreement bearing the same date which indicates an agreement between [REDACTED]. Both agreements were signed by the beneficiary in the capacity of CEO/partner.

Finally, the petitioner submitted a lease agreement for a 146 square foot office located in Chicago, Illinois. Counsel indicated that the beneficiary "will initially run the operations while scouting out locations for the proposed new manufacturing facility."

The director issued a request for additional evidence on August 31, 2010. The director advised the petitioner of the "new office" regulatory requirements pursuant to 8 C.F.R. § 214.2(l)(3)(v) and requested that the petitioner provide additional evidence to establish that the beneficiary qualifies as a manager or executive of a new office. Specifically, the director requested an original letter from the parent company which explains: the need for the new office as well as the proposed number of employees and types of positions to be filled, the amount of the U.S. investment, the financial ability of the foreign company to commence doing business in the United States, and how the proposed business venture will support a managerial or executive position within one year. The director also requested that the petitioner explain why the beneficiary acted on behalf of "Vittorio Inc.," an apparently unrelated company, to obtain the blending services of [REDACTED]

In a response dated September 24, 2010, the petitioner reiterated that the Chicago office will house two employees, the beneficiary and the research and product development director, [REDACTED]. The petitioner indicated that its funding would come from its parent company through its subsidiary, [REDACTED], and that the company will be able to commence its operations with an initial investment of \$30,000 to \$50,000.

The petitioner stated that "the main purpose of opening an office in the U.S. is the vast market potential for our products, and by opening an office here, our CEO is able to determine the feasibility for our company to construct a plant in the U.S. and to grow our distribution network across the U.S."

In response to the director's request for evidence related to the outsourcing agreements, the petitioner stated:

As the CEO of [the petitioner], [the beneficiary] has the authority to act on behalf of the petitioner in making agreements with other companies, such as our blending partner, [REDACTED]. [REDACTED] is a marketing entity that we have set up in order to market our flavoring agents, and as our CEO [the beneficiary] is authorized to enter into agreements for [REDACTED] on our behalf as well.

The director denied the petition on October 8, 2010, concluding that the petitioner failed to establish that it would employ the beneficiary in a primarily managerial or executive position or that the company would support a managerial or executive position within one year of the approval of the petition. In denying the petition, the director determined that the petitioner failed to provide a detailed and specific description of the beneficiary's proposed duties. Further, the director noted that the company intends to hire, at most, one additional employee within the first year of operations, and thus it had not been shown that the beneficiary would be relieved from performing non-managerial duties associated with the day-to-day operations of the U.S. company.

The director emphasized that the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C)(I) requires that the petitioner submit with its petition evidence pertaining to the scope of the proposed U.S. company, its organizational structure, and its financial goals, to establish the petitioner's ability to support a managerial or executive position. The director determined that the petitioner failed to provide this material information.

On appeal, counsel for the petitioner maintains that "the request for evidence did not request any additional evidence that the U.S. position was an executive or managerial level position." Counsel notes that, had such evidence been requested, "the petitioner would have supplied additional evidence of the executive nature of the U.S. position." Nevertheless, counsel asserts that sufficient evidence was submitted to establish the U.S. position as an executive or managerial position beyond a preponderance of the evidence. In this regard, counsel asserts that "the petitioner would have submitted evidence that the beneficiary would continue to act as CEO of both [the petitioner] in the U.S. and the parent company . . . if the service had requested such information."

Counsel further objects to the finding that the beneficiary's proposed duties were not described in sufficient detail, noting that, based on the information provided, "it is clear that the CEO will be primarily directing the management of the organization in the U.S." Again, counsel states that "if additional evidence was requested in association with the U.S. job description, the petitioner would have supplied this information."

Counsel contends that the director erred by finding that the petitioner failed to document the nature and scope of the new company. Counsel emphasizes that the petitioner provided a detailed business plan outlining the proposed nature and scope of the business, the products to be offered, key customers, key executives, the marketing plan, and information regarding the company's competitors in the United States. In addition, counsel notes that the petitioner provided a copy of its agreement with [REDACTED] and a copy of its lease agreement.

B. Analysis

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary will be employed by the United States entity in a managerial or executive capacity within one year.

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.*

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's proposed organizational structure, the duties of the beneficiary's proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of other employees to relieve the beneficiary from performing operational duties at the end of the first year of operations, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. As noted above, the petitioner's evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

The petitioner has described the beneficiary's proposed duties in broad terms, indicating that he will "plan, direct and coordinate" company strategies for manufacturing, supply chain and growth; "develop company strategy for expanding the manufacturing capability"; "develop company marketing strategies"; "manage [the company's] investment strategy"; "direct the management of the entire organization in the U.S."; "establish all goals and policies"; and "exercise wide latitude in discretionary decision-making." Such statements reflect that the beneficiary will possess the appropriate level of authority over the new company, but they offer little insight into what the beneficiary will actually do on a day-to-day basis as the president of a newly-established manufacturing and distribution company during the first year of operations and beyond. 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 has failed to provide any detail or explanation of the beneficiary's activities in the course of her proposed 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 AAO acknowledges that the director denied the petition, in part, based on a finding that the petitioner failed to provide a sufficiently detailed description of the beneficiary's duties. Counsel for the petitioner contends that the director did not provide the petitioner with an opportunity to address the director's concerns through the issued Request for Evidence. The regulation at 8 C.F.R. § 103.2(b)(8)(iii) clearly states if all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may, in its discretion, deny the application or petition for ineligibility. If the petitioner has rebuttal evidence, the administrative process provides for a motion to reopen, motion to reconsider, or an appeal as a forum for that new evidence.

Therefore, even if the AAO were to find that the director should have explicitly requested a more detailed description of the beneficiary's proposed duties before denying the petition, the director's error would be harmless. Because the director did not request a more detailed position description prior to issuing her decision, the petitioner had the opportunity to submit additional evidence to the AAO in support of the petition and to refute the director's findings. *Cf. Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). Neither counsel nor the petitioner has sought to clarify the beneficiary's proposed duties on appeal, but rather counsel states that it would have provided such clarification had the director requested it. Accordingly, the AAO must make its determination based on the position description provided at the time of filing the petition.

Overall, while some of the duties described by the petitioner would generally fall under the definitions of managerial or executive capacity, the lack of specificity raises questions as to the beneficiary's actual proposed duties. The AAO will not accept a vague or overly broad position description and speculate as to the beneficiary's actual managerial or executive duties and the amount of time he will allocate to qualifying tasks. 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 prove 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).

Therefore, the position description alone is insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or executive capacity. As noted above, the petitioner has the burden to establish that the U.S. company would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C)(2) requires the petitioner to submit evidence that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position supported by information regarding the proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals.

Therefore, in reviewing the totality of the evidence in the record, the AAO must consider the nature of the petitioner's new office, its proposed staffing levels, its preparation for rapid development, and its need for an employee who will perform primarily managerial or executive duties.

The petitioner has submitted a six-page business plan in support of the petition, but the business plan does not include a detailed plan for the critical first year of operations. Rather, the petitioner indicates that it intends to open its own plant within two years, to distribute its products nationwide within five years, and to operate multiple manufacturing plants within 10 years. Based on the statements made in the business plan, the company intends to initially operate with a chief executive officer and a director of research and product development, and plans to outsource functions such as manufacturing, logistics, finance, and distribution. The petitioner has not provided a position description for the director of research and development, and the business plan does not include sufficient information regarding the company's proposed structure, objectives and scope during the first year of operations. The business plan states that the company anticipates first-year sales of \$1 million, but does not outline its anticipated expenses or provide other evidence as to how it intends to achieve these sales, or to corroborate its claims regarding the company functions it claims will be outsourced. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Section 101(a)(44)(C) of the Act requires the AAO to "take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function." The AAO has long interpreted the statute to prohibit discrimination against small or medium-size businesses. However, the AAO has also consistently required the petitioner to establish that the beneficiary's position consists of "primarily" managerial and executive duties and that the petitioner will have sufficient personnel to relieve the beneficiary from performing operational and administrative tasks within one year of commencing operations.

Therefore, the fact that the petitioner intends to operate a "thin organization" with only two people during the first year of operations is not dispositive. Rather, the petitioner's claims fail on an evidentiary basis as it has not identified the actual duties the beneficiary and his one subordinate will perform, nor identified who, specifically would be responsible for performing the day-to-day duties of marketing, selling and distributing the company's products and handling routine administrative functions associated with operating the business.

Further, it is not clear that the company is prepared to immediately commence doing business in the United States. For example, the petitioner indicates that it still needs to secure maximum limited liability coverage and regulatory clearance for its products but provides no timeline for such milestones.

While the beneficiary has been assigned an executive job title and appears to be assigned to the overall management of the new U.S. company, the petitioner has not established how he would be relieved from focusing on the day-to-day operations of the petitioner's business within one year. As discussed, the petitioner's business plan primarily focuses on long-term objectives, is lacking in information regarding immediate plans for commencing business operations, and does not establish how the company will support a qualifying managerial or executive position within one year. The fact that the beneficiary manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(15)(L) of the Act. See 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive").

Based on the petitioner's failure to provide a detailed description of the beneficiary's duties or to adequately describe the proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals for the first year of operations, the petitioner has not established that it will employ the beneficiary in a primarily managerial or executive capacity within one year or that the company will grow to the point where it can support a qualifying managerial or executive position. Accordingly, the appeal will be dismissed.

III. SUFFICIENT PHYSICAL PREMISES TO HOUSE THE NEW OFFICE

The remaining issue to be addressed is whether the petitioner established that it has secured sufficient physical premises to house the new office, pursuant to 8 C.F.R. § 214.2(l)(3)(v)(A). The AAO will withdraw the director's determination with respect to this issue.

The record establishes that the petitioner has secured the premises located at [REDACTED] Avenue in [REDACTED]. The amount of space secured is 146 square feet. The director determined that "based on the confined office, the leased space is insufficient to establish that the petitioner has secured sufficient physical premises to house the new operation."

The petitioner indicated that it intends to employ no more than two employees during its first year of operations. The office secured, while small, appears to be sufficient in light of the company's hiring plans. While the director correctly stated that the small office secured "illustrates that the petitioner does not intend to hire additional employees," that observation relates to the beneficiary's proposed employment capacity and should be separate from a determination as to whether the petitioner has met the regulatory requirement at 8 C.F.R. § 214.2(l)(3)(v)(A). Accordingly, the AAO finds that the petitioner satisfied this regulatory requirement.

IV. CONCLUSION

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