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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

PUBLIC COPY

[redacted]

D7

DATE: MAY 2 2 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

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 with the field office or service center that originally decided your case by filing a 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 nonimmigrant petition seeking to classify the beneficiary as an 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 Washington limited liability company established in 2009, intends to provide professional financial and business management services. It claims to be an affiliate of Conseils et Gestion d'Entreprises, located in Ivory Coast. The petitioner seeks to employ the beneficiary as the president of its new office in the United States for a period of three years.[1]

The director denied the petition based on a finding that the petitioner failed to establish: (1) that it secured sufficient physical premises to house the new office; (2) that the new office would support the beneficiary in a primarily managerial or executive position within one year of approval of the petition; and (3) that the petitioner has a qualifying relationship with the foreign entity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the director applied extra-regulatory requirements in determining that the company failed to satisfy the requirements for a new office petition pursuant to 8 C.F.R. § 214.2(l)(3)(v).

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.

[1] Pursuant to 8 C.F.R. § 214.2(l)(7)(i)(A)(*3*), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

(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) also provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or 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 involves 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.

II. Discussion

The director denied the petition based on a finding that the petitioner failed to establish: (1) that it had secured sufficient physical premises to house the new office; (2) that the new office would support the beneficiary in a primarily managerial or executive position within one year of approval of the petition; and (3) that the U.S. and foreign entities are qualifying organizations.

A. Physical Premises to House the New Office

The first issue to be addressed is whether the petitioner established that it has secured sufficient premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

1. Facts and Procedural History

The petitioner filed the Petition for a Nonimmigrant Worker (Form I-129) on January 8, 2010. The petitioner indicated that the beneficiary would be working at [redacted] The petitioner indicated this same address as the beneficiary's U.S. address, as he was in the United States in B-2 status at the time the petition was filed.

In a letter dated December 28, 2009, the petitioner indicated that it has established its headquarters in [redacted] and stated that it intends to hire six employees during the first year of operations to operate its financial and business management consulting services business.

On January 15, 2010, the director issued a request for additional evidence (RFE), which instructed the petitioner to submit the following evidence pertaining to the company's physical premises: (1) a complete copy of the U.S. company's lease that indicates the total square footage of the premises obtained; (2) if the U.S. company's premises are subleased, a letter from the owner or property manager which confirms that the property owner has granted permission to the lessee to sublease to the U.S. company and that the U.S. company is actually occupying the premises; (3) if applicable, a copy of the contract between the owner and the lessee granting permission to sublease the space; (4) if applicable, a letter from the U.S. company explaining why the company does not require an independent business presence; (5) color photographs of the U.S. company's premises including the interior and exterior photos of all spaces; and (6) a floor plan for the leased premises.

The petitioner submitted a response on March 30, 2010. The petitioner's response included a sublease agreement and one color photograph. The sublease agreement is effective from December 17, 2009 until December 16, 2010, and is made between [redacted] as sub-landlord and the petitioning company as sub-tenant. The agreement refers to a prime lease agreement between [redacted] dated September 15, 2006. According to the terms of the sublease, the petitioning company will sublease 150 square feet of the building and will pay a monthly rent of [redacted].

The submitted photograph depicts a desk, chair, computer workstation and fax machine set up in what appears to be a small home office.

The petitioner submitted a business plan dated March 3, 2010 in response to the RFE, but the plan does not discuss the company's anticipated space requirements. The business plan includes a pro forma cash flow statement which indicates that the company has assumed payment [redacted] for rent for its first 12 months of operation.

The director denied the petition on April 15, 2010, concluding that the petitioner failed to establish that it had secured sufficient physical premises to house the new office. The director acknowledged the petitioner's submission of the sublease agreement and photograph. However, the director emphasized that the petitioner

failed to provide the requested evidence that the owner of the property had actually authorized the sublease. The director further observed that the leased location appears to be in a residential neighborhood, and that the premises, at 150 square feet, would not accommodate the six employees the petitioner states that it intends to hire. Finally, the director concluded that, in light of the petitioner's failure to submit evidence that its sublease agreement was authorized, it did not demonstrate that it had "lawfully secured a business premises at all."

On appeal, counsel emphasizes that the petitioner did in fact submit a sublease agreement for business premises, and contends that the fact that the leased space is small and in a residential neighborhood should not result in the denial of the petition. Counsel asserts that the regulation at 8 C.F.R. § 214.2(l)(3)(v)(A) only requires evidence of "sufficient physical premises," and places no restrictions on the type of neighborhood where the business must be located.

Counsel further contends that the director inappropriately determined that the size of the premises is insufficient, stating:

> The determination of "sufficient physical premises" is relative to a company's business and operations need. The immigration laws and regulation do not set forth a specific amount of square footage a company needs in order to operate or satisfy the immigration laws in support of an Intracompany Transferee petition. In today's economy and with the advancement of technology and communications, it is customary for a professional services business to reduce overhead cost associated with business space rental by leasing minimum office space to conduct business while utilizing technology to drive productivity. . . . As a professional services business [the petitioner] needs minimal office space to conduct its business operations. Of the six (6) employees that [the company] intends to hire within the first year of operations, five (5) of the employees will telecommute and primarily perform their services off-site.

Counsel further asserts that the lease agreement submitted in response to the RFE "is a lawful and legally enforceable document evidencing the premises lease-hold."

2. Discussion

Upon review, the petitioner has not established that it has secured sufficient physical premises to house the new office.

The director noted two specific deficiencies with respect to the petitioner's evidence: the sublease agreement itself, and the size and nature of the premises. With respect to the sublease agreement, the director specifically instructed the petitioner that if it subleases its business premises, it should provide additional evidence beyond the lease agreement, including evidence verifying that the property owner authorized the sublease and an explanation as to why the company does not maintain independent business premises.

The director's request was reasonable and well within the discretionary authority granted by 8 C.F.R. § 214.2(l)(3)(vii), which states that the director may request "such other evidence as the director, in his or her discretion, may deem necessary." The petitioner failed to submit evidence that the owner of the subleased property authorized and is aware of the petitioner's intention to operate a financial services business from the premises.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner was also asked to submit photographs of the interior and exterior of the leased premises. The petitioner opted to submit one interior photograph of a home office and provided no exterior photographs that would confirm the location or street address of the building. There were no identifying features in the interior photograph that would definitely confirm that the petitioner actually occupies the premises.

Finally, the information provided in the business plan suggests that the petitioner does not intend to operate its business from the premises identified on the sublease. The petitioner's business plan is dated March 3, 2010 and indicates that the company anticipates [redacted] on its rent. If the petitioner intended to do business from the subleased office, it is reasonable to believe that it would estimate its monthly rent [redacted], the amount required by its sublease. 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).

The AAO acknowledges that the regulations do not specify the type or size of premises that a petitioner must secure to establish 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" for the operation of the business as required by the regulations at 8 C.F.R. § 214.2(l)(3)(v)(A). To do so, it must clearly identify the nature of its business, the specific amount and type of space required to operate the business, its proposed staffing levels, and evidence that the space can accommodate the petitioner's growth during the first year of operations. USCIS may also consider evidence that the company has obtained a license to operate the business from a home office, if required, evidence that the landlord has authorized the use of residential space for commercial purposes, evidence that the company has established separate phone lines or made other accommodations for the use of the premises by the U.S. company, or any other evidence that would establish that a residential dwelling will meet the company's needs. Finally, photographs and floor plans of the leased premises may assist in determining that the premises secured are sufficient to accommodate the petitioner's business operations.

The director specifically requested that the petitioner provide an explanatory letter in the event that it intends to operate its business from a subleased or shared location. The petitioner offered no explanation for its decision to sublease a small residential office in its response to the request for evidence. Again, failure to

submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Counsel now offers an explanation on appeal, noting that only one of its six employees will work at the subleased premises, while the remainder of the staff will telecommute. Counsel does not indicate which workers would telecommute. However, the petitioner specifically stated that the beneficiary would work at address listed on the petition, and two of the other proposed employees, an office manager and an administrative employee, are office support staff who could not reasonably perform their "office-related" and administrative support duties as telecommuters.

The petitioner submits further evidence on appeal and offers only counsel's assertion that the sublease agreement "is a lawful and legally enforceable document." 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, the petitioner has not submitted evidence on appeal to overcome the director's determination. Accordingly, the appeal will be dismissed.

B. The Size of the United States Investment

The second issue the director addressed is whether the petitioner established that the United States operation, within one year of the approval of the petition, will support an executive or managerial position. In making this determination, the director focused specifically on the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C)(*2*), which requires information regarding 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.

1. Facts and Procedural History

At the time of filing the petition, the petitioner indicated that it intends to operate a professional financial and business management consulting business with six employees, and that it will employ the beneficiary as president with [redacted]

In the RFE, the director requested a letter explaining the need for the new office, the proposed staffing of the company, the amount of the U.S. investment, the financial ability of the foreign company to commence doing business in the United States, the staffing level of the foreign entity, and the company's ability to support a managerial or executive position within one year. The director also requested a copy of the U.S. company's business plan with financial projections. Finally, the director requested evidence that the beneficiary, the petitioner's sole shareholder, has adequately capitalized the U.S. entity. The director instructed the petitioner to submit copies of wire transfers, canceled checks, deposit receipts, and bank statements detailing monetary amounts.

The petitioner complied with most of these requests. According to the petitioner's business plan, the U.S. company "will be launched with [redacted] initial investment" needed to establish and staff the company's office and to finance regular operating expenses. The business plan indicates that the company expects [redacted] in the first 12 months of operation.

Counsel for the petitioner contended that the director's request that the petitioner provide evidence that the beneficiary has paid for his interest in and capitalized the U.S. entity is "outside the scope and guidelines of the immigration law and regulations and should not be relied upon as a basis to deny the L-1A petition."

The director denied the petition, noting that the petitioner did not provide evidence of an investment in the United States entity. The director acknowledged the petitioner's assertion that it is not required to submit evidence of capitalization, and emphasized that the regulations at 8 C.F.R. §214.2(l)(3)(v)(C)(*2*) require evidence of the size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and commence doing business in the United States.

The director noted that the petitioner provided no evidence of any monies provided to the U.S. entity, and insufficient evidence that the beneficiary or foreign entity can provide the capital necessary to support the U.S. business and pay the beneficiary's proposed salary. The director concluded that, without evidence of investment, it does not appear that the petitioner will be able to support a manager or executive in one year.

On appeal, counsel asserts that the petitioner provided financial documents evidencing that the foreign entity has a reserve [redacted] which is more than sufficient to financially support and remunerate the beneficiary for his services as President of the U.S. entity. Counsel further contends that the petitioner explained that the beneficiary would be paid by the U.S. entity, as indicated in the business plan. Counsel emphasizes that "together, the affiliate foreign entity's cash reserve and the U.S. entity's projected income/revenue evidence the required financial support and the Petitioner's ability to sustain the services of the beneficiary to the satisfaction of the immigration laws and regulations." Finally, counsel contends that "the lack of evidence of investment into the U.S. entity in and of itself should not bar an approval of the L-1A petition."

2. Discussion

Upon review, the AAO concurs that the petitioner has not adequately established the size of the United States investment, pursuant to 8 C.F.R. § 214.2(l)(3)(v)(C)(*2*).

Contrary to the petitioner's assertion, it is not outside of the scope of the regulations for the director to request evidence that funds have actually been committed to and invested in the new United States entity. As stated above, the regulation at 8 C.F.R. § 214.2(l)(3)(vii) indicates that a petitioner may be required to submit "such other evidence as the director, in his or her discretion, may deem necessary." Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The one-year "new office" provision is an accommodation for newly established enterprises, provided for by USCIS regulation, that allows for a more lenient treatment of managers or executives that are entering the

United States to open a new office. 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 company that has not been funded cannot reasonably expect to begin doing business immediately or to achieve its stated goals for growth during the first year of operations. The record as presently constituted contains no evidence of any funds already provided to the U.S. entity for the purpose of establishing the subsidiary company at the time of filing the petition. The fact that the foreign entity has over $100,000 in its bank accounts does not lead to a conclusion that those funds are in fact available to and committed to the U.S. company. 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)).

The petitioner has not submitted evidence on appeal to overcome the director's determination on this issue. Accordingly, the appeal will be dismissed

C. Qualifying Relationship

The third and final issue to be addressed is whether the petitioner established that the U.S. company has a qualifying relationship with the foreign entity. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

> (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
>
> (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
>
> (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the

duration of the alien's stay in the United States as an intracompany transferee[.]

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

* * *

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

(1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

1. Facts and Procedural History

The petitioner indicated on the Form I-129 that the petitioner and the foreign entity, [redacted], are affiliates based on common ownership by the beneficiary. The petitioner stated that the beneficiary is the sole owner of each entity.

The petitioner submitted a certificate of formation indicating that the petitioner was established as a limited liability company in the State of Washington on December 18, 2009. The petitioner also submitted a copy of the U.S. company's operating agreement. Article 8.1 of the operating agreement, "Initial Capital Contributions" states that "[e]ach Member shall pay the amount or transfer the assets to the Company shown opposite such Member's name on Exhibit A as its initial Capital Contribution and shall receive in exchange therefore the number of Units shown therein."

Exhibit A, which is attached to the agreement, identifies the beneficiary as the sole member of the company and his ownership percentage as "100%." The document does not identify the amount of money or the value of assets he provided as a capital contribution or the number of membership units he received.

The petitioner also submitted a "Registration for a Legal Registration to the RCCM" which indicates that the foreign entity was established in Ivory Coast as a sole proprietorship owned by the beneficiary.

In the request for evidence issued on January 15, 2010, the director requested evidence to establish that the beneficiary has paid for his interest in and adequately capitalized the United States entity. The director advised that this evidence should include copies of the original wire transfers, canceled checks, deposit receipts, bank statements or other evidence detailing monetary amounts.

As discussed above, the petitioner declined to submit this evidence, and counsel maintained that there is no requirement to demonstrate "proof of purchase and capitalization." Counsel asserted that "the information and supporting documents provided in support of the initial L-1A petition evidences that the United States entity. . . and the foreign related [redacted] are affiliated through their common ownership by a single individual [the beneficiary], who owns 100% of both entities."

The director determined that the petitioner had failed to substantiate its claim that the beneficiary owns 100 percent of the U.S. company. Specifically, the director acknowledged the petitioner's reliance on the company's operating agreement, noting that the document appeared to be drafted and signed by the beneficiary as sole member and one of two managers. The director emphasized that the operating agreement indicates that the beneficiary became owner by virtue of a capital contribution. The director concluded that "without any capital . . . the beneficiary does not own or control anything." The director found the operating agreement alone insufficient to show by a preponderance of the evidence that the petitioner and the foreign entity are affiliates.[2]

On appeal, counsel asserts that the petitioner's Certificate of Formation and limited liability corporation operating agreement "officially identify the existence of the U.S. entity and the entity's 100% corporate ownership by [the beneficiary]." Counsel asserts that the petitioner's submission of official corporate ownership documents for both companies is sufficient to meet the petitioner's burden of proof.

2. Discussion

Upon review, the petitioner has not established that the petitioner and the foreign entity have a qualifying relationship.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289

[2] The director referred to the petitioner's "Articles of Organization" in her April 15, 2010 decision. As noted by counsel on appeal, the petitioner did not submit a document titled "Articles of Organization" for the U.S. company. A review of the evidence and the director's decision reflects that the director did in fact review and was referring to the company's Limited Liability Company Operating Agreement, and the AAO finds the director's error harmless.

(Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, a certificate of formation or organization of a [redacted] alone is not sufficient to establish ownership or control of an [redacted] LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.,* 19 I&N Dec. 362 (BIA 1986). Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request "such other evidence as the director, in his or her discretion, may deem necessary. *See* 8 C.F.R. § 214.2(l)(3)(vii)." As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the identification of a member of an LLC into the means by which this membership interest was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for the membership interest. Additional supporting evidence would include an operating agreement, minutes of relevant membership or management meetings, or other legal documents governing the acquisition of the ownership interest.

As noted by the director, the petitioner's formation documents indicate that membership in the corporation requires a capital contribution in the form of a monetary payment or transfer of other assets to the limited liability company. Exhibit A to the operating agreement, according to the provisions of the agreement, should specify the monetary amount or value of the beneficiary's capital contribution and the number of membership units he was issued. The exhibit does not identify any capital contribution made by the beneficiary and the petitioner failed to submit evidence of such a contribution even when the director specifically requested this information.

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)). Furthermore, the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In the case of new office petition, the petitioner is required to submit evidence of the size of the U.S. investment, a key element in demonstrating that the company is prepared to commence doing business immediately upon approval of the petition. Pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G)(*2*), a qualifying organization is one which is or will be doing business as an employer in the United States and in at least one other country for the duration of the alien's stay in the United States as an intracompany transferee. In order to meet the definition of a "qualifying organization" the petitioner must be prepared to do business for the duration of the beneficiary's stay. Absent evidence that the U.S. company has received funding or capitalization, the AAO cannot conclude that it is prepared do business.

For the foregoing reasons, the AAO finds the petitioner's submission of a certificate of formation and operating agreement alone insufficient to establish that the U.S. and foreign entities are qualifying organizations. For this additional reason, the appeal will be dismissed.

III. Conclusion

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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

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.