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

[redacted]

D7

DATE: OCT 0 3 2012 OFFICE: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1A 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 Pennsylvania corporation, states that it intends to operate a restaurant business. The petitioner claims to be a subsidiary of [redacted] located in [redacted] The petitioner seeks to employ the beneficiary as the manager of its new office in the United States for a period of three years.[1]

The director denied the petition on May 9, 2011 concluding that the petitioner failed to establish: (1) that the beneficiary will be employed in a qualifying executive or managerial capacity within one year of approval of the petition; and (2) that the petitioner has secured sufficient physical premises to house the new office. In denying the petition, the director emphasized that the petitioner failed to submit a complete response to a request for evidence (RFE) issued on March 9, 2011, and cited to the regulation at 8 C.F.R. § 103.2(b)(14), which provides that the failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the petition.

The petitioner subsequently filed an appeal.[2] The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner submits a more detailed description of the beneficiary's proposed duties in support of its assertion that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

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.

Upon review, the AAO concurs with the director's decision and will affirm the denial of the petition. For the first time on appeal, the petitioner submits previously requested evidence for review. The submitted evidence will not be considered in this proceeding.

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[1] Pursuant to the regulation at 8 C.F.R. § 214.2(l)(7)(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.

[2] The record of proceeding contains a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, signed by the petitioner, authorizing [redacted] to appear as its attorney for the purpose of filing the instant appeal. In a letter dated August 17, 2011, [redacted] informed U.S. Citizenship and Immigration Services (USCIS) that, subsequent to the filing of the appeal, the Maryland Court of Appeals suspended him from the practice of law for a period of at least 60 days. He withdrew his appearance as attorney in this matter.

On March 9, 2011, the director put the petitioner on notice of the required evidence and gave a reasonable opportunity to provide it for the record before the visa petition was adjudicated. *See* 8 C.F.R. § 103.2(b)(8). Specifically, the director requested, *inter alia,* the following: (1) a comprehensive description of the beneficiary's proposed duties including the percentage of time to be spent performing each duty, (2) detailed position descriptions and educational requirements for the beneficiary's proposed subordinates, and (3) evidence to establish that the petitioner had acquired sufficient physical premises to house the new office, including a current rental agreement, lease, or mortgage, required business licenses, and original color photographs of the interior and exterior of the premises secured for the United States entity.

While the petitioner submitted a response to the request for evidence, the petitioner failed to provide evidence related to the beneficiary's proposed employment capacity, the proposed organizational structure of the U.S. entity, or the physical premises secured by the U.S. entity. *See generally* 8 C.F.R. § 214.2(l)(3)(v). Instead, the petitioner submitted an extremely brief and general explanation of the beneficiary's duties that merely repeated the language of the statutory and regulatory definitions of managerial and executive capacity. *See* section 101(a)(44) of the Act. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The petitioner did not submit any of the requested information regarding the beneficiary's proposed subordinates. Finally, the petitioner submitted a "floor plan for the space [the petitioner] is proposing to lease upon approval of this petition." The petitioner noted that "it is not prudent to make a ten year financial commitment without the approval of the L-1 status/visa." The director denied the petition after noting that the petitioner failed to submit the requested evidence.

The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically requested by the director, the petitioner did not provide the requested evidence. The petitioner's failure to submit this information cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). The director appropriately denied the petition, in part, for failure to submit requested evidence.

The AAO acknowledges that the petitioner offers a more detailed description of the beneficiary's duties on appeal. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

Further, on appeal, the petitioner does not contest the director's finding that the petitioner failed to establish that it has secured sufficient physical premises to house the new office or offer additional arguments with respect to this ground for denial. The AAO, therefore, considers this issue to be abandoned. [redacted]

[redacted]

[redacted] (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). The petitioner stated on the Form I-129 that the beneficiary's proposed work site will be at [redacted] Devon, Pennsylvania. The record reflects that this is also the beneficiary's residential address. The petitioner conceded in response to the RFE that it had yet to acquire physical premises for its intended restaurant operation. Evidence of sufficient physical premises is required initial evidence that must be submitted in support of a new office petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(A). 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'r 1978).

Beyond the decision of the director, the record does not contain evidence of a qualifying relationship between the petitioning company and its claimed parent company, [redacted] 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 petitioner has failed to submit any documentary evidence of the ownership of the U.S. company and thus has not supported its claim that it is a qualifying subsidiary of the foreign 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)). For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *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); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Due to the failure to provide the requested evidence, the petitioner has not met its burden.

The petitioner is not precluded from filing a new visa petition on the beneficiary's behalf that is supported by competent evidence that the beneficiary is now entitled to the status sought under the immigration laws.

ORDER: The appeal is dismissed.