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

(b)(6)

DATE: APR 10 2014 OFFICE: VERMONT SERVICE CENTER

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: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), seeking to employ 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 January 2010, states that it engages in management and marketing consulting services. The petitioner claims to be a subsidiary of located in India. The petitioner seeks to employ the beneficiary as its president and chief executive officer for a period of three years.

On June 4, 2013, the director denied the petition on two alternative grounds, concluding that the petitioner failed to establish that (1) the beneficiary has at least one year of full-time employment with a qualifying entity within the 3 years preceding the time of the filing of the current petition for admission into the United States in L-1A status; and (2) it has acquired sufficient physical premises to conduct business in the United States.

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, the petitioner contends that the beneficiary is only required to show that she was employed abroad prior to her initial entry to the United States as a B-2 non-immigrant, and that as it is not a new office, it is not required to acquire sufficient physical premises to conduct its business. The petitioner submits a brief and additional evidence in support of the appeal.

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.

II. THE ISSUES ON APPEAL

A. Employment Abroad for One Year

The first issue addressed by the director is whether the petitioner established that the beneficiary has at least one year of full-time employment with a qualifying entity within the three years preceding the filing of the petition, pursuant to 8 C.F.R. § 214.2(l)(3)(iii).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) defines "intracompany transferee" as:

> An alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge. *Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.*

(Emphasis added).

The petitioner filed the Form I-129 on February 12, 2013. On the Form I-129, the petitioner states that the beneficiary has been employed by the foreign entity from May 1, 1998 to the present, "with leave granted for non-immigrant visits to the United States." The petitioner also indicated that the beneficiary was last admitted to the United States as an H-4 dependant on February 13, 2011, and has been in the United States since that time. Thus, the beneficiary has been in the United States as an H-4 dependent for two years at the time the petition was filed.

The petitioner submitted a document titled, Payment of Wages, listing the foreign entity's employees and wages paid from April 1, 2010 to March 31, 2011. The document lists the beneficiary as the Chief General Manager and indicates that she was paid for 12 months, on a monthly basis, a gross salary of 78,600.00. The petitioner submitted a document titled, Particulars of appointment of directors and manager and changes among them, dated July 15, 1998, stating that the beneficiary was "appointed as Chief General Manager on Fulltime & Permanent Basis," on May 1, 1998. The petitioner submitted the beneficiary's Indian Income Tax Return for 2011-12, indicating that she received an "income from salary" of 78,600. The petitioner also submitted Form No. 16, Certificate . . . for tax deducted at source for income chargeable under the head

"Salaries," for the period of April 1, 2010 to March 31, 2011, dated April 15, 2011, indicating that the foreign entity paid the beneficiary a gross salary of 78,600 during that period.

The petitioner submitted a copy of the beneficiary's H-4 visa issued on June 14, 2010 for multiple entries to the United States. The beneficiary's passport opposite the visa page contains two stamps, one indicating a departure from on June 27, 2010 and the other indicating an admission to the United States through San Francisco on the same date. The petitioner also submitted a copy of the beneficiary's I-94, Departure Record, indicating that she was admitted to the United States through Chicago on February 13, 2011. The petitioner submitted a copy of the beneficiary's marriage certificate indicating that she was married on in Bridgewater, New Jersey.

The director issued a request for additional evidence ("RFE") on February 26, 2013, instructing the petitioner to submit evidence that the beneficiary was employed by the foreign entity for one continuous year. The director specifically asked for: (1) evidence of the most recent period of one continuous year of full-time employment for the foreign entity; and (2) evidence of where the beneficiary was actually employed and working abroad for the foreign entity. The director also requested evidence to show that the beneficiary has been maintaining valid non-immigrant status while in the United States.

In response to the RFE, the petitioner submitted a letter detailing the beneficiary's time of employment at the foreign entity and coinciding travel to the United States as follows:

> Please be aware that our Indian parent company i.e. [the foreign entity] has employed [the beneficiary] as its Chief General Manager on full-time basis since 1st May 1998 with leave granted for her United States non-immigrant stay. . . .
>
> The beneficiary has first apply for the admission in the United States as B-2 visitor on June 12, 2000 using her B-1/2 class visa . . . .
>
> The beneficiary was admitted as F-1 academic student by USCIS I-539 approval . . . having notice date May 11, 2001 . . . valid for duration of status. . . . This approval was for the study by the beneficiary at . .
>
> The beneficiary was then kept continued [*sic*] her F-1 studies at . . . . After completion of her classes as required by the college, she has undergone her CPT with USCIS approval . . . valid through 06/30/2007. . . .
>
> After completion of her F-1 studies as above, the beneficiary hereto has adjusted her status as H-4 dependent vide [*sic*] USCIS approval . . . which is valid through 12/30/2010. . . .
>
> The said H-4 status was further extended by the USCIS approval . . . which is valid through 03/15/2013. . . . During the validity of this H-4 approval she travelled to India on two occasions. During her first visit to India she secured H-4 visa in her passport from the U.S. Consulate in Mumbai, India . . . dated 06/14/2010 valid through 03/15/2013. . . . She was re-admitted as H-4 Dependent based on said USCIS approval and H-4 class visa she hold first

on 06/27/2010 . . . and second time on 02/13/2011 . . . . During both these visits to India she actually and physically resumed her duties as Chief General Manager with company abroad i.e. [the foreign entity] at its offices located in India.

* * *

Also, the beneficiary has resumed her position as Chief General Manager in India on full-time basis with our Indian parent company i.e. [the foreign entity] at its usual business place(s) located within India on her two aforesaid visits to India first from June 4, 2010 through June 27, 2010 and the second time from November 25 through February 12, 2011. . . .

Based on the above submissions and evidence . . . we confirm that the beneficiary . . . was granted leave by our Indian parent company i.e. [the foreign entity] as tabulated hereunder.

Sr.	Period of Leave Granted to [the beneficiary] by [the foreign entity] as its Chief General Manager	Purpose of Leave
1	From June 12, 2000 through June 4, 2010	For B-2, F-1 and H-4 Non-immigrant stay in United States.
2	From June 28, 2010 through November 25, 2010	For H-4 Non-immigrant stay in United States.
3	From February 12, 2011 through todate [*sic*]	H-4 Non-immigrant stay in United States.

Also based on the above submission and evidence . . . we confirm that the beneficiary . . . has been employed and actually and physically worked on full-time basis as the Chief General Manager of our Indian parent company i.e. [the foreign entity] at the regular and usual business place(s) located within the country of India for the period tabulated hereunder.

Sr.	Period of Full-Time Employment During which [the beneficiary] has Actually and Physically Worked as Chief General Manager of [the foreign entity] at its Regular and usual Business place(s) Located within India	Numbers of Days of Actual and Physical Working on Full-Time Basis as Chief General Manager of [the foreign entity]	Interruptions, if Any
1	From May 1, 1998 through June 12, 2000.	773 Days (more than two years)	Continuously and Without any interruption
2	From June 4, 2010 through June 27, 2010	23 Days	Continuously and Without any interruption

3	From November 25, 2010 through February 12, 2011	79 Days	Continuously and Without any interruption

The documentations, evidences and explanations submitted and presented hereinabove clearly proves that the beneficiary has completed one continuous year of full-time employment as Chief General Manager with the company abroad i.e. [the foreign entity] within three years prior to her application for admission as B-2 non-immigrant visitor in United States on June 12, 2000. Also she was employed and worked as such on fulltime basis and physically at the usual business place(s) of the company abroad located within India from November 25, 2010 through February 12, 2011 the period falling within three year immediately prior to the receipt of this I-129 petition by the USCIS.

The petitioner went on to state that the beneficiary's time of admission to the United States was June 12, 2000, upon entering as a B-2 non-immigrant visitor for pleasure. Therefore, her requirement for employment at a qualifying foreign entity in a managerial or executive capacity for at least one continuous year was prior to that admission on June 12, 2000.

In response to the RFE, the petitioner also submitted a letter from the foreign entity confirming the beneficiary's employment in a managerial or executive position from May 1, 1998 to the present. The petitioner submitted evidence of the beneficiary's studies in the United States and status changes and extensions. The petitioner included the documentation for the beneficiary's conditional practical training ("CPT") and optional practical training ("OPT"), indicating that she was to be employed by in CA from March 28, 2006 through June 11, 2006 in CPT and July 1, 2006 through June 30, 2007 in OPT.

The petitioner also submitted Form No. 16, for the period of April 1, 1999 to March 31, 2000, dated April 25, 2000, indicating that the foreign entity paid the beneficiary a gross salary of 112,674 during that period.

The director denied the petition on June 4, 2013 concluding, in part, that the petitioner failed to establish that the beneficiary has at least one year of full-time employment with a qualifying entity within the three years preceding the filing of the petition. In denying the petition, the director found that the beneficiary was employed for one continuous year prior to her admission to the United States as a non-immigrant visitor on June 12, 2000. As such, the director found that the evidence does not comply with the USCIS regulations at 8 C.F.R. § 214.2(l)(3)(iii).

On appeal, the petitioner contends that it is not seeking admission for the beneficiary, but rather changing her status from H-4 to L-1A. The petitioner states that the beneficiary is already in the United States and therefore, her qualifying period of service should be one continuous year in three years preceding the date of her non-immigrant original admission into the United States on June 12, 2000, not preceding the date of filing the instant petition, which is February 12, 2013. The petitioner asserts that, in light of the above-cited definition of intracompany transferee, USCIS should take into consideration the two years of the beneficiary's employment preceding her initial entry into the United States.

Upon review, the petitioner's interpretation of the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) is not persuasive. The cited regulatory provision must be read together with the regulation at 8 C.F.R. § 214.2(l)(3)(iii), which requires evidence that the beneficiary 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.* If the beneficiary is already in the United States in a lawful status employed for a branch of the same employer, or a parent, affiliate or subsidiary thereof, this period of employment will not be considered interruptive of the beneficiary's continuous employment abroad, and USCIS will look beyond the three-year period immediately preceding the filing of the petition to determine whether the beneficiary meets the requirement set forth at 8 C.F.R. § 214.2(l)(3)(iii). Here, the beneficiary entered the United States 13 years prior to the filing of the instant petition with two short trips to India, where she worked full-time at the foreign entity, one for 23 days (including weekends) after 10 years of being in the U.S., and the other for 79 days (including weekends) after being in the U.S. for another six months.

Although the petitioner submits evidence that it continued to pay the beneficiary a salary during her periods of stay in the United States, it clearly indicated that she was on leave and not directly working for the foreign entity during that period. It is unreasonable to assume that the intention of the law is to allow a beneficiary to remain in the United States for 13 years, with two short trips to the foreign entity for less than 80 days each, and retain eligibility for L-1A classification based on her employment at the foreign entity prior to her entry to the United States. Accordingly, the appeal will be dismissed.

Furthermore, although not addressed by the director, the petitioner has not established that the beneficiary's employment abroad from May 1, 1998 through June 12, 2000 was in a managerial or executive capacity. In the instant matter, the petitioner provided an organizational chart for the foreign entity, a thorough list of job duties, including the number of hours devoted to each task, for the beneficiary and each of her subordinates, and copies of the subordinates' advanced degrees, none of which were acquired prior to 2002. However, at the time the petitioner claims it employed the beneficiary in the executive position of chief general manager, the beneficiary was 19 years old. The petitioner has not provided evidence or explanation regarding the beneficiary's ability to perform the duties of the foreign entity's chief general manager with the skills the foreign entity ascribes to the foreign position. That is, the record does not include persuasive evidence that the beneficiary's education and experience was sufficient to qualify her to hold an executive or managerial position, except in title only, at that time. 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). 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). Based on these factors, the petitioner has not sufficiently established that the foreign entity employed the beneficiary in an executive or managerial position. For this additional reason, the petition cannot be approved.

The AAO maintains discretionary authority to review each appeal on a *de novo* basis. The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 v. United States*, 229 F. Supp. 2d 1025,1043 (E.D. Cal. 2001), *aff'd* 345 F. 3d 683 (9th Cir. 2003).

B. Physical Premises

The second issue briefly addressed by the director is whether the petitioner acquired sufficient physical premises to conduct its business in the United States.

On the Form I-129, the petitioner lists its address as [redacted] and indicates that this is the address where the beneficiary will work. In its letter of support, the petitioner states the following about its current staff and office environment:

> The corporation currently employed [*sic*] five fulltime and permanent employees out of total proposes [*sic*] six new direct employments (including one of beneficiary). . . .
>
> The petitioner has leased the requisite office premise to run its business at [redacted], which has the entire requisite infrastructure to carry on the business as proposed, for a period of three years and thereafter will continue on month to month basis. The current and proposed employees have been/are being deployed thereat. The premises so leased is zoned as General Commercial and allowed its commercial usage and adequate enough to house six employees and to store inventories of supplies.

The petitioner's "Certificate of Incorporation" and paystubs for employees in December 2012 and January 2013, list the petitioner's address as [redacted] The petitioner's 2011 and 2012 IRS Form 1120, U.S. Corporation Income Tax Return, and IRS Forms 941, Employer's Quarterly Federal Tax Return, for the first through fourth quarters of 2012, list the petitioner's address as [redacted]

The petitioner submitted a lease, dated February 1, 2013, and set to commence on said date, indicating that the petitioner's office is located at [redacted], and that the petitioner is now leasing the premises at [redacted] The lease specifically identifies the use of the premises "for a business of the lessee." The petitioner also submitted a letter from the lessor, [redacted] dated February 11, 2013, stating the following about the leased premises:

> We hereby certify and confirm that:-
>
> 1. We have leased business premises owned by us and situated at [redacted] by way of commercial lease deed dated February 1, 2013 for the period of three years to [the petitioner].
> 2. The leased area covered under the said lease to [the petitioner] is in two floors and a basement. They occupy physically two floors having approximately 1700sq.fts [*sic*] of usable area.

3. We also confirm that the leased premises at is zoned Commercial and the intended use by the tenant is permitted by the said applicable zoning rules.

The director denied the petition concluding, in part, that the petitioner failed to establish that it had acquired sufficient physical premises to conduct business in the United States. In denying the petition, the director observed that a search of publicly available internet resources revealed that the place of employment, exists in a residential dwelling in a residential neighborhood. As such, the director noted that this finding raises questions as to whether it is a place of employment that can accommodate the beneficiary, as well as other employees. The director recognized that this issue was not addressed in the RFE and that internet sources are not always guaranteed; however, the director found that the information found casts significant doubt upon the legitimacy of the petitioner's business and the validity of the employment offered.

On appeal, the petitioner states that the director failed to address this issue in the RFE and contends that it is not a new office and therefore the requirement to have sufficient physical premises does not apply in this case. The petitioner further states, "this petitioner has secured another premises in addition to the said premises for its business which is zoned commercial and located at

The petitioner submits a single sheet of paper titled, "Commercial Net Lease for Office Condo," dated June 1, 2013, set to commence on said date for a period of two years. The "lease" states that the premises are located at and the area leased is "one office only and open space" at 1,050 square feet, excluding shared facilities, which are listed as restrooms and hallways. The lease is signed by The petitioner also submitted a copy of the publicly available internet resource for general information about the new leased space in Pennsylvania. The document states that the property at the newly leased address is zoned for commercial use.

Upon review, the AAO finds that the petitioner has not established that it has acquired sufficient physical premises to conduct its business and the evidence presented in the record raises doubts as to the validity of the employment offered to the beneficiary with this petition.

As a preliminary matter, the AAO notes that the petitioner contends that it is not a new office and therefore not subject to the physical premise requirement at 8 C.F.R. § 214.2(l)(3)(v)(A). The evidence of record indicates that the petitioning U.S. company was established as a corporation in Delaware on January 22, 2010, and has been operating in the United States as evidenced by its IRS Forms 1120 for 2011 showing a total income of $196,995 and operating costs of $103,178, and for 2012 showing a total income of $312,497 and operating costs of $134,158. The petitioner indicates that the beneficiary's foreign employer acquired an 80 percent ownership interest in the petitioning U.S. company on January 22, 2010 and increased its ownership to 98.182 percent ownership interest on February 4, 2013. The petitioner filed the Form I-129 on February 12, 2013.

Pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(F), "new office" means an organization which has been doing business in the United States through a parent, branch, affiliate or subsidiary for less than one year. In the instant matter, the director did not specifically determine that the petitioning U.S. company is considered a "new

office." The director's decision addresses the physical premise issue as it is an inconsistency contained in the record. However, the AAO observes that the "physical premises" requirement that applies to new offices serves as a safeguard to ensure that a newly established business immediately commences doing business so that it will support a managerial or executive position within one year. *See* 52 FR 5738, 5740 (February 26, 1987). A petitioner is not absolved of the requirement to maintain sufficient physical premises simply because it has been in existence for more than one year. In order to be considered a qualifying organization, a petitioner must be doing business in a regular, systematic, and continuous manner. *See* 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (H). Inherent to that requirement, the petitioner must possess sufficient physical premises to conduct business.

At the time of filing the petition, the petitioner claimed to be doing business in New Jersey. The only documents in the record containing the New Jersey address, however, are the lease agreement and a "Contract to Provide Consulting Services," signed and dated February 10, 2013, nine days after the lease date and two days prior to submitting the instant petition.

The petitioner also submitted additional documentation to specifically address the commercial zoning of the leased address in NJ by way of a letter from the landlord, but failed to submit any official documentation from the county or city government. The petitioner contends on appeal that the director violated 8 C.F.R. § 103.2(b)(8) by failing to request further evidence before denying the petition. The cited regulation states, "[i]f the record evidence establishes ineligibility, the application or petition will be denied on that basis." *Id.* The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. The director did not deny the petition based on insufficient evidence of eligibility.

Further, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

On appeal, rather than rebut the findings of the director or submit evidence contrary to the director's findings, the petitioner merely submits a new "commercial lease" written on a single sheet of paper with six bullet lines of text. It is not reasonable to assume that a company like the landlord of the new lease, who presumably manages properties as its business, would issue a commercial lease with six bullet lines of text, omitting all of the legal language usually contained in a commercial lease. Again, 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. at 591.

Furthermore, the new lease submitted on appeal is for office space in Pennsylvania, approximately 300 miles from the petitioner's other leased "office" in New Jersey. On the instant petition, the petitioner lists its office address and address where the beneficiary will work as the New Jersey address. On appeal, the petitioner does not address where the beneficiary will actually work, in

Pennsylvania; the petitioner simply states that it has acquired another office space in addition to the existing office space.

Based on the inconsistencies detailed above, the AAO agrees with the director's determination that such inconsistencies cast significant doubt upon the legitimacy of the petitioner's business and the validity of the employment offered to the beneficiary. In this case, the lack of sufficient business premises and the conflicting evidence of record fail to establish that the petitioner has been and will be doing business in a manner that will support the beneficiary's claimed position. Accordingly, the appeal will be dismissed.

IV. 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. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that petitioner has not met that burden.

ORDER: The appeal is dismissed.