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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JAN 3 1 2014 Office: VERMONT SERVICE CENTER [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.

Thank you,

Ron Rosenberg,
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, revoked the approval of the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded for further action and entry of a new decision.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary's stay 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 was formed as a limited liability company under the laws of the State of Florida, and operates a retail watch store. It claims to be a subsidiary of The petitioner seeks to employ the beneficiary as the President of its new office in the United States for an initial period of one year.

The petition was initially approved for a one year period. The director subsequently issued a notice of intent to revoke the approval and the petitioner submitted a timely rebuttal. The director ultimately revoked the approval of the petition. The director concluded that the petitioner failed to establish: (1) that the beneficiary has been employed abroad in a managerial or executive capacity for at least one continuous year within three years preceding the beneficiary's application for admission into the United States; (2) that the beneficiary will be employed in a managerial or executive capacity in the United States; (3) that the U.S. entity would be financially viable within one year of starting the business; and (4) that the petitioner has secured sufficient physical premises to house the new office. The director improperly advised the petitioner that the decision could not be appealed.

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 asserts that the notice of intent to revoke failed to contain a detailed statement of the grounds for revocation as required by 8 C.F.R. § 214.2(l)(9)(iii)(B) and that the revocation was based on grounds other than those specified in the notice of intent to revoke.

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 the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate 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 of 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 sole issue to be addressed is whether the director properly revoked the approval of the petition.

Under USCIS regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).

A. Facts

The Form I-129, Petition for a Nonimmigrant Worker, was filed April 11, 2012 and initially approved for a one-year period commencing on May 8, 2012. On January 17, 2013, the director issued a notice of intent to revoke the approval of the petition. The director notified the petitioner that, as a result of an interview of the beneficiary conducted by [redacted] in Moscow, Russia, it had come to the attention of U.S. Citizenship and Immigration Services (USCIS) that he does not qualify for the proffered employment. The director further stated that it was determined that: (1) the petitioner does not actively conduct business in the United States; (2) the beneficiary appears to have used fraudulent means to support of the instant petition, and (3) the beneficiary's "desire to gain status for his family in the U.S. supersedes his desire to maintain a business in and ties to his home country of Russia."

The petitioner responded to the notice of intent to revoke on February 14, 2013. The petitioner requested that the director issue an amended approval for three years since the petitioner had now been in business for more than one year, or in the alternative, requested an approval for one year from the date of issuance if the petitioner was still to be considered a new office. The petitioner submitted evidence to establish that it was conducting business and evidence of the bona fide nature of the United States operations.

The director revoked the approval of the petition on March 8, 2013. The director disputed the petitioner's assertion that it should no longer be considered a new office. The director found that the petitioner failed to establish: (1) that the beneficiary has been employed in a managerial or executive capacity abroad for at least one continuous year within three years preceding the beneficiary's application for admission into the United States; (2) that the beneficiary will be employed in a managerial or executive capacity in the United States; (3) that the U.S. entity would have been financially viable within one year of starting the business; or (4) that the petitioner has secured sufficient physical premises to house the new office.

On appeal, counsel for the petitioner stated that the director's revocation was entirely based on grounds other than those addressed in the notice of intent to revoke, thus depriving the petitioner of sufficient opportunity to respond. Counsel asserted that the director's decision failed to discuss any of the three deficiencies alleged in the notice of intent to revoke, specifically: (1) that the petitioner does not actively conduct business in the United States; (2) that the beneficiary used fraudulent means to obtain his petition approval; or (3) that the

beneficiary's desire to gain status for his family in the United States superseded his desire to maintain a business in Russia.

B. Analysis

Upon review, counsel's assertions are persuasive. The director's notice of intent to revoke did not contain sufficient notice as required under 8 C.F.R. § 214.2(l)(9)(iii)(B). Further, the director revoked the approval of the petition on grounds other than those contained in the notice of intent to revoke, and therefore, the petitioner was not provided an opportunity to respond to the reasons for revocation.

Additionally, the notice fails to meet the regulatory requirement of 8 C.F.R. § 103.2(16)(i), which provides that the petitioner must be advised of any derogatory information used as the basis for a decision and otherwise unknown to the petitioner. Here, the director informed the petitioner that the proposed revocation was based, in whole or in part, on information obtained by embassy officials in the course of interviewing the beneficiary. However, the notice of intent to revoke failed to specify the facts leading to director's initial determination that the beneficiary may have used "fraudulent means to support the instant petition." Similarly, the director informed the petitioner that the U.S. company is not actively conducting business, but failed to specify the facts surrounding this assertion. The notice of intent to revoke raised serious allegations but contained absolutely no evidence in support of these allegations. Just as the unproven assertions of counsel are not evidence, neither are the unsupported conclusions of the director. *Cf. Matter of Obaigbena*, 19 I&N Dec. 533, 534 note (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Accordingly, as both the notice of intent to revoke and notice of revocation contain significant defects, the director's decision dated March 8, 2013 will be withdrawn.

Although the director's decision will be withdrawn, the AAO finds that the record as presently constituted does not contain sufficient evidence to establish that the petitioner would employ the beneficiary in a primarily managerial or executive capacity within one year of the approval of the petition. Accordingly, the petition will be remanded to the director for further action and entry of a new decision, consistent with the discussion below.

When a petition indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is ready to commence doing business immediately upon approval. A petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to commence business, that it has the financial ability to commence doing business in the United States, and that it will support the beneficiary in a managerial or executive position within one year of approval. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

The proposed organizational structure of the new office includes a president, a vice president, and four sales persons. The petitioner failed to show how the new office will support a two-tiered managerial structure within one year. The job descriptions provided for the President and Vice President call into question how these two jobs will differ and how the beneficiary will be other than a first-line supervisor. Furthermore, the

petitioner fails to state what employees will be performing the other administrative duties associated with operating a retail store including marketing, purchasing, finances, and website development as specified in the business plan. Additionally, the petitioner's business plan fails to adequately break down the petitioner's expenses and anticipated monthly income to show that the business would sustain a managerial or executive position after one year of operations.

Furthermore, the record contains insufficient evidence of the petitioner's qualifying relationship with the foreign entity. The petitioner claims that it is organized as a limited liability company (LLC) with member-managers. At the time of filing, however, the petitioner submitted a stock ledger and shareholder list. As general evidence of a petitioner's claimed qualifying relationship, a certificate of formation or organization of a limited liability company (LLC) alone is not sufficient to establish ownership or control of an LLC. 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. The presence of a shareholder register, shareholder list, and stock register, however, calls into question whether the organization was truly formed as an LLC as claimed.

Accordingly, the AAO will remand the petition to the director for issuance of a new notice of intent to revoke and entry of a new decision. The director is instructed to review the petition pursuant to the above-cited statutory and regulatory provisions applicable to the L-1A nonimmigrant classification, and to request any additional evidence deemed necessary to adjudicate the petition.

ORDER: The director's decision dated March 8, 2013 is withdrawn. The petition is remanded to the director for issuance of a new notice of intent to revoke and entry of a new decision which, if adverse, shall be certified to the AAO.