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File: EAC 04 136 53767 Office: VERMONT SERVICE CENTER Date: SEP 05 2006

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

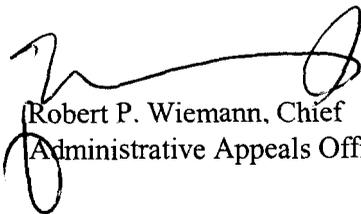
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, 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 this nonimmigrant petition seeking to employ 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 was incorporated under the laws of the Commonwealth of Virginia in 2004 and intends to engage in the import and export of automobiles and automobile parts. The petitioner claims to be an affiliate of [REDACTED], located in Lima, Peru. The petitioner seeks to employ the beneficiary as the general manager of its new office in the United States for a one-year period.

The director denied the petition, concluding that the petitioner had not established: (1) that the beneficiary would be employed in a primarily managerial or executive capacity within one year; or (2) that the petitioner had secured sufficient physical premises from which to operate the new office.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the U.S. company intends to hire seven employees during the first year of operations and will have a reasonable need for an executive or managerial position within one year. The petitioner also clarifies its physical space requirements, noting that the company's business model for the first year of operations does not require the company to lease a warehouse, as suggested by the director. The petitioner notes that although its leased premises are in a residential home, the space can and will be accommodated to house the U.S. operation. The petitioner submits a brief in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) 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.

The first issue in the present matter is whether, within one year, the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(v)(C).

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petition was filed on April 5, 2004. In an un-dated supporting letter, the petitioner indicated that the beneficiary would serve in the position of general manager of the U.S. entity and "will devote virtually all of his time in the United States to the commencement and management of the U.S. business." The petitioner submitted a seven-page business plan outlining the company's objectives, ownership, management structure, and personnel plan. The business plan indicates that the beneficiary will "be in charge of starting up the business, finding the appropriate location for the permanent office and deposit, as well as hiring the required personnel. By the end of the year 2004 [the petitioner] shall hire 2 salespeople, 1 purchasing agent, 1 secretary, 1 clerk and 1 mechanic."

The director requested additional evidence on April 12, 2004, in part instructing the petitioner to submit: (1) a detailed description of the type of business to be conducted including the type and location of established and prospective customers, the services to be rendered and the products or commodities to be sold; (2) an explanation of how the beneficiary will qualify as a manager or executive, other than in job title; (3) a comprehensive description of the beneficiary's proposed duties during the start up of the operation and after the first year; and (4) position descriptions for all proposed employees in the United States and the anticipated date of hire for each employee.

In a response dated May 7, 2004, the petitioner provided the following additional information regarding the beneficiary's proposed duties:

The duties of the proffered job include conducting general administration of the affairs of the company, acting as a liaison and representative for [the petitioner's] affiliate company in the US, marketing the services and product line of both companies, engaging in long-term planning and identifying business opportunities in the U.S. and international markets. He will also direct the business activities and be responsible for planning, formulating and implementing administrative and operational policies and procedures.

As Director and General Manager, he will hold the highest managerial position in the US company, working directly with the Board of Directors and will be fully responsible for the US operation.

During the first year or start up period, the duties will be to hire and oversee the required personnel, including those which will hold a managerial position, contacting and hiring professionals such as attorneys, accountants, cargo and customs agencies. He will also be responsible for identifying the initial suppliers and deciding if expanding the office and deposit space is necessary.

The petitioner stated that the primary purpose of the U.S. office is the import and export of used automobiles, parts and equipment. The petitioner indicated that the U.S. company will purchase products from U.S. suppliers or import them from Asia, and export the products to Peru to be sold by the petitioner's affiliate. The petitioner described its proposed staffing as follows:

- a. [REDACTED] As Director and founder of the company he will work directly with the General Manager in setting up the operation and establishing goals and strategies for the first year. Mr. [REDACTED] already began working for the company.
- b. Secretary: A person to handle the day to day office work. . . . The secretary will be hired as soon as the transferee arrives to the US.
- c. Purchasing Agent: (One) The person holding this position will be responsible for spotting the products specified in the plan elaborated by the General Manager. He will also be responsible for evaluating the price/quality of the products and will handle any request for quotes from our clients. To be hired when the start up of the operation has finished and the General Manager fully assumes all his functions, approximately within the first nine months.
- d. Salesperson: (Two) The main responsibility of this position is to contact our prospective clients in order to offer our products and obtain purchase orders. Will work with the purchasing agent once a quote is requested and/or purchase order placed. Will be under the direct supervision of the General Manager. Need to be fully bilingual (English/Spanish) as most of our business will be done in South America.
- e. Mechanic: (One) Will be responsible for certifying that all of the automobiles that the company purchases to be exported are in good working and mechanical condition, and if not to indicate what problems are spotted and suggest if the repairs should be done in the US or abroad. Mr. [REDACTED] is currently handling this responsibility, thus the mechanic will be hired at the end of the first year of operations.

- f. Clerk: (One) Handle all clerical duties within the company. During the start up period the clerical and secretarial responsibilities will be handled by the same person but by the end of the first year of operations the duties will be divided if necessary.

The director denied the petition on May 21, 2004, concluding that the petitioner had failed to establish that the business will grow, within one year, to the level and scope required to support the beneficiary in a primarily managerial or executive position. The director observed that the petitioner would employ few people and noted that it appears the beneficiary will merely serve as a supervisor and that “the function in which he will oversee will not rise to the level and magnitude intended by Congress.” The director further determined that the petitioner had not submitted evidence that the business has sufficient capital to begin operations.

On appeal, the petitioner asserts that the business plan and proposed organizational structure previously submitted establish the U.S. company’s ability to support the beneficiary in a primarily managerial or executive capacity. The petitioner emphasizes that the company needs to hire at least seven employees in order to execute its business plan, and claims that three of these employees, the director, the mechanic and the purchasing agent, will be employed in a managerial, supervisory or professional capacity.

The petitioner also contends that its initial \$30,000 in working capital is sufficient for the implementation of the office and to pay salaries for the first few months of operation. The petitioner notes that the company will initially work as an “import export agent” for its foreign affiliate, which will pay for purchases in advance or through letters of credit. The petitioner states that the U.S. company will not need to disburse money in order to start the operation.

Upon review of the petition and the evidence, the petitioner has not established that the beneficiary will be employed by the United States entity in a managerial or executive capacity within one year. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner’s description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

In the instant matter, the petitioner has provided only a vague description of the beneficiary’s job duties that fails to identify what managerial or executive tasks he will perform on a day-to-day basis once the petitioner’s business is operational. For example, the petitioner asserted that the beneficiary will conduct “general administration of the affairs of the company,” “direct business activities,” “engage in long-term planning and identify business opportunities,” “be fully responsible for the US operation,” and be responsible for “planning, formulating and implementing administrative and operational policies and procedures.” Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner has not enumerated the specific managerial or executive job duties to be performed by the beneficiary on a daily basis as the company's general manager. The AAO will not accept a vague job description and speculate as to the related managerial or executive duties. The fact that the beneficiary manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987). The record must establish that the majority of the beneficiary's duties will be primarily directing the management of the organization or a component or function of the organization.

Furthermore, the director specifically requested that the petitioner provide a comprehensive description identifying the specific duties to be performed by the beneficiary after the first year of operations. Any 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 AAO does not doubt that the beneficiary will have managerial or executive authority over the petitioner's start-up operations and would eventually supervise the day-to-day operations of the business once it is operational. However, the definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The test is basic to ensure that a person not only has the requisite authority, but that a majority of his or her duties are related to operational or policy management, not to the supervision of lower level employees, or other non-managerial and non-executive duties. The inadequate job description provided does not allow the AAO to discern the beneficiary's actual duties, such that they could be classified as managerial or executive.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose its business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). 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.

The petitioner's proposed business plan is too general to demonstrate that the U.S. entity would employ a subordinate staff sufficient to relieve the beneficiary from performing non-qualifying operational or first-line supervisory duties associated with operating an import and export business within one year. The business plan indicates that the petitioner intends to immediately hire a secretary, and asserts it will hire a purchasing agent within nine months and a mechanic "at the end of the first year of operations." The petitioner also identified two sales positions, but did not provide an anticipated date of hiring for these employees, as requested by the director. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Based on the petitioner's representations, the petitioner will initially be operating as a purchasing and import/export agent for the foreign entity. Specifically the record suggests that the foreign entity will in fact be selling the products exported by the petitioner and will submit requests for specific products directly to the petitioner. Therefore, the AAO will not assume that the sales staff would be hired during the first year of operations. The petitioner also identified a clerk position that would only be filled "if necessary." Finally, the petitioner indicated that it already employs a "director and founder" who will work with the beneficiary to set up the operations and establish the goals of the company. The petitioner did not adequately describe his duties, and the AAO cannot conclude that this employee, who is a shareholder of the petitioning company, will be subordinate to the beneficiary.

Therefore, based on the petitioner's business plan, it appears that the company would employ a director, a purchasing agent, a secretary and a mechanic, in addition to the beneficiary, by the end of the first year of operations. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not established that a bachelor's degree is actually necessary, for example, to perform the duties of a purchasing agent, secretary or mechanic. Nor has the petitioner shown that the beneficiary's proposed subordinates will supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. The AAO notes that the petitioner asserts on appeal that the director is employed in a managerial position, the record contains no description of his supervisory duties, nor does the record demonstrate that he will work under the beneficiary's supervision. Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

Finally, it must be noted that the petitioner's business plan is quite brief and lacks the detail required to establish that the company is prepared to do business and expand to the point where it could employ the

beneficiary in a managerial or executive capacity. While the petitioner has stated that a \$30,000 investment is sufficient to commence operations and provided anticipated gross sales figures for the 2004 through 2006 years, there is no market research or financial data included in the plan to support these figures, nor any evidence of the petitioner's anticipated operating costs. For example, the section of the business plan devoted to the petitioner's financial plan states: "There is no need of a financial plan for [the U.S. entity] as the main shareholder of the company is also the main shareholder of the Peruvian affiliate and both, the shareholders personally as well as the foreign company have enough funds to cover the company's initial financial needs." The petitioner has not provided evidence of the petitioner's shareholders' financial status. Regardless, without additional evidence regarding the petitioner's anticipated income and operating costs, it is impossible to determine whether its business objectives and hiring plans are feasible. Again, 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. at 165.

Collectively, the beneficiary's vague job description, the petitioner's proposed organizational structure, and the business plan submitted fail to demonstrate a realistic expectation that the enterprise will rapidly expand to the point where it would require a manager or executive to perform primarily qualifying duties within one year. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel, or primarily managing an essential function within the organization. Further, the record is not persuasive that the beneficiary functions at a senior level within an organizational hierarchy other than in position title. Based on the evidence submitted, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

The second issue in this matter is whether the petitioner had secured sufficient physical premises to house the new office in the United States as required by 8 C.F.R. § 214.2(l)(3)(v)(A), as of the date the petition was filed.

In support of the initial petition, the petitioner submitted a "business lease" between the petitioning company and its director and minority shareholder, [REDACTED]. The lease agreement is for the property located at [REDACTED], Alexandria, Virginia and is to be used for "mechanical services and import-export office" for a six-month period commencing on April 1, 2004. The lease does not specify the amount or type of space secured. The business plan submitted with the petition states that the beneficiary, upon his arrival in the United States, will "determine the permanent location and lease the proper establishment for the operation of both the import/export business and the future shop/store."

In her April 12, 2004 request for evidence, the director requested photographs of the interior and exterior of the leased premises as well as the following documents:

Submit a copy of your COMMERCIAL LEASE showing a facility of sufficient size to conduct an export business, providing for a warehouse for shipping and receiving goods and other services. It must be shown sufficient physical premises have been secured for the type of business indicated in the petition. Submit a copy of the floor plan. The evidence should

also include an official zoning map and the phone number and address of the lessor and/or leasing agent.

Submit a clarification of the current business address where the beneficiary will actually be employed. Define the worksite as a sales office, representative agency, distributorship, etc. Explain what type of building in which the office is located. . . .

In a response dated May 7, 2004, the petitioner stated that the leased premises is an import-export office located on the premises of [REDACTED]'s residential home. The petitioner noted that the home has a basement with a large office that will be divided when more employees are hired, as well as two "deposits" and two bathrooms "which will be destined entirely to the operation of [the petitioner]. In addition on the outside there is sufficient space to store the automobiles that will be exported." The petitioner further indicated that once the operation "starts in full" the company intends to build on the same property "a totally independent office and to build a roof in order to store the automobiles while their shipping is handled."

The petitioner submitted a floor plan diagram purported to show the leased premises, including a large office, two bathrooms, two "deposits," and a "service area." The petitioner submitted a photograph of the exterior of a residential home that appears to have the house number [REDACTED] a photograph of a living room containing one desk, computer and fax machine, and a photograph presumably intended to depict the side or back yard of the house.

The director denied the petition on May 21, 2004, noting "the physical premises are that of a residentially zoned house. . . . The petitioner has not provided evidence to show that they have acquired commercial space but in fact will utilize residentially zoned space to operate a vehicle and automobile parts sales business from." The director further observed that the submitted photographs depict a living room within a residence without sufficient space for the projected number of employees or sufficient storage space for vehicles or space for a parts warehouse.

On appeal, the petitioner asserts that during its first year of operations, the U.S. company "will not sell directly to the public any goods, it will act as an "international broker" and for doing so we only require officie [sic] space destined for computers, faxes and telephones, which can perfectly and legally [sic] be handled in the premises we have secured." The petitioner asserts that the merchandise it imports does not actually enter the United States "as it stays 'on bond' at the port of arrival departure, while it is shipped to its 'export destination.'" The petitioner notes that the merchandise it purchases in the United States will be shipped directly from its sellers to export agents, thus obviating the need for warehousing space.

The petitioner further acknowledges that the photographs provided depicted Victor Linan's living room, noting that he currently handles the affairs of the business from that space. The petitioner notes that it previously explained that the U.S. company has secured the entire basement of the house to be used for operation of the business. The petitioner emphasizes that no mechanical work will be performed on the premises and asserts that "on the outside of the secured premises there is plenty of space to store the automobiles that will be exported." The petitioner again states that the company has a plan to build an

independent office on the property and to build a roof in order to store automobiles “but this will be done only if we are able to secure a license by the zoning authority.”

The petitioner’s assertions are not persuasive. The record establishes that the petitioner had secured one room in a residential home from which to operate its import and export business. Although the petitioner claims that it will have full use of the basement of a residential home, the petitioner did not submit the requested photographs or architectural floor plans of the leased premises to establish that the house even has a basement with the described features, nor does the lease specify the amount of space rented. 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. at 165.

On appeal, the petitioner claims that it does not require any storage or warehouse space, while simultaneously asserting that the leased property contains sufficient space for the storage of vehicles that are awaiting export. The petitioner also asserts that no mechanical work will be performed on the premises, yet the floor plan submitted in response to the director’s request for evidence identified a “service area.” 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).

Furthermore, the petitioner’s business plan indicates that the beneficiary will “determine the permanent location and lease the proper establishment” for the business upon his arrival in the United States. There was no reference in the business plan to the petitioner’s intention to convert a basement for the company’s use, or to build an independent office or storage space on the property purportedly leased or owned by Mr. Linan. Rather, the business plan strongly suggests that the petitioner had not yet located sufficient physical premises from which to operate its business as of the date of filing, and this conclusion is further supported by the photographs submitted in response to the director’s request for evidence. The petitioner has not submitted evidence on appeal sufficient to overcome the director’s decision. For this reason, the appeal will be dismissed.

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. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.