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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

07



DATE: JUL 13 2011 Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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:  
[REDACTED]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to 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, a California corporation established in February 2008, states that it intends to engage in international trade. The petitioner claims to be a subsidiary of Zhao Feng Internacional de Negocios Cia. Ltda, located in Ecuador. The petitioner seeks to employ the beneficiary as the general manager of its new office in the United States for a period of one year.

The director denied the petition based on two independent and alternative grounds, concluding that the petitioner failed to establish: (1) that it has a qualifying relationship with the beneficiary's foreign employer; and (2) that it secured sufficient physical premises to house 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, new counsel for the petitioner asserts that the petitioner's previous attorney negligently failed to provide "enough detail, information and facts" to support the petition. Counsel submits an updated Form I-129, noting that the previous petition contained "more than 26 errors." Counsel also alleges that "someone signed in the petition at least 15 times without their consent." Counsel asserts that the evidence submitted on appeal clarifies any discrepancies or questions and clearly establishes the beneficiary's and petitioner's eligibility for L-1A classification.

#### **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.

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 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.

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 branch, affiliate or subsidiary for less than one year.

## **II. The Issues on Appeal**

As a preliminary matter, the AAO will address the petitioner's submission of a new Form I-129 Petition and other amended documentation on appeal. Counsel alleges that the petitioner's prior attorney made more than 26 errors in completing the Form I-129, signed documents without the petitioner's authorization, and otherwise failed to properly present the petitioner's evidence to USCIS.

The AAO notes that any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond,

and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The petitioner has not provided evidence that its former counsel has been informed of the allegations leveled against him and been given an opportunity to respond, nor does the appeal reflect whether a complaint has been filed with appropriate disciplinary authorities. Counsel indicates that "the company is preparing to file the complaint to against the previous attorney in misguided, misrepresentation of the petition," but submits nothing further. Thus, the petitioner has not adequately supported a claim that it received ineffective assistance from former counsel.

Accordingly, the AAO will not consider the new Form I-129 submitted on appeal. The petitioner claims that the evidence filed prior to the adjudication of the petition was rife with errors, unauthorized signatures and other serious deficiencies, but fails to identify specifically what information was initially omitted or misrepresented. Nevertheless, if significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. See 8 C.F.R. § 214.2(l)(7)(i)(C). Despite the previous denial, there is no bar to the petitioner's filing of a new petition supported by new evidence of eligibility.

#### A. Qualifying Relationship

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

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

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

\* \* \*

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

\* \* \*

- (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
- (L) *Affiliate* means
- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
  - (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 23, 2008. The petitioner stated on Form I-129 that the U.S. company is a subsidiary of [REDACTED]. The petitioner indicated that the foreign entity owns 92,000 shares of the petitioner's common stock, resulting in 100% ownership of the U.S. company.

In support of the claimed parent-subsidiary relationship between the U.S. and foreign entities, the petitioner submitted:

1. The U.S. company's Articles of Organization filed with the California Secretary of State on February 1, 2008, which indicate that the company is authorized to issue one million shares of stock.
2. A copy of the company's stock certificate number one indicating that it issued 92,000 shares of stock [REDACTED] on September 20, 2008. The stock certificate is signed by the beneficiary in his capacity as Secretary and President.
3. A copy of the U.S. company's stock transfer ledger indicating the issuance of the above-referenced stock certificate to [REDACTED] of the [REDACTED] in exchange for \$92,000.
4. The minutes of the U.S. company's organizational meeting dated September 20, 2008, which indicates that the company's directors resolved to issue 92,000 shares to [REDACTED] for \$92,000 in cash already received by wire transfer as capital investment in exchange for 100% ownership of the company. The meeting minutes were signed by the beneficiary in his capacity as secretary and chairman.
5. A Notice of Transaction Pursuant to Corporations Code Section 25102(f) dated September 20, 2008, indicating that the U.S. company issued stock valued at \$92,000 on that date.

6. Copies of four wire transfers advices showing transfer of the following amounts from the foreign entity to the petitioner's business checking account designated "expenses account": \$15,000 on September 8, 2008; \$42,000 on July 24, 2008; \$15,000 on July 21, 2008; and \$20,000 on June 23, 2008.
7. Copies of the petitioner's [REDACTED] which confirm the wire transfer credits to the petitioner's account. The petitioner also submitted copies of statements for a separate checking account designated "operating account" which had a balance of \$42,000 as of September 30, 2008.

The AAO notes that the petitioner's bank statement for the month of July 2008 reflects the company's receipt of wire transfers in the amounts of \$15,000 and \$42,000 from [REDACTED] on July 21 and July 24, 2008, respectively. The statement shows that the petitioner wire transferred \$32,000 from the same account to [REDACTED] account on July 21, 2008 and transferred another \$5,000 to [REDACTED] International on July 25, 2008. In addition, the petitioner transferred \$10,000 to [REDACTED] (China) and \$20,000 to [REDACTED] (China) on July 25, 2008. The total outgoing wires exceeded the amount transferred by the foreign entity by \$10,000.

The director issued a request for evidence ("RFE") on October 29, 2008, in which the director instructed the petitioner to submit, *inter alia*, the following evidence to establish that the U.S. and foreign entities have a qualifying relationship: (1) evidence to show that the foreign company has paid for its ownership interest in the U.S. entity, including bank-certified copies of the original wire transfers from the parent company, canceled checks, deposit receipts and other evidence detailing monetary amounts for the stock purchase; (2) minutes of the meeting of the U.S. company that list the stock shareholders and the number and percentage of stocks owned; (3) copies of all of the U.S. company's stock certificates (both front and back); (4) a copy of the U.S. company's stock ledger showing all stock certificates issued to date; (5) a copy of the U.S. company's Notice of Transaction Pursuant to Corporations Code Section 25102(f); and (6) a detailed list of owners of the U.S. company.

The petitioner re-submitted the above-referenced documents #1 through 7, along with the minutes of meetings held by the foreign entity relating to the establishment of a U.S. subsidiary, in which the company's directors indicate the intention to make a \$90,000 capital investment in the U.S. company.

The director denied the petition on December 17, 2008, concluding that the petitioner failed to establish that the U.S. and foreign entities have a qualifying relationship. Specifically, the petitioner found that the petitioner failed to provide "documentation of monies, property or other consideration furnished to the entity in exchange for stock ownership."

On appeal, counsel asserts that the evidence submitted clearly demonstrates a direct investment from the foreign entity to the U.S. subsidiary, and thus clearly shows that "the parent company in Ecuador owns US subsidiary and has 100% direct control of its right and interest such as establishment, management and operation of its entity." Counsel further asserts that all costs and expenses of the U.S. company to date have been funded and wire transferred from the parent company in Ecuador.

Upon review, the AAO notes that the director erred in finding that the petitioner did not submit any evidence of the foreign entity's payment for its claimed ownership interest in the U.S. company. The petitioner

submitted copies of wire transfers from the foreign entity and the petitioner's bank statements at the time of filing and again in response to the RFE. Therefore, the director's finding that such documents were never submitted will be withdrawn.

However, the AAO finds several inconsistencies in the record which raise doubts regarding the credibility of the petitioner's claims. Therefore, the AAO will uphold the director's ultimate conclusion that the petitioner failed to establish the existence of the claimed qualifying relationship.

The petitioner submits evidence in support of the appeal which, at first glance, appears to be identical to that previously submitted to establish the claimed parent-subsidiary relationship. However, two key documents submitted on appeal are inconsistent with those previously provided.

First, the petitioner submits a copy of the U.S. company's organizational meeting dated September 20, 2008, which was also submitted at the time of filing and in response to the RFE. The minutes of the meeting as originally submitted identified the beneficiary as the sole director at the meeting and indicated that he acted as the "Temporary Chairman and Secretary of the meeting." The document was signed by the beneficiary twice in his capacities as Secretary and Chairman. The version of this document submitted on appeal indicates that [REDACTED] was present and acted as temporary secretary of the meeting, and bears his signature along with that of the beneficiary. The petitioner has provided no explanation for the existence of two different versions of the minutes of the same meeting. While the petitioner's current counsel alleges that documents previously submitted were signed without the beneficiary's knowledge or authorization, neither counsel nor the petitioner has specifically claimed that former counsel created and signed this particular corporate document, nor have they acknowledged that the petitioner is submitting a different or corrected version on appeal.

The petitioner also submits on appeal a copy of its stock certificate number one which is identical to that previously submitted, except that it has been signed by [REDACTED] as Secretary. The previously submitted stock certificate was signed by the beneficiary in his capacity as both secretary and president of the U.S. company. Again, the petitioner offers no explanation for the existence of two different versions of the same stock certificate.

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). 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).

In addition, the AAO notes that the petitioner indicated on its stock transfer ledger that its stock was issued to [REDACTED] but identified that company's country of origin as the [REDACTED]. The petitioner does not claim to have a Chinese shareholder, so it is unclear why this information appears on the company's stock ledger.

Finally, as briefly addressed above, the AAO has noted an apparent irregularity in the petitioner's treatment of its claimed monetary investment from the foreign entity. Specifically, the record shows that \$37,000 of the

\$57,000 transferred to the petitioner by the foreign entity in July 2008 as capital investment in the company was immediately transferred back to the foreign entity. Therefore, the net transfer of funds from the foreign entity appears to have been \$55,000, not \$92,000 as claimed. The remainder of the \$57,000 received by the U.S. company in July 2008, plus a portion of funds previously provided, was immediately transferred to two individuals in China for purposes that have not been explained.

Further, the petitioner indicates on appeal that the company has already paid startup and operations expenses in the amount of \$75,079.68 as of January 5, 2009, using the funds provided by the foreign entity. However, according to the petitioner's IRS Form 1120, U.S. Corporation Income Tax Return for 2008, for the tax year ending on January 31, 2009, the company reported total deductions of only \$19,112 and assets of \$4,830. Schedule L of the Form 1120 is not completed and thus does not corroborate the petitioner's claim that it has either common stock or paid in capital valued at \$92,000. Again, 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).

Overall, the petitioner's submission of different versions of the same stock certificates and meeting minutes, the unexplained immediate transfer of investment funds back to the foreign entity, and the petitioner's inability to provide a consistent account of the purpose of the claimed investment raise doubts regarding the legitimacy of the documentation submitted in support of the claimed qualifying relationship. In this case, the discrepancies and omissions catalogued above lead the AAO to conclude that the evidence of such relationship is not credible. Accordingly, the appeal will be dismissed.

**B. Physical Premises to House the New Office**

The remaining issue addressed by the director is whether the petitioner submitted evidence that it has secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(1)(3)(v)(A). The petitioner indicated that the beneficiary will work at [REDACTED]. The petitioner stated in its letter dated October 20, 2008 that the U.S. company "is currently engaging in import and export of daily commodities including clothes, shoes, bags, toys and crafts in the United States."

The petitioner submitted a copy of a commercial lease dated February 25, 2008 between the U.S. company and Hector Luevanos for the premises at [REDACTED]. According to the terms of the agreement, the lease was valid for one year commencing on February 25, 2008, with a monthly rent of \$750. The petitioner is authorized to occupy the premises as its "corporate office headquarters." The terms of the lease give the company the option to renew the lease for one additional year at a monthly rent of \$850.

The petitioner submitted six photographs depicting the premises, including an exterior view of the petitioner's sign, an interior view of an office with a desk, and photographs of what appears to be a fully stocked and functioning warehouse. The exterior photograph shows a car parked inside an open garage or warehouse door and a stack of car tires immediately outside the building.

As noted above, the petitioner submitted copies of bank statements for its expense and operating accounts at the time of filing. None of these statements reflect any checks or monetary transfers in the amount of \$750.

In the RFE issued on October 29, 2008, the director requested: (1) a copy of the U.S. company's floor plan for all spaces including office, warehouse and production spaces; (2) color photographs of the interior and exterior of the U.S. premises; (3) a complete copy of the U.S. company's lease agreement that indicates the total square footage of the premises; (4) a letter from the owner or property manager of the leased premises which confirms that the U.S. company is occupying the premises and maintaining the lease agreement; and (5) if the premises are sub-leased, a letter from the owner or property management company confirming that the property owner has granted permission to the lessee to sublease to the U.S. company and that the U.S. company is actually occupying and maintaining the sub-lease agreement.

The director also requested that the petitioner identify the type of business to be conducted, identify the nature of the worksite, and explain the type of building occupied. Finally, the director requested that the petitioner provide a copy of the company's business insurance policy.

In response, the petitioner re-submitted the commercial lease provided at the time of filing. The petitioner submitted new photographs of the exterior of the premises which show a second, larger company sign for a business known as [REDACTED] apparently located in the same building. The interior photographs show a sign for the petitioning company in a small reception area, and the same small office with one desk. Finally, the petitioner submitted a photograph of the warehouse area of the U.S. company, which depicts an entirely different space compared to the photographs submitted at the time of filing. The space is largely empty, save for a few empty boxes and some shelves holding unidentifiable items.

In addition, the petitioner submitted a commercial lease agreement between [REDACTED] as landlord and [REDACTED] as tenant, for the premises located at [REDACTED]. The lease has a ten-year term that commenced on April 4, 2003. The petitioner provided a letter from [REDACTED] indicating that "[REDACTED] has full permission to rent out the location at [REDACTED]" and confirming that the petitioner is "currently subleasing 2500 sq. ft. of the Warehouse building for business purposes." The petitioner submitted evidence that [REDACTED] is the owner of the 4,400 square foot property located at [REDACTED].

Finally, the petitioner submitted evidence that it obtained property insurance for the premises with a policy effective date of November 18, 2008.

The director determined that the petitioner failed to submit evidence that the petitioner had secured sufficient physical premises to house the new office. In denying the petition, the director noted that the submitted lease agreement would expire just three months after the beginning of the beneficiary's requested period of employment, and therefore would not support the petitioner's request to employ the beneficiary for one full year. The director further stated that "the photographs showing the claimed premises are inconsistent with the commercial lease agreement."

On appeal, counsel asserts that the U.S. company secured the location at [REDACTED] in February 2008 and has paid \$750.00 per month to the sub-lease holder. In response to the director's finding that the lease would expire in February 2009, counsel notes that the agreement contains an option to renew clause. The petitioner submits a new commercial lease for the same premises which was signed on January 12, 2009, for a five-year term commencing on February 26, 2009.

The petitioner also provides a hand-drawn office floor plan depicting a front desk, two offices, a bathroom and a warehouse space occupying 2,500 square feet. In addition, the petitioner submits some additional photographs of the leased premises. The exterior photograph depicts the petitioner's sign on the building that appears to also house [REDACTED] and shows two cars parked inside the area that is designated on the floor plan as the petitioner's warehouse space.

Upon review, while the petitioner has submitted a lease agreement, photographs and proof of insurance, the AAO notes that the record contains inconsistencies that raise doubts regarding the petitioner's occupancy of the claimed 2,500 square feet premises.

First, the record does not corroborate the petitioner's claims that it has been making the \$750 monthly rent payments to the lessor named on the lease agreement. As noted above, there is no deduction in this amount on any of the submitted bank statements. On appeal, the petitioner submits a statement summarizing its start-up and operating expenses for the period February 2008 to January 2009. According to this statement, the company has paid a total of \$9,000 in rent. The petitioner's IRS Form 1120, U.S. Corporation Income Tax Return, for the period February 1, 2008 to January 31, 2009 reflects rent expenses in the amount of \$4,982. 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).

Second, the petitioner has submitted two different sets of photographs of its warehouse space which depict two completely different spaces. 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). Further, while the petitioner has submitted some photographs of an empty warehouse space apparently reserved for the company's use, other photographs appear to show cars parked in the same area, raising questions as to whether the space is actually leased by one of the many auto repair related companies located in the same building.

We acknowledge that the petitioner has been consistently utilizing the address at [REDACTED] as its business address, has obtained a seller's permit, business license and insurance for this location, and appears to be paying some rent, although not the amount stated in the lease agreement submitted. However, in light of the inconsistencies catalogued above, there are unresolved questions regarding the amount and type of space secured, and thus we cannot determine whether the petitioner has secured sufficient premises for the operation of an import/export and wholesale distribution business. In addition, we noted that the petitioner has submitted receipts for business expenses which include the company's purchase of a stove and refrigerator for installation at the address listed on the petition as the beneficiary's private residence. These purchases are listed as "office equipment" and "office furniture" on the petitioner's tax return, which raises questions as to whether the petitioner had actually set up its office at [REDACTED].

Based on the foregoing, we concur with the director's conclusion that the petitioner failed to establish that it has secured sufficient physical premises to house the new office. For this additional 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.