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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**

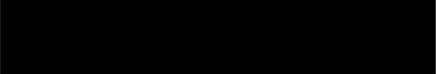
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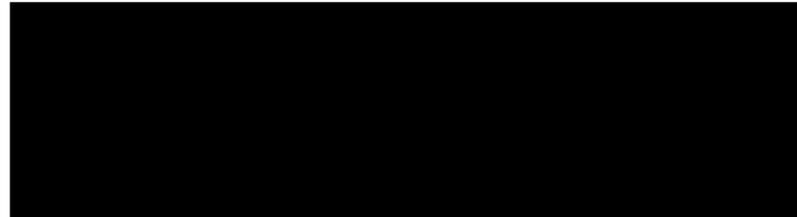
Office: CALIFORNIA SERVICE CENTER

FILE: 

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:



**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,

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 sustain the appeal.

The petitioner filed this nonimmigrant petition seeking classification of 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 publicly-traded corporation established in Nevada, states that it intends to provide products and services in the technology and energy sectors. The petitioner indicates that it is the parent company of [REDACTED] located in [REDACTED]. The petitioner seeks to employ the beneficiary as the [REDACTED] of its new office in the United States for a period of one year.<sup>1</sup>

The director denied the petition based on two independent and alternative grounds, concluding that the petitioner failed to establish: (1) that the U.S. company secured sufficient physical premises to house the new office; and (2) that the U.S. and foreign entities have a qualifying relationship.

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 director's decision was in error, as the petitioner submitted ample evidence of its qualifying relationship and physical premises secured to house the new U.S. office. The petitioner submits a statement 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.

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<sup>1</sup> The petitioner maintains that, although the petitioner's predecessor company was incorporated in the State of Nevada in 1996, the U.S. company remained dormant for many years and has never established a formal office or operations in the United States. The evidence of record does not establish that the U.S. entity is doing business as defined in the regulations. Therefore, the petition involves a "new office." See 8 C.F.R. §§ 214.2(l)(1)(ii)(F)(defining "new office") and 214.2(l)(1)(ii)(H)(defining "doing business.")

- (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.

## II. Discussion

As noted above, the director two independent and alternative grounds for the denial of the petition. Specifically, the director found that the petitioner did not establish: (1) that the U.S. company secured

sufficient physical premises to house the new office; and (2) that the U.S. and foreign entities have a qualifying relationship.

*A. Physical Premises*

The first issue to be addressed is whether the petitioner established that it has secured sufficient physical premises to house the new office. *See* 8 C.F.R. § 214.2(l)(3)(v)(A).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on May 4, 2009. On the Form I-129, the petitioner indicated its address as [REDACTED] and stated that the beneficiary will work at this location.

In support of the petition, the petitioner submitted a copy of its Office Service Agreement with [REDACTED]. Under the terms of the agreement, the petitioner has unrestricted use of a furnished 105 square foot office (#55B) during regular business hours, and access to shared reception and kitchen areas. The stated length of the agreement is six months, from June 1, 2009 until November 30, 2009. According to the terms of the agreement, the duration "will be extended automatically for successive periods equal to the initial term but no less than 3 months . . . until brought to an end by the Client or by [REDACTED]."

According to the manpower projections included at section 9.0 of the petitioner's 2008 Business Plan, the company anticipates that it will employ three people in addition to the beneficiary by the end of calendar year 2009, and a total of eight employees by the end of 2010.

The director issued a request for evidence ("RFE") on May 6, 2009. The director instructed the petitioner to submit additional evidence to establish the U.S. company's presence at the listed location. Items requested included: a floor plan; photographs; a letter from the owner or property management company confirming the petitioner's occupancy; business hours, an operating telephone number; a zoning map; evidence of the U.S. company's business insurance policy; and an occupancy permit. The director also requested that the petitioner explain the type of worksite established, the type of business to be operated at the worksite, and why the location was selected.

The petitioner provided a detailed response to the RFE which addressed each of the director's requests and explained why certain items, such as the occupancy permit, were unavailable. The petitioner indicated its intent to secure a larger office space as required as the company grows. The petitioner explained that the U.S. company will not require a factory, warehouse or production facilities.

The director denied the petition on June 24, 2009, concluding that the petitioner failed to establish that the secured premises are sufficient to house the new office. The director emphasized that the term of the agreement submitted is only six months and that the size of the space secured is only 105 square feet. The director determined that the premises would not support the company's proposed staffing and would not encompass the first year of operations.

On appeal, the petitioner asserts that the secured space is sufficient to support the staff anticipated during the first six months of operations. The petitioner contends that, per its arrangement with [REDACTED] it can increase the amount of space secured as necessary. The petitioner emphasizes that it does not have a "virtual office."

In support of the appeal, the petitioner submits a letter from the [REDACTED] general manager, confirming that the petitioner does occupy a physical office, with additional access to meeting rooms and facilities. The general manager indicates that the company "is also able to extend their agreement for a longer term and add offices at any time as their business may require them to do so."

Upon review, the AAO will withdraw the director's determination that this the petitioner has not satisfied the regulatory requirement at 8 C.F.R. § 214.2(l)(3)(v)(A). The record establishes that the petitioner has secured a physical office, rather than a "virtual office," and that the terms of the lease would in fact be automatically extended upon expiration of the six-month lease. Further, the AAO is satisfied that the office secured, while small, is sufficient to accommodate the company's staffing needs for the term of the lease. The petitioner, based on its business plan, will not require physical premises other than commercial office and meeting space for the first year of operations and beyond, and the AAO is satisfied that the current arrangement with [REDACTED] would allow for the company to expand into other offices located within the same building as its staffing levels grow.

*B. Qualifying Relationship*

The second issue to be addressed is whether the petitioner has established that the United States and foreign entities are qualifying organizations. 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.
- (J) *Branch* means an operating division or office of the same organization housed in a different location.
- (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 stated on the Form I-129 that the U.S. company owns 98 percent of [REDACTED] located in [REDACTED] and was the sole owner of [REDACTED]. The petitioner indicates that the beneficiary owns 65 percent of the outstanding shares of the U.S. company, with the public owning the remaining 35 percent of the company's shares.

The petitioner's initial evidence included the petitioner's Form 10-Q, Quarterly Report Under Section 13 or 15(d) of the Securities Exchange Act of 1934, for the period ended December 31, 2008. The Form 10-Q includes the consolidated Financial Statements for [REDACTED] and subsidiaries" which subsidiaries are identified as [REDACTED]. This evidence is sufficient to establish a qualifying parent-subsidiary relationship between the petitioner and the foreign entities which employed the beneficiary during the three years preceding the filing of the petition. Accordingly, the director's determination that the petitioner failed to establish the existence of a qualifying relationship will be withdrawn.

The AAO notes that, in addition to the Form 10-Q, the record contains relevant corporate documentation, including articles of incorporation and organization, merger agreements, stock transfer agreements, and other evidence tracing the history and formation of the [REDACTED] of companies. The director denied the petition primarily based on a finding that the petitioner "failed to submit evidence to demonstrate that the

foreign company [REDACTED] paid for ownership of the petitioning entity," and failed to provide evidence that the U.S. entity is being funded by the foreign entity. However, because the evidence shows that the petitioning entity is the parent company of the foreign company, the director's conclusion was incorrect. The petitioner has also provided evidence of substantial U.S. currency funds held in a bank account and available for the start-up operations of the new office in the United States.

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, the petitioner has sustained that burden. Accordingly, the director's decision dated June 24, 2009 is withdrawn and the petition is approved.

**ORDER:** The appeal is sustained.