

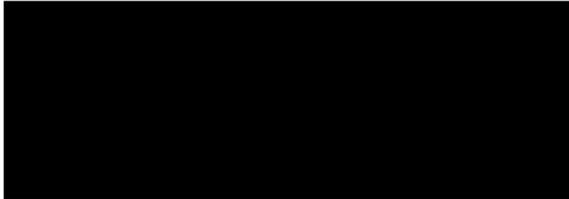
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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DATE: **MAR 02 2012** Office: VERMONT 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: SELF-REPRESENTED

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,

Perry Rhew
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 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 Tennessee corporation established in November 2009, states that it intends to operate a grocery store. It claims to be a subsidiary of [REDACTED] located in India. The petitioner seeks to employ the beneficiary as the chief executive officer of its new office in the United States for a period of two years.¹

The director denied the petition, concluding that the petitioner failed to establish: (1) that the beneficiary has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition; and (2) that the petitioner has 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, the petitioner asserts that it submitted sufficient evidence to establish the beneficiary's qualifying employment abroad and provided evidence that it secured office space for the newly-formed U.S. company. The petitioner asserts that the company intends to purchase an existing business upon approval of the petition. The petitioner submits a brief and additional evidence in support of the appeal.

I. The Law

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

¹ Pursuant to 8 C.F.R. § 214.2(l)(7)(i)(A)(3), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

- (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. The Issues on Appeal

A. One Continuous Year of Full-time Employment Abroad

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on January 25, 2010. In a letter dated January 7, 2010, the petitioner stated that the beneficiary was employed by its claimed Indian parent company, [REDACTED] from December 15, 2006 until May 22, 2008. The petitioner also submitted a letter from [REDACTED] confirming the beneficiary's dates of employment, but the letter was not signed.

In a request for additional evidence dated January 28, 2010, the director instructed the petitioner to provide copies of payroll documents reflecting the beneficiary's period of employment and salary as evidence that she

was employed by the qualifying organization abroad for one continuous year in the three years preceding the filing of the petition.

In response, the petitioner submitted copies of "salary slips" for the months of November 2007 through April 2008. The salary slips are printed on the U.S. company's letterhead, but bear [REDACTED] and signature. The salary slips indicate that the beneficiary held the position of "manager," joined the company on December 15, 2006, and received a monthly salary of Rs. 12000.

The director denied the petition on March 2, 2010, concluding that the petitioner failed to provide evidence that the beneficiary has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition, as required by 8 C.F.R. § 214.2(l)(3)(iii).

The director emphasized that he specifically instructed the petitioner to provide sufficient documentation to establish that the beneficiary was employed for at least one continuous year during the relevant period of time. The director noted that the pay slips submitted established, at best, that the beneficiary was employed by the foreign entity for six months. The director acknowledged that the salary slips indicate the beneficiary's hiring date as December 15, 2006, but noted that no additional documentation was provided to corroborate this date. The director also questioned the probative value of the submitted salary slips, noting that they identify only the beneficiary, her job title and her salary, but no tax information or other data. The director concluded that "the pay slips cannot be deemed trustworthy or informative enough to bear the burden of establishing the beneficiary's eligibility."

On appeal, the petitioner asserts that the beneficiary was in fact employed by [REDACTED] as a manager from December 2006 until April 2008. In response to the director's observation that the petitioner submitted only six months of pay slips, the petitioner states:

[I]f you check the whole L1 application documents, you will be able to find out that we have produced all latest six month bank statements, last six month invoices and six month utility bills and that was only the reason we put the pay slips for six months only. Otherwise, we would have surely send you the pay slips for one year and if you refer my previous application, her position and duration was confirmed by the owner of [REDACTED] [REDACTED] from December '06 to April '08.

Now coming to your statement that surely some Tax documentation would have been generated when she was hired, we would like to draw your attention stating a fact that she joined the company, and her last one year salary was Rs. 12,000 per month, which comes to Rs. 1,44,000 per year and after taking investments in [REDACTED] her salary income does not fall within taxation criteria as per Indian Taxation Law.

In support of this assertion the petitioner submits a letter from [REDACTED]. The accountant certifies that the beneficiary had salary income of Rs. 12,000 per month during the period December 15, 2006 through April 30, 2008 from [REDACTED]. He states that "as she had no taxable income, she has not filed Income Tax returns for the said Assessment Years."

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary was employed by its claimed parent company for at least one continuous year during the three years preceding the filing of the petition.

The letter from the foreign entity which purports to confirm the beneficiary's dates of employment is not signed and has little probative value. The salary slips submitted in response to the RFE, though dated November 2007 through April 2008, are printed on the letterhead of the U.S. company, which was not established until November 2009. As such, the documents appear to have been created for the purpose of responding to the RFE after the director found the unsigned letter from the foreign entity insufficient to establish the beneficiary's period of employment abroad. 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).

Although the petitioner indicates that it could have sent pay slips for one year, it offers no explanation as to why it failed to do so when the director specifically requested documentary evidence of one year of employment. 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 director's decision once again put the petitioner on notice that providing a mere six months of dubious payroll records is insufficient to meet the petitioner's burden, yet the petitioner still offers no documentary evidence of the beneficiary's full year of employment abroad. If the beneficiary was employed as a manager of the foreign entity for a period of over one year, it is reasonable to believe that the company has retained some documentary evidence of her employment in its personnel records. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). If a required document does not exist or cannot be obtained, the petitioner must demonstrate this and submit secondary evidence pertinent to the facts at issue. *Id.*

The explanation from [REDACTED] accounting firm indicating that the beneficiary was not required to pay income taxes on her salary is insufficient to meet the petitioner's burden to corroborate its statements with documentary evidence of the beneficiary's employment. Regardless, [REDACTED] does not state how he derived the information he provides regarding the beneficiary's salary, employment, and tax situation. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

For the foregoing reasons, the appeal will be dismissed.

B. Physical Premises to House the New Office

The remaining issue addressed by the director is whether the petitioner established that it has secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A), as of the date the petition was filed.

The petitioner indicated its business address as [REDACTED]. [REDACTED] The petitioner submitted a renewable six-month lease for this location. According to the terms of the lease, the premises may be used for office space. The submitted photographs show a small office with a desk, computer and office equipment.

The petitioner submitted a four-page business plan in which it indicates that its initial plan is to acquire a successful and well-established grocery store in or near Columbia, Tennessee. The petitioner states that it has approximately \$20,000 in the bank, but does not provide details such as its budget or anticipated costs associated with the acquisition of a business, identify potential available locations for the store, or provide an anticipated timeline for the acquisition.

The director denied the petition concluding that the leased office does not appear capable of accommodating additional employees and does not provide sufficient physical premises for the proposed retail business.

On appeal, the petitioner asserts that it does intend to buy a business, but is awaiting the approval of the petition before doing so. The petitioner states that the leased office "is just a place for the new office of new business incorporation for the market studies of the USA." The petitioner reiterates its intent to "buy a good business and explore the market of the United States." Finally, the petitioner contends that the business plan submitted demonstrates that the company is "fully willing and clearly intending to establish our business."

Upon review, the petitioner has not established that it has secured sufficient physical premises to house the intended new office.

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. At the time of filing the petition to open a "new office," 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(1)(3)(v).

Therefore, if the petitioner indicates that it intends to do business as a grocery retailer, it is reasonable to expect the petitioner to provide evidence that it is well-prepared to commence business as a grocery retailer upon approval of the petition. Here, the petitioner indicates that the beneficiary will continue to study the U.S. market while occupying a small office, and there is nothing in the record to suggest that the petitioner has identified a "successful and well-established grocery store" that is currently for sale in the company's geographic area or otherwise has a firm plan for acquiring, opening and operating a grocery store.

The petitioner has not submitted evidence on appeal to overcome the director's determination. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, a remaining issue in this matter is whether the petitioner has established a qualifying relationship with the beneficiary's claimed 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(1).

The petitioner indicates that it is a subsidiary of [REDACTED] based on the parent company's ownership of 51% of the U.S. company. The record shows that [REDACTED] is a sole proprietorship owned by [REDACTED]

In its business plan, the petitioner describes the ownership of the U.S. company as follows:

In the RFE issued on January 28, 2010, the director requested additional evidence of the ownership and control of the U.S. company, including share certificates, stock ledgers and articles of incorporation. The petitioner submitted no evidence of ownership of the U.S. company in response to the RFE. 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).

As such, the record contains no documentary evidence to corroborate the petitioner's claim that the foreign entity owns a majority interest in the U.S. company, and thus the petitioner has not established the alleged parent-subsidary relationship. Furthermore, the information provided in the petitioner's business plan appears to identify the beneficiary as the majority shareholder of the U.S. company. 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). 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). For this additional reason, the petition cannot be approved.

Finally, although not explicitly addressed in the decision, the record contains no documentation to support a finding that the beneficiary has been or would be employed in a managerial or executive capacity as defined at section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44), or that the petitioner would support such a position within one year of approval of the petition. As noted above, at the time of filing the petition to open a "new office," 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).

While the petitioner's business plan indicates that it intends to acquire and operate a grocery store, it has obtained a lease for a small office, has no documented plans for obtaining the store, and no firm hiring plans for the first year of operations. The petitioner has \$20,000 in the bank, but has not identified the company's start-up costs and initial operating expenses such that it could be determined that company has sufficient funds to commence doing business as contemplated in the business plan. The petitioner indicates that it would eventually hire a store clerk, cashier, front desk people, a material purchasing employee and an assistant. However, the petitioner's description of the beneficiary's duties indicates that she will be responsible for supervising a team of "general managers responsible for finance, accounting, sales and marketing," and supervising a team of "top management personnel." These job duties appear to be inflated in light of the petitioner's stated staffing plans. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the 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. Here, the petitioner's evidence does not

demonstrate a realistic expectation that the new office will support a qualifying managerial or executive position within one year. For this additional reason, the appeal will be dismissed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683 (9th Cir. 2003).

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.