



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

(b)(6)

DATE: **APR 02 2013** OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker under 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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. 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 classify 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 Texas corporation, is self-described as a textiles and apparel import business. The petitioner claims to be a branch office of [REDACTED] located in Faisalabad, Pakistan. The petitioner seeks to employ the beneficiary as its Operations Manager for an initial period of three years.<sup>1</sup>

The director denied the petition on June 27, 2011, concluding that the petitioner failed to establish: (1) the beneficiary will be working primarily in a qualifying executive or managerial capacity; and (2) that it secured sufficient physical premises to house the new operation. In making this determination, the director found that the petitioner failed to provide the requested position descriptions for the beneficiary's proposed subordinates, leaving the director unable to determine if the beneficiary will supervise the work of other managerial or professional employees. The director also found that the petitioner failed to submit the requested photographs of the petitioner's physical premises.

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.

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 evidentiary requirements for this visa classification are set forth at 8 C.F.R. § 214.2(l)(3). 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

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<sup>1</sup> Pursuant to the regulation at 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.

- (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 (I)(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.

Upon review, the AAO concurs with the director's decision that the petitioner failed to establish that it would employ the beneficiary in a primarily managerial or executive capacity within one year of the approval of the petition.

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.

On November 5, 2010, the director put the petitioner on notice of required evidence and gave a reasonable opportunity to provide it for the record before the visa petition was adjudicated. *See* 8 C.F.R. § 103.2(b)(8). Specifically, the director requested *inter alia* a complete position description for all proposed employees in the United States including number of hours devoted to each duty on a weekly basis. In response, the petitioner failed to provide the requested evidence. Instead, the petitioner submitted a position description for the beneficiary including percentage of time performing each duty, but failed to submit position descriptions for any other proposed employee. The director denied the petition after noting that the petitioner failed to submit the requested evidence.

The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically requested by the director, the petitioner did not provide the requested evidence. The petitioner's failure to submit this information cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). The director appropriately denied the petition, in part, for failure to submit requested evidence.

The AAO agrees with the director that the initial evidence and the petitioner's incomplete response to the request for evidence do not support a finding that the beneficiary will be employed in a primarily managerial or executive capacity within one year. The petitioner has the burden to establish that the U.S. company would

realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the record must be considered in analyzing whether the beneficiary's proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period. *See generally*, 8 C.F.R. § 214.2(l)(3)(v)(C).

On appeal, the petitioner states that the business plan included with the initial submission provides job descriptions for the executive-level staff. The AAO notes the inclusion of these brief job descriptions; however, the business plan does not contain the requested percentage breakdown of time for each duty. Furthermore, the business plan states that the petitioner "will begin hiring and training a sales and management team to begin the sales operations of the business." The petitioner did not provide the requested job descriptions for the sales and management teams either in response to the RFE or on appeal. The business plan further indicates that the company "will hire a corporate office staff, marketing manager and warehouse staff based upon business growth," but it includes no timeline for hiring the sales, office, marketing or warehouse employees. As such, the AAO cannot discern the proposed organizational structure or the number and types of employees that would be working for the company within one year.

The record also lacks evidence of the size of the United States investment. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(2). The petitioner provided a bank letter indicating that the U.S. company had \$4,000 in the bank as of the date of filing. The petitioner's business plan does not identify the company's anticipated start-up costs for the U.S. operation or otherwise address the amount of funding or investment required to commence business operations in the United States. Former counsel for the petitioner advised in response to the RFE that "the foreign company will not submit a bank wire transfer to being the operations of a branch office until the alien i[s] approved for his employment visa." The record remains devoid of any information regarding the size of the United States investment, which further undermines the petitioner's claim that the company would realistically support a managerial or executive position within one year.

The petitioner did not submit all of the requested evidence and the unsupported assertions and explanations provided on appeal are insufficient to overcome the evidentiary deficiencies noted in the director's decision. 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)). Accordingly, the petitioner has not established that it will employ the beneficiary in a primarily managerial or executive capacity within one year and the appeal will be dismissed.

The remaining issue addressed by the director is whether the petitioner established that the United States entity secured sufficient physical premises to house the new office as of the date of filing the petition. The director found that the petitioner failed to provide the requested photographs of the United States entity, leaving the director unable to determine if sufficient physical premises were secured.

Upon review, the AAO concurs with the director's decision and will affirm the denial of the petition.

At the time of filing the petition on October 15, 2010, the petitioner stated its address on the Form I-129 as [REDACTED] Longview, Texas [REDACTED]. In a letter submitted in support of the petition, former counsel for the petitioner stated that "since this is a new operation, the business has not yet leased office space." Nevertheless, the petitioner's initial evidence included an un-executed lease agreement for the address stated on the petition. The lease agreement was between the petitioner and [REDACTED] for a term of five years commencing on November 1, 2010. The lease provides at section 3.01, Permitted Use, the following terms:

Lessee shall maintain sufficient inventory to operate the leased premises as a grocery store/supermarket continuously during the term of this agreement and shall use the premises for no other purpose.

On November 5, 2010, the director requested color photographs of the interior and exterior of the premises secured for the United States entity. In a response dated January 27, 2011, counsel stated that the United States branch had not "established the business entity or leased an office or warehouse location" because "the alien has not yet been authorized by USCIS to work in the U.S." The director denied the petition after noting that the petitioner failed to submit the requested evidence pertaining to the company's physical premises.

The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically requested by the director, the petitioner did not provide the requested evidence. The petitioner's failure to submit this information cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). The director appropriately denied the petition, in part, for failure to submit requested evidence.

The AAO agrees with the director that the initial evidence and the petitioner's incomplete response to the request for evidence do not support a finding that the petitioner secured sufficient physical premises to house the new operation. On appeal, the petitioner submits a signed copy of the lease agreement provided at the time of filing the petition. However, there is no evidence that the lease was signed and effective as of the date the petition was filed. Given the repeated assertions in the record that the U.S. company had not yet established an office, it is reasonable to assume that the lease agreement was not, in fact, in effect at the time of filing. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

Even if the petitioner had secured the lease prior to filing the petition, the petitioner has not explained how the U.S. company intends to operate an apparel import and distribution business from leased premises that must be operated as a "grocery store/supermarket." 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). Accordingly, the petitioner has not established that it has secured sufficient physical premises to house the new office and the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that it has a qualifying relationship with the foreign entity. 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 petitioner stated on the Form I-129 that the U.S. company is a branch office of [REDACTED] located in Pakistan. Where asked to describe the stock ownership and managerial control of each company, the petitioner stated:

[REDACTED], Non-US, Partnership, [REDACTED]  
[REDACTED] 90% ownership [REDACTED] 10%

In its business plan, the petitioner further clarifies that the beneficiary owns 90 percent of the U.S. company's common stock while [REDACTED] and [REDACTED] each own 5 percent of the company's common stock. Further, the foreign entity's 2009 company tax return identifies [REDACTED] as its sole shareholder. The record does not contain primary evidence of the ownership of either company, such as copies of stock certificates, stock purchase agreements and stock transfer ledgers.

However, based on the petitioner's statements, the petitioner is not a "branch" of the foreign entity, nor does it have any other type of qualifying relationship with the beneficiary's claimed foreign employer.

In defining the nonimmigrant classification, the regulations specifically provide for the temporary admission of an intracompany transferee "to the United States to be employed by a parent, *branch*, affiliate, or subsidiary of [the foreign firm, corporation, or other legal entity]." 8 C.F.R. § 214.2(l)(1)(i) (emphasis added). The regulations define the term "branch" as "an operating division or office of the same organization housed in a different location." 8 C.F.R. § 214.2(l)(1)(ii)(J). Probative evidence of a branch office would include the following: a state business license establishing that the foreign corporation is authorized to engage in business activities in the United States; copies of Internal Revenue Service (IRS) Form 1120-F, U.S. Income Tax Return of a Foreign Corporation; copies IRS Form 941, Employer's Quarterly Federal Tax Return, listing the branch office as the employer; copies of a lease for office space in the United States; and finally, any state tax forms that demonstrate that the petitioner is a branch office of a foreign entity.

If the petitioner submits evidence to show that it is incorporated in the United States, then that entity will not qualify as "an . . . office of the same organization housed in a different location," since that corporation is a distinct legal entity separate and apart from the foreign organization. See *Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm'r 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm'r 1980). If the claimed branch is incorporated in the United States, USCIS must examine the ownership and control of that corporation to determine whether it qualifies as a subsidiary or affiliate of the overseas employer.

Here, the petitioning company is a Texas corporation, and cannot qualify as a branch office of the Pakistani company. Based on the petitioner's description of the ownership of each company, and the limited evidence

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provided, the record indicates that the foreign entity is wholly-owned by [REDACTED] and the U.S. company is majority-owned (90 percent) by the beneficiary, while [REDACTED] holds only a five percent interest in the company. The companies do not share the requisite common ownership and control to establish a parent-subsidary or affiliate relationship as those relationships are defined at 8 C.F.R. § 214.2(l)(ii)(1). For this additional reason, the petition cannot be approved.

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. 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. Due to the failure to provide the requested evidence, the petitioner has not met its burden.

**ORDER:** The appeal is dismissed.