



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JAN 29 2013** 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 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 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 a 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 limited liability company established on July 7, 2009, engages in the business of product procurement and export management. It claims to be an affiliate of [REDACTED] based in Dubai, United Arab Emirates. The petitioner seeks to employ the beneficiary in the position of Procurement Director in its new office in the United States for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary will be employed in an executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner asserts that the beneficiary will be employed in an executive capacity, and that the petition should be treated as a "new office" petition.

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

¹ Pursuant to 8 C.F.R. § 214.2(l)(7)(i)(A)(2), 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.

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.

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.

8 C.F.R. § 214.2(l)(ii)(F) defines the term "new office" as "an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary *for less than one year* (emphasis added)."

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.

(H) *Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

II. The Issues on Appeal

A. *Executive Capacity*

The first issue to be addressed is whether the petitioner established that the beneficiary will be employed in the United States in a primarily executive capacity.

The petitioner filed Form I-129, Petition for a Nonimmigrant Worker, on September 9, 2011. On Form I-129, the petitioner indicated that it currently employs one employee in the United States. It also indicated that it has a gross annual income of \$3,040,000 and a net annual income of \$1,247,000.

According to a letter dated July 29, 2011 submitted with the petition, the petitioner described the beneficiary's job duty as Procurement Director as "supervising and controlling the U.S. operations of our company." In addition, the petitioner listed the following additional duties for the beneficiary:

1. Set the vision, strategic decision, expectations and annual objectives for the overall procurement organization;
2. Hire and lead the strategic procurement team, has oversight responsibility for all procurement activities, and ensures quality materials and services are obtained and delivered at the lowest total cost;
3. Develop, redesign, implement and maintain procedures for the overall procurement organization (strategic and tactical) focused on clients in Dubai;
4. Oversee the management, selection and development of suppliers to continuously improve quality, delivery and price in a way that positively impacts the corporation and strategic management of the supplier base;
5. Ensure that new sources meet selection criteria and that best possible pricing and contractual terms are obtained for local and export requirements;
6. Provide leadership in sourcing, purchasing and supplier management with expertise in exporting to Middle East;

7. Establish targets and measures for sourcing products, including the demonstration of supplier, product and process capacity in the shortest possible timeframes;
8. Forecast procurement costs on a quarterly basis and provide input costs for the annual company budget process;
9. Communicate on a consistent basis with executives and managers in order to establish and execute integrated procurement initiatives throughout the enterprise;
10. Lead, develop and execute strategic sourcing strategies, best practices and initiatives to support aggressive improvements in supplier quality, delivery, pricing, lead times, payment and other areas as identified;
11. Benchmark, track and analyze annual performance metrics and sourcing trends against budget and vendor performance to demonstrate continuous improvement and progress against strategic objectives; and
12. Build, develop, coach and support an effective leadership team to drive achievement of organizational objectives by identifying opportunities for growth and learning while fostering a high performance culture.

According to the same letter, the petitioner stated that it intends to hire an additional five employees within the first two years, including Product Sourcing Specialists, and Product Sourcing Manager(s).

The petitioner submitted its Business Plan, which described the nature and scope of the petitioner's services as offering "complete export management services plus inventory consulting services" including: supplier/buyer identification; purchasing process contracting and consulting; shipping setup; warehousing arrangements; and delivery.

The director issued a request for evidence ("RFE") in which he requested, *inter alia*, the following: (1) a breakdown of the number of hours devoted to each of the beneficiary's job duties on a weekly basis; (2) a short answer explaining how many subordinate supervisors will be under the beneficiary's management and the job duties of the employees to be managed; (3) a list of the petitioner's U.S. employees that identify each employee by name and position title, as well as complete position descriptions for all employees; and (4) an organizational chart/diagram depicting where the position of Procurement Director fits into the organization.

In response to the RFE, the petitioner submitted a forty-four page brochure describing the beneficiary's proposed position in the United States and the U.S. organization's proposed structure. In this brochure, the petitioner indicated that the beneficiary will spend 80% of his time on executive tasks, and 20% of his time on non-executive tasks. The petitioner also indicated that the beneficiary will report directly to the Managing Director, and will be "responsible for all Sales, Procurement, and Sourcing activities for the Company." Furthermore, the petitioner indicated that the beneficiary will be responsible for the following:

A key function is supervising an organization to be formed and developing and implementing sales and business development strategies. Take an active role in the product procurement process by recommending potential targets and involvement in negotiations. Follow the technical and commercial developments within the industry and make recommendations accordingly.

Review and or prepares all major contracts, and coordinate with the major vendors to acceptable payment and delivery terms. Demonstrated experience in building new business and extending services into new markets by building strong client relationships.

Directs and oversees the [petitioner's] purchasing functions. Develops policies and procedures related to the procurement of goods and services. Familiar with a variety of the field's concepts, practices, and procedures. Relies on extensive experience and judgment to plan and accomplish goals. Leads and directs the work of others. A wide degree of creativity and latitude is expected.

Finally, the petitioner indicated that the procurement division would be headed by the beneficiary and is "projected to be 16 individuals" including five sourcing managers and eleven sourcing specialists. The petitioner indicated that all sixteen positions for the sourcing managers and sourcing specialists are currently "open positions to be hired." The petitioner also provided an organizational chart showing the managing director as the head of the organization that directly supervises the beneficiary. In turn, the beneficiary will directly supervise the five sourcing managers, who each will supervise two sourcing specialists.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary will be employed in a primarily executive capacity. The director concluded that the beneficiary's job duties were "vague and reminiscent of immigration regulations," with little or no explanation of what the beneficiary's actual job duties entail. The director questioned the credibility of the beneficiary's stated job duties, noting that there was a substantial overlap between the beneficiary and the managing director's duties. The director also concluded that the petitioner did not qualify as a new office.

On appeal, the petitioner asserts the beneficiary will be performing in a primarily executive capacity, and refers back to the prior submissions detailing the beneficiary's job duties. The petitioner clarifies the differences between the beneficiary's job duties and the managing director's duties. The petitioner also asserts that the petition should be considered a new office petition.

Upon review of the record, the AAO finds that the petitioner failed to establish that the beneficiary will be employed in a primarily executive capacity.

Preliminarily, the AAO will address the petitioner's assertion that it should be considered a "new office." Specifically, the petitioner asserts that it should be considered a new office because it was recently acquired by [redacted] ("the foreign entity") on May 2011.

The AAO finds that the petitioner does not qualify as a "new office" as defined by the regulation. 8 C.F.R. § 214.2(l)(1)(ii)(F) defines the term "new office" as "an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary *for less than one year* (emphasis added)." As the petitioner was established in the United States on July 7, 2009 and filed the instant petition on September 8, 2011, it has *prima facie* been doing business in the United States for more than one year. The petitioner submitted no evidence to establish otherwise. Therefore, the petitioner failed to establish that it qualifies as a "new office" in order to receive the more lenient treatment afforded to new offices. Whether or not the petitioner was subsequently acquired by another company does not change the fact that the petitioner has been doing business in the United States for more than one year prior to filing.

The L-1A nonimmigrant visa is not an entrepreneurial visa classification that would allow an alien a prolonged stay in the United States in a non-managerial or non-executive capacity to start up a new business, or multiple new businesses. The one-year "new office" provision is an accommodation for newly established enterprises, provided for by USCIS regulation, that allows for a more lenient treatment of managers or executives that are entering the United States to open a new office. When a new business is first 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 low-level 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 that first year. In an accommodation that is more lenient than the strict language of the statute, the "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position. See generally 8 C.F.R. § 214.2(l)(3)(v).

By allowing multiple petitions under the more lenient standard, USCIS would in effect allow foreign entities to create under-funded, under-staffed or even inactive companies in the United States, with the expectation that they could receive multiple extensions of their L-1 status without primarily engaging in managerial or executive duties. The only provision that allows for the extension of a "new office" visa petition requires the petitioner to demonstrate that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii).

In addition, the petitioner initially indicated on Form I-129 that the beneficiary was *not* coming to the United States to open a new office. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izumimi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978).

Therefore, the petition must be adjudicated pursuant to the regulatory requirements applicable to individual petitions pursuant to 8 C.F.R. § 214.2(l)(3)(i)-(iv). The petitioner must demonstrate that it is able to support the beneficiary in an executive position as of the date of filing the petition. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition).

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). Beyond the beneficiary's position description, the AAO must review the totality of the record including descriptions of the beneficiary's subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position.

In the instant matter, the petitioner described many of the beneficiary's duties in vague and overly broad terms, such as as: "[s]et the vision, strategic decision, expectations and annual objectives for the overall procurement organization"; "oversight responsibility for all procurement activities"; "[d]evelop, redesign,

implement and maintain procedures for the overall procurement organization; and “[l]ead, develop and execute strategic sourcing strategies, best practices and initiatives.” This type of vague and broad language provides little, if any, insight into the beneficiary’s actual daily activities in the United States. 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 provide any detail or explanation of the beneficiary’s activities in the course of his daily routine. 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). Specifics are clearly an important indication of whether a beneficiary’s duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Id.*

In addition to being vague and overly broad, the beneficiary’s job duties are not entirely credible when considered in the context of the petitioner’s actual organizational structure at the time the petition was filed. The petitioner described the beneficiary’s primary role as to direct and oversee the petitioner’s purchasing functions and to head the procurement division. However, at the time of filing, the petitioner had no procurement division nor any purchasing specialists to perform the lower-level procurement and purchasing functions to be directed. At the time of filing, the petitioner employed only one employee, the managing director. Therefore, the record is unclear what the beneficiary’s actual duties will be.

Moreover, the record is unclear who, if not the beneficiary, would perform the tasks necessary to provide the services of the U.S. petitioner’s daily operations. Considering that the petitioner’s only employee is the managing director who is the head of the U.S. organization and directly supervises the beneficiary, the petitioner failed to credibly establish that it will employ the beneficiary in a primarily executive capacity. The petitioner’s claim that the beneficiary’s executive duties will constitute 80% of his time is not realistic given the size, structure, and nature of the petitioner’s operations at the time of filing.

An employee who “primarily” performs the tasks necessary to produce a product or to provide services is not considered to be “primarily” employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one “primarily” perform the enumerated managerial or executive duties); see also *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir. 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm’r 1988)).

Notably, the petitioner failed to provide a complete position description for the managing director, although this was specifically requested in the RFE. The petitioner’s failure to submit the position description for the managing director is significant, considering that the managing director is the petitioner’s only employee. As noted by the director, many of the beneficiary’s proposed job duties, such as setting the petitioner’s direction and hiring and firing staff, seem more appropriate for the managing director rather than the beneficiary. 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).

On appeal, the petitioner provides an explanation of the managing director’s duties. However, the AAO will not consider this statement for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner

failed to submit the requested evidence and now submits it on appeal. The appeal may only be adjudicated based on the record of proceeding before the director.

B. Qualifying Relationship

Beyond the decision of the director, the petitioner failed to establish 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). In addition, the petitioner must show that it and the foreign entity meet the definition of "qualifying organization" as defined in 8 C.F.R. § 214.2(l)(1)(ii)(G).

The petitioner indicated on the Form I-129 that it is a subsidiary of [REDACTED] and that the foreign entity owns 100% of the petitioner.

In support of the qualifying relationship, the petitioner submitted, *inter alia*, the following documents:

1. Business Purchase Contract executed on May 17, 2011 between the petitioner ("seller") and the foreign entity ("buyer"), in which seller agrees to sell and buyer agrees to buy the petitioner's entire business. As payment, the seller was to receive total net stock worth \$50,000 in the foreign entity at closing to occur on May 17, 2011;
2. Certificate issued by the foreign entity to [REDACTED] for 4500 shares of preferred stock, dated May 13, 2011, with the following restrictive legend: "The shares represented have been acquired for investment and have not been registered under [code or law]. Such shares may not be sold or transferred or pledged in the absence of such registration.";
3. Employment Agreement effective May 21, 2011, by and between the petitioner ("employer") and [REDACTED] ("executive employee"). According to this agreement, the employer "shall employ Executive Director as a(n) Director and Shareholder."; and
4. Membership Certificate number 5, issued by the petitioner to the foreign entity for "one hundred percent" membership interests on May 17, 2011;

Upon review of the record, the petitioner failed to submit credible evidence establishing the qualifying relationship. The above-listed documents are inconsistent and lack reliability.

First, the Business Purchase Contract in which the foreign entity purportedly acquired the petitioner was executed on May 17, 2011. However, the share certificate issued by the foreign entity to [REDACTED] was dated May 13, 2011, four days *prior* to the execution and closing date of the purported acquisition.

In addition, the foreign entity's share certificate to [REDACTED] is not credible. It was written entirely in the English language, even though the foreign entity is a corporation registered and operating in Dubai, United

Arab Emirates. Furthermore, the restrictive legend on the share certificate specifically states that the transaction represented by the certificate "have not been registered under [code or law]."

Membership Certificate number 5 issued by the petitioner to the foreign entity for "one hundred percent" membership interests on May 17, 2011 is also not reliable. The membership certificate is not signed by any representative of the petitioner.

The petitioner's business plan written in 2011 made two references to its parent company as [REDACTED]. The petitioner failed to explain its relationship to [REDACTED].

Furthermore, the petitioner claims that through the purported acquisition in May 2011, the foreign entity became the sole owner of the petitioner. However, the Employment Agreement between the petitioner ("employer") and [REDACTED] ("executive employee") specifically states that [REDACTED] will be the executive director *and* shareholder. The fact that [REDACTED] remains a shareholder of the petitioner directly undermines the petitioner's claims that it is 100% owned by the foreign entity. Moreover, according to the Texas Comptroller of Public Accounts' website, [REDACTED] is still listed as the sole member.² Considering that neither the transfer of shares from the foreign entity to [REDACTED], or from the petitioner to the foreign entity, were registered in accordance with the law, the petitioner has failed to establish the legitimacy of the purported acquisition or whether it actually occurred.

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. *Id.*

Finally, the petitioner failed to establish that it is a "qualifying organization" as defined in 8 C.F.R. § 214.2(l)(1)(ii)(G). Specifically, the petitioner failed to establish that it has sufficient physical premises in order to establish that it is doing business in the United States. 8 C.F.R. § 214.2(l)(1)(ii)(G) requires an organization to be "doing business" in order to be considered a "qualifying organization." 8 C.F.R. § 214.2(l)(1)(ii)(H) defines the term "doing business" as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization *and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad* (emphasis added)."

The AAO observes that the "physical premises" requirement applies to new offices serves as a safeguard to ensure that a newly established business immediately commence doing business so that it will support a managerial or executive position within one year. *See* 52 FR 5738, 5740 (February 26, 1987). However, a petitioner is not absolved of the requirement to maintain sufficient physical premises simply because it has been in existence for more than one year. In order to be considered a qualifying organization, a petitioner must be doing business in a regular, systematic and continuous manner. *See* 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (H). Inherent to that requirement, the petitioner must possess sufficient physical premises to conduct business.

² See <https://ourcpa.cpa.state.tx.us/coa/Index.html> (last accessed January 11, 2013).

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According to Form I-129, the petitioner's current address is [REDACTED] Austin, TX. In support of the petition, the petitioner submitted its lease and two payment statements for its office at [REDACTED] Austin, TX. However, the lease specifies that this is a virtual office which provides only two days of private office usage per month, or five days of private office usage per month for "virtual plus" packages. The payment statements reflect that the petitioner's monthly payment is \$199, and that the service provisions were from the dates of April 1, 2011 to June 30, 2011, and September 1, 2011 through November 30, 2011.

Furthermore, the petitioner submitted no proof establishing that it has extended its lease at its current premises or has entered into a new lease beyond November 30, 2011. The only other lease submitted for the record was a three-month lease for a different premises located at [REDACTED] Austin, TX, beginning on September 5, 2011 and ending on November 5, 2011.

Based upon the evidence establishing that the petitioner occupies only a virtual office and does not have a valid lease beyond November 30, 2011, the petitioner failed to establish that has sufficient physical premises, i.e., something more than "the mere presence of an agent or office of the qualifying organization in the United States." Therefore, the petitioner failed to establish that it is doing business in the United States, and that it qualifies as a "qualifying organization." See 8 C.F.R. § 214.2(l)(3); 8 C.F.R. § 214.2(l)(1)(ii)(G); 8 C.F.R. § 214.2(l)(1)(ii)(H).

III. Conclusion

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.