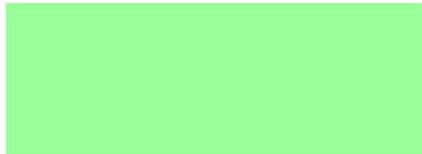




U.S. Citizenship  
and Immigration  
Services

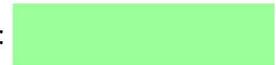
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DATE: JUN 04 2013

Office: CALIFORNIA SERVICE CENTER

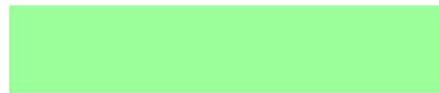
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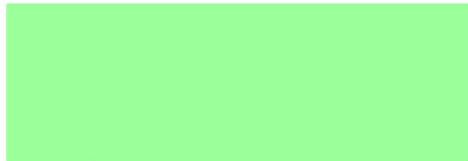
Petitioner:

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,

Ron Rosenberg  
Acting 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 and approve the petition.

The petitioner filed this nonimmigrant petition seeking to classify 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, an Arizona corporation established in 2008, states that it operates a consulting firm for fundraising.<sup>1</sup> It claims to be an affiliate of [REDACTED] located in British Columbia, Canada. The petitioner seeks to employ the beneficiary as the President of its new office in the United States for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish that it will employ the beneficiary in a qualifying managerial or executive capacity. In denying the petition, the director referenced the regulatory requirements applicable to a petition involving the extension of a "new office" petition at 8 C.F.R. § 214.2(l)(14)(ii).

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, counsel for the petitioner asserts that the director erred by failing to consider the instant petition under the regulations applicable to "new office" petitions at 8 C.F.R. § 214.2(l)(3)(v). Counsel asserts that, as the petitioner is not required to establish that it has been staffed at the time of filing a petition for a new office, and, as the denial was based primarily on the petitioner's current staffing levels, the petition should not have been denied. Counsel submits a brief and additional evidence in support of the appeal.

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.

Pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(F), a "new office" means an organization which has been doing business in the United States through a parent, branch, affiliate or subsidiary for less than one year. When a new business is 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 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 order to qualify for L-1 nonimmigrant classification during the first

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<sup>1</sup> The AAO notes that the beneficiary's Canadian employer, [REDACTED] filed this petition on behalf of its United States affiliate, [REDACTED] the entity that will serve as the beneficiary's U.S. employer. All mentions of "the petitioner" refer to the importing U.S. employer, [REDACTED]

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 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.

The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that the beneficiary is coming to the United States to open a "new office," and requested a one-year period of approval. The petitioner submitted: evidence that it had acquired physical premises to house the new office; a business plan; a proposed organizational chart; detailed position descriptions for the beneficiary's current foreign and proposed U.S. positions; evidence of its qualifying affiliate relationship with the beneficiary's Canadian employer; and, evidence of the foreign entity's financial status and organizational structure, in compliance with the regulations governing "new office" petitions at 8 C.F.R. § 214.2(l)(3)(v). The petitioner explained that, while the company was incorporated in the State of Arizona in June 2008, it has not commenced business activities or hired staff and would not do so until the beneficiary is granted L-1A nonimmigrant status. The petitioner further explained that U.S. Citizenship and Immigration Services (USCIS) had denied its previous "new office" petition several months earlier and that it had since taken steps to correct the deficiencies found in that petition before filing this second request for approval as a new office.

Nevertheless the director requested evidence of the petitioner's current staffing levels and ultimately denied the petition based on a finding that the petitioner is not staffed and cannot currently support a qualifying managerial or executive position. The director stated that USCIS would not consider the instant petition as a "new office" because the petitioning company was incorporated approximately 19 months prior to the date of filing. Counsel objects to this finding on appeal and asserts that the petitioner meets all eligibility requirements as a new office and does not have to establish that it is currently staff.

Counsel's assertions are persuasive. The AAO finds that the director erroneously failed to adjudicate the petition under the regulations applicable to "new office" petitions. As the record establishes that the petitioner in this matter has not been doing business in the United States for at least one year, and has not previously been granted an approval for a "new office" petition, it is eligible to be considered a "new office" pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(F), and the director should have applied the regulations at 8 C.F.R. § 214.2(l)(3)(v) in adjudicating the petition. Accordingly, the director's decision was made in error and will be withdrawn.

The AAO reviews each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, the petitioner has submitted evidence to address all applicable regulatory requirements for new offices set forth at 8 C.F.R. § 214.2(l)(3)(v). Further, the petitioner has established by a preponderance of the evidence that the majority of the day-to-day non-managerial tasks required to provide services for the petitioner's clients will be carried out by the beneficiary's proposed subordinates and contracted service providers within one year of the approval of the petition. The petitioner need only establish that the beneficiary will devote more than half of his time to qualifying managerial or executive duties by the end of the first year of operations. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily"

perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988). The petitioner has met that burden. Accordingly, the appeal will be sustained and the petition will be approved for a period of one year.

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 sustained.