



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAY 16 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:



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 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 New Jersey corporation established on January 31, 2012, is a software development company. The petitioner is a subsidiary of [REDACTED] located in Grodno, Belarus. 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 had secured sufficient physical premises for 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, counsel for the petitioner asserts that it has secured sufficient physical premises for its operations. Counsel 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.
- (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 Issue on Appeal**

The sole issue to be addressed is whether, as of July 10, 2012, the date the petition was filed, the petitioner established that it had secured sufficient physical premises to house the new U.S. office. If 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. *See* 8 C.F.R. § 214.2(l)(3)(v)(A).

On Form I-129, the petitioner listed the address where the beneficiary would work as [REDACTED], [REDACTED] Short Hills, New Jersey 07078. In support of the initial petition, the petitioner clarified that [REDACTED] Short Hills, NJ 07078 is its "temporary office" and that it "would

like to sign a long term lease (5-10 years) to enable it to start expending and developing its business” once the beneficiary comes to the United States and has the opportunity to fully negotiate and sign the lease.

The director issued a request for evidence (“RFE”) instructing the petitioner to submit, *inter alia*, evidence that it has secured sufficient premises to house the new office. The director noted that such evidence should include an original lease agreement indicating the square footage of the office premises, a copy of the floor plan, and photographs.

In response to the RFE, counsel for the petitioner stated:

[The petitioner] has secured sufficient physical premises for the commencement of its operations in the U.S. Since [the petitioner] is a newly formed company and will expend [sic] rapidly, it needs substantial flexibility in being able to quickly add staff and expend [sic] its office space accordingly. Therefore, [the petitioner] decided to commence its operations by using services of executive office providers who can provide flexible office arrangements and ability to quickly offer fully furnished and connected offices for expending [sic] staff of [the petitioner]. Thus, [the petitioner] secured an office space with [redacted] an international office space provider with offices in 1200 locations in 550 cities and 95 countries. The office space of [the petitioner] is located at [redacted], Short Hills, NJ 07078. [The petitioner] was also able to secure a telephone number [redacted]. Please find attached letter dated September 30, 2012 from [redacted] confirming that [the petitioner] has secured an office space and telephone number at the above address. See Exhibit F. Please also find the photographs of the location where [the petitioner] will maintain its offices and actual office space.

In response to the RFE, the petitioner submitted a letter dated September 30, 2012 from [redacted] stating that the petitioner is [redacted] “current client in good standing” and that [redacted] is “engaged to provide executive office services to [the petitioner] at [redacted], Short Hills, NJ 07078. Services include conference room usage and mail processing.” The petitioner also submitted photographs of the exterior of the business building and a single desk.

The director denied the petition, concluding that the petitioner failed to secure sufficient physical premises for its new office. The director found that no lease was submitted at the time of filing, and that the letter from [redacted] was insufficient as it only stated that [redacted] will provide executive office services including conference room usage and mail processing. The director also found the copies of the photographs to be insufficient as they did not depict the organization and operation of the U.S. entity.

On appeal, counsel for the petitioner asserts that the evidence it submitted was sufficient to establish that it had secured physical premises. Counsel asserts that the letter from [redacted] was sufficient to establish that [redacted] was providing office space, as the letter did not state that its services were “limited solely” to providing conference room and mail processing. Furthermore, counsel disputes the director’s conclusion that evidence of secured physical premises must be in the form of a written lease. Counsel points out that, as a matter of policy, [redacted] does not issue leases to their tenants, and that the petitioner does not have a

“lease” but an office occupancy agreement with [REDACTED]. Counsel also explains that, subsequent to the RFE, the petitioner obtained a clarification letter from [REDACTED] and a new occupancy agreement for office number [REDACTED].

In support of the appeal, the petitioner submits a letter dated November 7, 2012 from [REDACTED] confirming that the petitioner has been its tenant in good standing since February 1, 2012. The letter explains that [REDACTED] offers fully furnished, fully connected offices on a “long or short term basis.” The letter states that [REDACTED] never signs leases with its clients as a matter of policy, but offers a tenant the option of entering into a renewable fixed-term written agreement “in order to guarantee particular office space and certain rates for [REDACTED] services.” The letter further states that, on November 1, 2012, [REDACTED] and the petitioner entered into a renewable, formal written agreement from November 1, 2012 “to guarantee [the petitioner] certain rates for our services . . . [which] include a fully furnished physical office workspace environment, as well as all utilities . . . and use of conference rooms for meetings with clients.” Finally, the letter explained that [REDACTED] policy does not allow for any signage for individual tenants on the building exterior, but that the petitioner is listed in the building’s electronic directory.

Upon review, and for the reasons discussed herein, the petitioner failed to establish that it had secured sufficient physical premises to house the new office at the time of filing. See 8 C.F.R. § 214.2(l)(3)(v)(A).

The petitioner’s evidence fails to establish that the petitioner had secured sufficient physical premises to house the new office at the time of filing. The only evidence submitted to establish the nature of the petitioner’s premises at the time of filing was the letter dated September 30, 2012 from [REDACTED]. This letter confirmed only that the petitioner secured “executive office services . . . including conference room usage and mail processing.” This letter did not state nor suggest that the petitioner acquired actual, physical office space as part of the “executive office services.” The unsupported assertions of counsel do not constitute evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On appeal, counsel points out that the letter dated September 30, 2012 was sufficient to establish that [REDACTED] was providing actual “office space” because [REDACTED] did not state that its services were “limited solely” to providing conference room and mail processing. However, counsel’s assertions are unpersuasive and unsupported by the documentation. While it is true that the September 30, 2012 letter did specifically not state that the services were “limited solely” to providing conference room and mail processing, the September 30, 2012 letter from [REDACTED] also did not specifically state or suggest that the petitioner acquired office space as part of the “executive office services.” There is nothing inherent in the term “executive office services” to suggest that such services would reasonably include physical office space. The AAO will not infer that the petitioner has met its regulatory requirement to secure sufficient *physical* premises when the only relevant evidence submitted stated that the petitioner had acquired “executive office services . . . including conference room usage and mail processing.” The non-existence

or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The AAO acknowledges that, on appeal, the petitioner submits a letter dated November 7, 2012 establishing that the petitioner entered into a new agreement with [REDACTED] to obtain a “fully furnished physical workspace environment” as of November 1, 2012. This evidence establishes that the petitioner has now secured sufficient physical premises. However, this evidence cannot be considered as evidence of eligibility 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. 1978).

The petition will be denied and the appeal dismissed for the above stated reasons. 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.