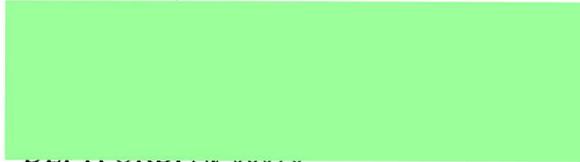
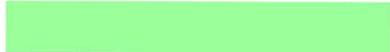


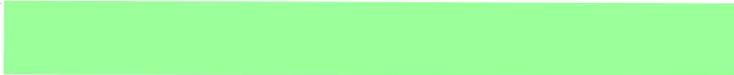
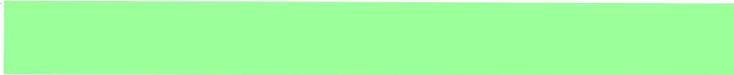


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 05 2014** Office: CALIFORNIA SERVICE CENTER 

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)

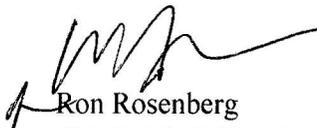
ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,



Ron Rosenberg
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 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 Delaware corporation established in December 2012, states that it engages in "setting up of new for profit business venture[s] in field of marketing and management consulting services in both foreign or domestic market[s]." The petitioner claims to be a subsidiary of [REDACTED] located in India. The petitioner seeks to employ the beneficiary as the president of its new office in the United States.

The director denied the petition on two independent and alternative grounds, concluding that the petitioner failed to establish that: (1) it has a qualifying relationship with a foreign entity; and (2) it had secured sufficient physical premises to house the new operations as of the date of filing the petition.

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 has a qualifying relationship with a foreign entity and that it has acquired sufficient physical premises for the new office. 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.
- (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. ISSUES ON APPEAL

A. Physical Premises

The first issue to be addressed is whether the petitioner established that it has secured sufficient physical premises to house the new office. *See* 8 C.F.R. § 214.2(l)(3)(v)(A).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on January 14, 2013, and therefore must establish that it satisfied the requirements at 8 C.F.R. § 214.2(l)(3)(v)(A) as of this date. 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).

On the Form I-129, the petitioner indicated its address as [REDACTED]

[REDACTED] The petitioner submitted a copy of its lease at the listed address for an office suite of approximately

256 square feet. The lease spans a term of six months and 15 days, commencing December 17, 2012 and ending on June 30, 2013.

The director issued a request for evidence ("RFE") on February 5, 2013, requesting that the petitioner submit a complete copy of the U.S. company's lease for the duration of the beneficiary's intended employment, along with other documentation to establish the sufficiency of the space for the intended business operation.

In response to the RFE, the petitioner submitted a second copy of the same lease agreement, along with floor plans of the leased and shared spaces, none of which are drawn to scale. The floor plan of the office suite illustrates a single office space with desks and nine chairs along the four walls of the room. The floor plan of the shared reception and waiting area illustrates a single desk and chair at one end of the room with eight sofas and one chair along the remaining three walls of the room. The floor plan of the shared conference room illustrates a single large table with 12 chairs in the center of the room.

The director denied the petition on May 8, 2013 concluding, in part, that the petitioner failed to establish that it had secured sufficient physical premises to house the new office. In denying the petition, the director found that the petitioner's lease spanned a term of only six months and 15 days, commencing on December 17, 2012 and ending on June 30, 2013. The director found that a six month lease was not sufficient to support the petition to employ the beneficiary for 12 months.

On appeal, the petitioner contends that the statute and regulations do not require a specific term for leasing the physical premises of a new office, just that there be physical premises and that they are sufficient in size and scope for business operations. Nonetheless, the petitioner submitted a Lease Modification Agreement extending the term of its lease an additional six months for a total of 13 months and 15 days, ending January 31, 2014. The petitioner points out that clause 31 of the original lease provides the petitioner with the opportunity to renew or extend the lease as they have done.

Upon review, the AAO concurs with the director's determination that the petitioner failed to submit evidence that it had secured sufficient physical premises to house the new office prior to filing the petition.

In the instant matter, the petitioner submitted a lease agreement for a term of six months and 15 days. In the RFE, the director specifically requested a complete copy of the U.S. company's lease "for the duration of the beneficiary's intended employment." In response to the RFE, the petitioner failed to comply with the request and submitted the same lease for a term of six months and 15 days. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). 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).

On appeal, the petitioner submits a lease modification agreement extending the lease term an additional six months, for a total of 13 months and 15 days. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see*

also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Furthermore, the AAO acknowledges that the regulations do not specify the type of premises that must be secured by a petitioner seeking to establish a new office. The phrase "sufficient physical premises" is broad and somewhat subjective, leaving United States Citizenship and Immigration Services (USCIS) great flexibility in adjudicating this legal requirement. However, the petitioner bears the burden of establishing that its physical premises should be considered "sufficient" as required by the regulations at 8 C.F.R. § 214.2(l)(3)(v)(A). To do so, it must clearly identify the nature of its business, the specific amount and type of space required to operate the business, its proposed staffing levels, and evidence that the space can accommodate the petitioner's growth during the first year of operations.

Here, the petitioner explains that it will use the premises for its entire business operations, "such as marketing, administration, accounting and finance, HRD [*sic*], planning and budgeting, developing and initiating the delivery of the consulting services, [and] employing and deploying the personnel there at." The lease indicates that the office suite is 256 square feet. The petitioner submitted a floor plan drawing, indicating that it is not drawn to scale, of the office suite with nine desks and chairs. The petitioner's business plan states that it will employ six individuals by March 2013: president & CEO, vice president, manager development and marketing, manager operation, technician, and officer. Although the six employees are accounted for in the submitted floor plan, it is not drawn to scale and the AAO cannot reasonably determine that an executive, three managers, and two lower-level employees will share an office space of 256 square feet, or approximately a 13' x 20' room. In this instance, it does not appear that the petitioner's leased premises will be of sufficient size to accommodate its planned employees within the first year of operations.

For the foregoing reasons, the petitioner has not established that it had secured sufficient physical premises to house the new office as of the date of filing the petition. Accordingly, the appeal will be dismissed.

B. Qualifying Relationship

The second issue to be addressed is whether the petitioner has established that the United States and foreign entities are qualifying organizations. 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 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.
- (J) *Branch* means an operating division or office of the same organization housed in a different location.
- (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.

Pursuant to the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(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.

The petitioner stated on the Form I-129 that it is a subsidiary of [REDACTED], located in India. Where asked to explain the company stock ownership and managerial control of each company, the petitioner stated "[the petitioner] is 60% owned by [the beneficiary] who is proprietor of [REDACTED] is owned by [the beneficiary]."

With respect to the U.S. company, the petitioner submitted its Delaware Certificate of Incorporation indicating that the company is authorized to issue 1,500 shares of stock with a par value of 0.00 per share. The petitioner submitted a "Stock Subscription Agreement," dated January 2, 2013, stating that the foreign entity will purchase twenty (20) shares of stock of the U.S. company for \$20,500. The agreement is signed by [REDACTED] on behalf of the foreign entity. At the end of the agreement, [REDACTED] again on behalf of the foreign entity, acknowledges receipt of certificate number one for one (1) share of common stock of the U.S. company. The petitioner also submitted Minutes of the Shareholders' Meeting, dated January 2, 2013, and stated the following:

RESOLVED: That thirty common stock of shares of the corporation having par value of one dollar be and are hereby allotted against the receipt of cash to the following persons

Sr.	Name and Address of the Shareholder	Number of Common Stock of Shares Subscribed	Considerations paid/ to be paid for the shares so acquired US\$
1	[REDACTED]	20	20,500
	Total	20	20,500

[REDACTED] and/or [the beneficiary], director(s) on board of the corporation be and is/are hereby authorized to complete all necessary formalities to complete the allotment.

The petitioner submitted an unnumbered stock certificate, dated January 2, 2013, indicating that [REDACTED] Proprietor [REDACTED] was issued 20 shares of stock, purchased for \$20,500, of the 20 shares of total stock issued by the U.S. company. The certificate further states that it "evidences 100% of the total shares of stock issued by the corporation."

The petitioner then submitted a stock ledger, printed January 10, 2013, indicating that it issued certificate number one to the foreign entity for 20 shares of stock on January 2, 2013 for \$20,500, and certificate number two to [REDACTED] for 13 shares of stock on January 2, 2013 for \$13,167.

The petitioner submitted a letter from [REDACTED] indicating that it opened an account on December 13, 2012, and as of January 4, 2013, it had a balance of \$20,474.03. The petitioner submitted copies of a cancelled check from the beneficiary in the amount of \$19,000 on January 2, 2013 (with its corresponding deposit ticket) and another cancelled check from an unknown source in the amount of \$1,100 on December 13, 2012 (also with its corresponding deposit ticket).

The petitioner's business plan briefly describes its ownership and management by stating, "the entire issued, subscribed and paid-in capital is owned and controlled by the Indian corporation namely, [REDACTED]"

Service Center. The same business plan later elaborates on its ownership and states that "[the petitioner] is sixty percent owned subsidiary of the corporation incorporated in India, namely, [the foreign entity]."

With respect to the foreign entity, the petitioner submitted a partially translated document indicating that the beneficiary is the proprietor of [REDACTED] professional tax receipts indicating that the beneficiary is the proprietor of the foreign entity, a sale deed for property in India, utility bills, bank statements, and invoices.

In the request for evidence, the director requested the following documentation to demonstrate the existence of a qualifying relationship between the U.S. and foreign entities: (1) proof of stock purchase or capital contribution in exchange for ownership of the U.S. company; and (2) a detailed list of owners of the U.S. company and the foreign entity.

In response to the RFE, the petitioner submitted the same copies of checks, deposit tickets, and bank statements previously provided. The petitioner also submitted the same stock ledger and Delaware Certificate of Incorporation previously provided. The petitioner did not submit any new evidence related to its actual ownership and control. In reference to the foreign entity's ownership, the petitioner stated, "the foreign business [REDACTED] is 100% owned by [the beneficiary] as its proprietor."

The petitioner also submitted a detailed description of the beneficiary's duties at the foreign entity, along with an organizational chart and description of duties for each of his subordinates. The petitioner claims that the beneficiary's subordinate general manager, [REDACTED], will assume executive powers at the foreign entity while the beneficiary is temporarily transferred to the United States.

The director denied the petition, concluding, in part, that the petitioner failed to establish that it had a qualifying relationship with a foreign entity, noting the inconsistencies contained in the record. The director found that the petitioner's stock ledger listing certificate numbers one and two was not supported by those certificates, rather the petitioner submitted a single, unnumbered stock certificate for 20 shares of its stock indicating that the 20 shares represented 100% of its issued stock. The director further found that the petitioner stated on the Form I-129 that the beneficiary owned 60% of its shares. The director finally noted that the evidence does not indicate that the foreign entity actually contributed capital in exchange for ownership as the \$19,000 check submitted as evidence came from the beneficiary's personal bank account.

On appeal, the petitioner contends that the beneficiary owns and controls the foreign entity and therefore, his personal investment "must be treated as originated from the company abroad." The petitioner goes on to state that its total required investment is \$72,465, of which \$33,667 is the total membership capital. Of that \$33,667, \$20,500 was contributed by the beneficiary as the proprietor of the foreign entity and therefore, makes him majority owner of the U.S. company. The petitioner then states that the beneficiary owns 100% of the foreign entity and that as its proprietor, the business entity does not have a separate legal existence from him.

On appeal, the petitioner submits the following new evidence:

- Stock certificate number 1, dated June 2, 2013, indicating that [REDACTED] Proprietor [REDACTED] was issued 20 shares of stock, purchased for \$20,500, of the 20 shares of total stock issued by the U.S. company. The certificate states that it is re-issued in lieu of certificate dated January 2, 2013. However, the new certificate no longer states that it "evidences 100% of the total shares of stock issued by the corporation."
- Stock certificate number 2, dated June 2, 2013, indicating that [REDACTED] was issued 13 shares of stock, purchased for \$13,167, of the 33 shares of total stock issued by the U.S. company. The certificate states that it is re-issued in lieu of certificate dated January 2, 2013.
- A copy of the same stock ledger previously provided.

Upon review, the AAO concurs with the director's determination that the petitioner failed to establish that it has a qualifying relationship with a foreign entity.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

While it appears that the petitioner claims an affiliate¹ relationship between the U.S. and foreign companies based on the foreign entity's/beneficiary's ownership of majority stock of the U.S. company, the petitioner has failed to submit probative documentary evidence of the ownership or control of the U.S. company. Here, the petitioner demonstrates that the foreign entity is owned and controlled by the beneficiary. The petitioner then claims that the foreign entity, through the beneficiary, owns majority stock in the U.S. company, as the beneficiary's investment of \$19,000 from his personal US bank account should be considered an investment by the foreign entity since he is the proprietor of the foreign entity. The AAO finds the petitioner's assertions persuasive as they relate to the beneficiary's proprietorship of the foreign entity. The petitioner has established that the beneficiary is proprietor of the foreign entity, which in turn validates the monetary transaction from the beneficiary's personal bank account to purchase shares of stock and establish the affiliate relationship between the two entities.

The issue in question is the inconsistent evidence provided by the petitioner as it relates to the U.S. company's actual ownership. The petitioner submitted three different stock certificates. The first, submitted with the petition, indicates that the foreign entity owns 100% of the shares issued by the U.S. company. Then, on appeal, the petitioner submits two stock certificates, one indicating that the foreign entity owns 20 of the 20

¹ On the Form I-129, the petitioner marked the box indicating that it had a parent-subsidary relationship with the foreign entity; however, the evidence demonstrates that the appropriate relationship is that of an affiliate.

total shares issued, and the other indicating that another individual owns 13 of the 33 total shares issued. The stock ledger submitted, although consistent throughout the record, is also inconsistent with the stock certificates presented in the record. In this instance, according to the stock ledger, the petitioner issued two consecutive stock certificates on the same date (although only one has been presented in this proceeding) that contradict each other in the total number of shares issued by the U.S. company. And again, on the same date, the petitioner re-issued the same two consecutive stock certificates contradicting the total number of shares issued by 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. at 591-92. 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).

Given the inconsistencies detailed above, the evidence on record does not support the petitioner's claim that it has an affiliate relationship with a foreign entity. As such, the petitioner has not met its burden to establish that the U.S. and foreign entities have a qualifying relationship. Accordingly, the appeal will be dismissed.

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.