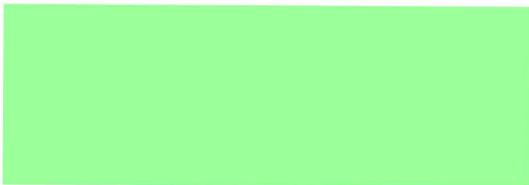


(b)(6)

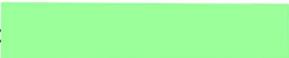
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

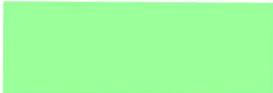


U.S. Citizenship
and Immigration
Services



Date: **MAY 05 2014**

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 (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, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

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 New York corporation, claims to be a telecommunications consulting company affiliated with the beneficiary's foreign employer located in Turkey. The petitioner seeks to employ the beneficiary as managing director of its new office in the United States.¹

The director denied the petition on May 2, 2013, finding that the petitioner failed to provide evidence that it had secured sufficient physical premises to house the new office prior to filing the petition. The director observed that the petitioner submitted evidence of a [REDACTED] office and did not provide evidence that it leases any physical space.

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, counsel for the petitioner asserts that the director erred. Counsel asserts that the "law and regulations are prospective" and that "sufficient physical premises must be secured prior to the commencement of the L-1 position in this new business petition." In support of the appeal, the petitioner provides photographs and a copy of a newly signed "Online Office Agreement" valid from July 1, 2013 through June 30, 2014, under which the petitioner has access to an office on a full-time basis.

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.

¹ The director determined that, although the petitioning company was incorporated in New York in 2008, it has not been doing business for one year as of the date of filing. Accordingly, the petitioner is a "new office" as that term is defined at 8 C.F.R. § 214.2(l)(1)(ii)(F).

- (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 addressed by the director is whether the petitioner established that it had secured sufficient physical premises to house its new office at the time the petition was filed.

A. Facts

The petitioner filed Form I-129, Petition for a Nonimmigrant Worker, on February 5, 2013 indicating that it was seeking to employ the beneficiary for one year in a new office beginning March 15, 2013. Documentation in the record corroborates that the U.S. petitioning company is a New York company incorporated on October 8, 2008. The company has not yet engaged in the regular, systematic, and continuous provision of goods and/or services and therefore, the petitioner requests classification as a new office.

The petitioner provided a letter dated January 21, 2013 stating that the company is a consulting company specializing in telecommunications services and infrastructure. The petitioner stated on the Form I-129 that its offices are located at [REDACTED] New York [REDACTED]

A "Unanimous Written Consent in Lieu of First Meeting of the Board of Directors" provides that this location is the "principal executive office" of the corporation.

The petitioner submitted documents in support of its petitioner including, a business plan projection for 2013. According to this plan the petitioner expects to pay \$1,500.00 per month in rent or \$18,000 for the year. In addition to rent, the petitioner planned to allocate the following yearly expense amounts: (1) \$20,000 for office equipment and decorations; (2) \$3,000 for building expenses; (3) \$1,200.00 for heating; (4) \$2,400.00 for electricity; and (5) \$4,800.00 for cleaning.

On February 19, 2013 the director issued a Request for Evidence (RFE). The director requested, among other items, the following: (1) a lease with all attachments demonstrating occupancy of the claimed [REDACTED] N.Y. business location; (2) interior and exterior photographs of the business location; (3) a copy of its business plan for commencing start up with a timetable for each proposed action beginning with the time of filing; and (4) information regarding its proposed organizational structure and any current U.S. employees.

In response, the petitioner provided the following documents relating to the petitioner's business location: (1) [REDACTED] "Office Agreement" entered into between the foreign company and [REDACTED] for a [REDACTED] office at the stated [REDACTED] NY address in exchange for a monthly fee of \$200.00 for a 12 month term starting October 1, 2008; (2) "Addendum to Service Agreement" signed on December 14, 2012, expressly referring to an October 8, 2010 "[REDACTED] Service Agreement" between the foreign company and [REDACTED]; (3) [REDACTED] invoice issued to the petitioner reflecting the petitioner's payment of \$257.36 on January 28, 2013 and a invoice description sheet; and (4) two color photographs of the outside of an office building labeled [REDACTED] with no other legible signs and three color photographs of a sparsely furnished office building interior with no signs or any other indication of any particular business in operation.

Notably, the December 14, 2012 addendum reflects the party's agreement to change the client name from the foreign company's name to the petitioning company's name. The petitioner did not provide a copy of the underlying agreement dated October 8, 2010.

In a letter dated April 19, 2013 the petitioner stated that it submitted the lease documents as requested by the director and referred to the documents listed above.

On May 2, 2013, the director denied the petition finding that the petitioner failed to submit evidence that it had acquired sufficient physical premises for its new office as of the date the petition was filed.

On appeal, the petitioner asserts that the law and regulations are prospective, and therefore, "sufficient physical premises must be secured prior to commencement of the L-1 position in this new business petition." In support of the appeal the petitioner states that it has secured a private office at the same [REDACTED] facility.

The petitioner submits a copy of its "Online Office Agreement" with [REDACTED] which has a one-year term commencing on July 1, 2013. The petitioner claims the office is sufficient to accommodate two people and costs \$1,199.00 per month. The petitioner also submits photographs depicting the company name on a nameplate and on a building directory.

B. Analysis

Upon review, the petitioner has not established that it had secured sufficient physical premises to house its new office as of the date of filing. *See* 8 C.F.R. § 214.2(l)(3)(v)(A).

If a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within one year. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). 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 house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Evidence of the physical premises secured for the new office is required initial evidence for a petition filed pursuant to 8 C.F.R. § 214.2(l)(3)(v). Therefore, the critical facts to be examined are those that were in existence at the time of filing the petition.

The petitioner filed the petition without the required initial evidence pertaining to its physical premises. In response to the RFE, the petitioner provided an expired agreement between the foreign company and [REDACTED] for [REDACTED] office space priced at \$200.00 per month. The petitioner provided an addendum amending an agreement from 2010 that was not provided. Only an invoice from [REDACTED] to the petitioning company indicates that the petitioning company paid \$237.00 for January 2013, presumably for the same [REDACTED] office services. These documents do not reflect an agreement or lease of office space at the time the petition was filed in February 2013.

Moreover, even if the petitioner provided evidence of leased [REDACTED] office space, the director reasonably observed that the [REDACTED] office arrangement and the low monthly cost indicates that the petitioning company would not have full-time and dedicated office space for its business. Notably, the petitioner's business plan indicated that it intended to pay substantially more than \$200.00 for

rent and other related expenses, as noted above, but the petitioner had not secured physical premises at the time of filing.

On appeal, counsel raises no objection to the director's conclusion that the petitioner did not secure physical premises as of the date of filing. Instead, she asserts that the petitioner need only secure physical premises "prior to the commencement of the L-1 position." Counsel maintains that the "law and regulations are prospective." However, as stated above, evidence of physical premises is required initial evidence of eligibility that must be submitted in support of every "new office" petition pursuant to 8 C.F.R. § 214.2(l)(3)(v). A petitioner must establish eligibility as of the date of filing the petition. 8 C.F.R. § 103.2(b)(1).

The evidence submitted on appeal indicates that the petitioner secured a physical office of sufficient size for two employees approximately one month after the petition was denied. This evidence will not be considered on appeal. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). 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 Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

The petitioner did not establish that it had acquired sufficient physical premises to house the new office and commence doing business at the time the petition was filed as required under 8 C.F.R. § 214.2(l)(3)(v)(A). As noted by the director, the petitioner failed to provide current documentation explaining the terms and conditions relating to any lease arrangements in place when this petition was filed in February 2013. 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 has secured sufficient physical premises to house its new office and the appeal will be dismissed.

III. Conclusion

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.