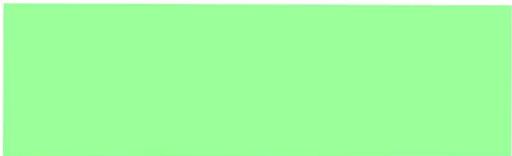
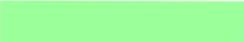


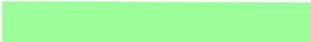


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **NOV 04 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)

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

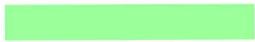
DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

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 established in October [REDACTED] states that it operates as a "real estate developer and restaurant." The petitioner claims to be a branch of [REDACTED] located in India. The petitioner seeks to employ the beneficiary as the general manager of its new office in the United States.

On June 4, 2013, the director denied the petition on two alternate grounds, concluding that the petitioner failed to establish that (1) it has secured sufficient physical premises to commence operations, and (2) the beneficiary will be employed in a primarily executive or managerial capacity. In denying the petition, the director noted that the petitioner submitted a sub-lease for office space of undetermined size that is listed as a loft on the lessor's original lease. The director also noted that the petitioner submitted photos of the leased premises, including a photo of a door with the name of the petitioner's business taped underneath, but failed to identify employees, rooms, and work areas. The director found that the leased space is insufficient for the petitioner's business and the six employees it plans to hire by the end of the first year. The director also found that the beneficiary will not be relieved from performing the day to day duties associated with operating the business after its first year of operation. The director further noted that the petitioner failed to identify its current employees' duties or positions and failed to indicate the non-managerial positions it intends to employ to carry out the day to day duties of the company. The petitioner solely listed positions with managerial titles but failed to indicate the educational requirements for those positions or evidence that such positions are actually managerial, supervisory, or professional.

The petitioner subsequently filed a motion to reopen and motion to reconsider the director's decision. On November 1, 2013 the director granted the petitioner's motion to reconsider, and on November 27, 2013, the director denied the petition, concluding again, that the petitioner failed to establish that (1) it has secured sufficient physical premises to commence operations, and (2) the beneficiary will be employed in a primarily executive or managerial capacity. In denying the petition for the second time, the director noted that the petitioner obtained a new lease, dated June 10, 2013, which is after the filing of the petition. The director found that the new lease also does not list the square footage of the leased premises or provide a description of the leased premises to establish that it is of sufficient size to house the operations during its first year. The director observes that the rider to the lease specifically states that it includes a single parking space, and although parking is not a requirement to establish the acquisition of sufficient physical premises, the single parking space may be indicative of the size or number of occupants permitted in the leased premises. The director further found that the petitioner, again, failed to identify its current employees' duties or positions and failed to indicate the non-managerial positions it intends to employ to carry out the day to day duties of the company. As such, the director found that it is reasonable to assume that the beneficiary would be involved in the performance of the day to day operations of the new business.

On December 26, 2013, the petitioner submitted a Form I-290B, Notice of Appeal or Motion, to appeal the denial of the underlying petition. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. The petitioner marked the box at part two of the Form I-290B to indicate that



a brief and/or additional evidence is attached. The AAO considers the record complete as presently constituted.

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 the 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.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

On appeal, the petitioner included the following statement on the Form I-290B:

The denial decision is not based on facts and it is reasoning for no reason. We explained and discussed in brief attached.

In support of the appeal, the petitioner submits a two-page brief making the following relevant statements:

The Service claim that this Lease was for Loft whereas it was not The building [redacted] is office building; the office was on 5th floor and is about 1600 sq feet. . . . This building has no loft for residential or private.

* * *

After filing Non-immigrant petition for our General Manager, we decided to rent a new office in [redacted] which is a sufficient space for business operation. We rent this office on June 10, 2013

* * *

About the Managerial and Executive position of the Beneficiary It is clearly explained that under Beneficiary's supervision FIVE managers will be part of management and they will supervise the company's day to day operation with the help of their subordinates.

* * *

The Beneficiary is founder Director of the Parent Company and was 100% involved in decision making of the Company. He is also General Manager of US Company since inception and fully involve in establishing the US Company.

In support of the appeal, the petitioner submits a duplicate copy of [REDACTED] original lease, dated 2009, for premises located at [REDACTED] a duplicate copy of its brief, dated June 13, 2013, submitted with the motion to reopen and motion to reconsider; a duplicate copy of its new lease, dated June 10, 2013, for premises located at [REDACTED] a duplicate copy of its Rider to Lease for premises located at [REDACTED] copies of previously submitted photos showing its company name on the door of suite [REDACTED] copies of checks, dated June, August, September, October, and November 2013, for rent paid for the premises located at [REDACTED] and a duplicate copy of the foreign entity's letter, dated May 20, 2013, submitted in response to the RFE. All of the above listed evidence was previously submitted in response to the RFE or with the motion to reopen and motion to reconsider.

The petitioner also submits the following new evidence on appeal:

- Its proposed organizational chart for the U.S. company.

In the instant matter, the petitioner has not specifically identified an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. Although the petitioner specifically addresses the director's grounds for denial of the underlying petition, it has not identified any error on the part of the director and simply submits a brief statement and duplicate copies of documents already in the record. The petitioner's blanket assertion that the director's decision was incorrect is not sufficient for an appeal. The director's decision includes a thorough discussion of the evidentiary deficiencies and inconsistencies present in the record. The petitioner's statement and additional evidence submitted on appeal fails to overcome these deficiencies and inconsistencies. The petitioner attempts to directly address the director's finding of it leasing a loft space, but fails to present evidence in support of its claim. 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)). Here, the original lease agreement, dated August 2009, states that suite 504 is a loft, which is the evidence analyzed by the director.

Further, regardless of the petitioner's statement or evidence presented on appeal, the petitioner submitted its original lease agreement, commencing on May 1, 2013, two days after the date of filing of the petition, and a subsequent lease agreement, commencing on June 10, 2013, 42 days after the date of filing of the petition. 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'r 1978).

Furthermore, on May 6, 2013, the director put the petitioner on notice of the required evidence and gave a reasonable opportunity to provide it for the record before the visa petition was adjudicated. See 8 C.F.R. § 103.2(b)(8). Specifically, the director requested evidence of the U.S. company's organizational structure. In

response, the petitioner failed to provide the requested evidence. Instead, the petitioner submitted a letter from the foreign entity listing the proposed positions to be hired at the U.S. company and failed to submit its organizational chart or provide a description of its organizational structure to establish the clear lines of supervision and direction. The director denied the petition after noting that the petitioner failed to submit the requested evidence.

The director correctly found that such information was critical to the petitioner's claim that the beneficiary will be employed in the United States in a qualifying managerial or executive capacity. Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner failed to document its organizational structure and the proposed positions of the operation of real estate development and its restaurant business. The regulation at 8 C.F.R. § 214.2(i)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically requested by the director, the petitioner did not provide the requested evidence. The petitioner's failure to submit this information cannot be excused. 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).

The petitioner now submits its organizational chart, which still fails to address the proposed positions of the operation of real estate development and its restaurant business. 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. Consequently, the appeal will be dismissed.

Upon review, the AAO agrees with the director's decision and will affirm the denial of the petition. As no erroneous conclusion of law or statement of fact has been specifically identified and as no additional evidence is presented on appeal to overcome the decision of the director, the appeal will be dismissed.

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 summarily dismissed.