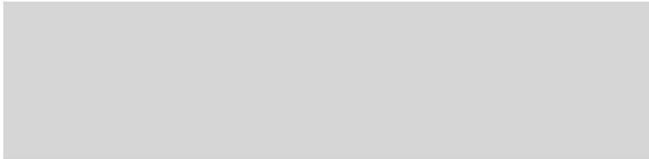




U.S. Citizenship
and Immigration
Services

(b)(6)



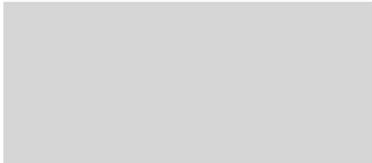
DATE: JUL 16 2015

PETITION RECEIPT #: 

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

 Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further consideration and entry of a new decision.

The petitioner filed this Petition for a Nonimmigrant Worker (Form I-129) seeking to classify the beneficiary as an L-1A 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 California corporation established in [REDACTED] claims to be a subsidiary of [REDACTED] located in China. The petitioner seeks to employ the beneficiary as the chief executive officer of its new office for a period of one year.

On November 13, 2014, the director denied the petition, concluding that the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer. The director based this determination on the fact that the petitioner's issuance of stock to the foreign entity did not take place contemporaneously with the foreign entity's payment of monetary consideration in exchange for that stock.

On appeal, the petitioner submits a brief disputing the denial as well as additional evidence addressing the director's findings.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon reviewing the entire record of proceeding as supplemented by the petitioner's submission on appeal, we conclude that the record now contains sufficient evidence to overcome the basis for the director's decision. The petitioner has established the required qualifying relationship with the foreign entity.

Notwithstanding our decision to withdraw the director's decision, we are unable to sustain the appeal as a result of evidentiary deficiencies that preclude an affirmative finding of eligibility. Namely, we find that the record lacks sufficient evidence to show: (1) that the petitioner would employ the beneficiary in a qualifying managerial or executive capacity after its first year of operation; and (2) that the petitioner has secured sufficient physical premises to house the new office operation as required by 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 the one-year timeframe. *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. Specifically, the petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

Here, the petitioner has leased an office intended to accommodate one employee. The petitioner has stated that it anticipates hiring "several" employees, or as many as five to six employees, during its first year of operations, but also submits a proposed organizational chart identifying eleven total positions. The petitioner has not established that the leased premises would provide sufficient physical premises for the intended business.

The petitioner has not identified its financial goals or objectives for the first year of operations or submitted its business and hiring plans to support any of its varying claims regarding the number and types of staff to be hired. Therefore, the record as presently constituted does not support a finding that the new U.S. operation, within one year of the approval of the petition, would support an executive or managerial position. See 8 C.F.R. § 214.2(l)(3)(v)(C).

In order to determine whether the petitioner is eligible for the nonimmigrant classification sought herein, additional evidence is required. Accordingly, the instant matter must be remanded to the director for the purpose of allowing the petitioner the opportunity to supplement the record with evidence that may address the deficiencies described above.

ORDER: The decision of the director dated November 13, 2014 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse, shall be certified to the AAO for review.