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**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF U-S-A-M- INC.

DATE: SEPT. 11, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a business engaged in the production and distribution of baked goods, seeks to classify the beneficiary as an intracompany transferee. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner, a New York corporation, claims to be an affiliate of the Beneficiary's foreign employer in Turkey, [REDACTED] Internet, [REDACTED]. It seeks to employ the Beneficiary as its "Operations Manager" for a period of one year in order to open a new office in the United States.

The Director denied the petition, concluding that the Petitioner did not establish that the Beneficiary has been or will be employed in a primarily managerial or executive capacity.

The Petitioner subsequently filed an appeal. The Director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, the Petitioner asserts that the evidence of record establishes that the Beneficiary will function in a qualifying managerial or executive capacity. 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, Petition for a Nonimmigrant Worker, 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.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term “managerial capacity” as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term “executive capacity” as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

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. EVIDENTIARY STANDARD

As a preliminary matter, and in light of the Petitioner's references to the requirement that we apply the "preponderance of the evidence" standard, we affirm that, in the exercise of our appellate review in this matter, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). In pertinent part, that decision states the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

....

The “preponderance of the evidence” of “truth” is made based on the factual circumstances of each individual case.

....

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “more likely than not” or “probably” true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing “more likely than not” as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support the Petitioner’s contentions that the evidence of record establishes eligibility for the benefit sought.

III. THE ISSUES ON APPEAL

A. Beneficiary’s Foreign Employment

The first issue to be addressed is whether the Petitioner established that the Beneficiary was employed by the foreign entity in a qualifying managerial or executive capacity for one year in the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(B).

The Petitioner claims that the Beneficiary was employed abroad by its foreign affiliate since April 28, 2004, in the position of managing director. The Director denied the petition on November 4, 2014, stating that the evidence of record did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity. The Director noted that the Petitioner's description of the Beneficiary's duties abroad was not sufficiently detailed. Furthermore, the Director found that the organizational chart for the foreign entity did not establish the Beneficiary's position in the overall hierarchy of the organization.

On appeal, the Petitioner states that the Director overlooked evidence of record, and contends that the foreign position met the regulatory requirements.

Upon review, we find that the Petitioner has established that the Beneficiary has been employed abroad in a qualifying managerial or executive position with the foreign employer. The organizational chart for the foreign entity demonstrated that the Beneficiary directly supervised three area managers, a technical director who supervised two subordinate managers, and a customer service representative. In addition, the petitioner demonstrated that the Beneficiary had the authority to hire and fire personnel and reported directly to the board of directors. While the Beneficiary may perform some non-qualifying managerial duties, the majority of the Beneficiary's time is spent supervising subordinate managerial-level employees and performing qualifying managerial duties. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that the petitioner has established that the Beneficiary has been employed abroad in a qualifying managerial capacity. The Director's comments regarding the Beneficiary's employment abroad are withdrawn.

B. Employment in the United States in a Managerial or Executive Capacity

The second issue to be addressed is whether the Petitioner established that the new office will support the Beneficiary in an executive or managerial position within one year of approval of the petition.

When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. The "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of a beneficiary in a primarily managerial or executive position.

Accordingly, 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. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally* 8 C.F.R.

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§ 214.2(l)(3)(v). 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.*

The Petitioner submitted a letter dated November 1, 2013, in support of the petition. According to the Petitioner, it was established in [REDACTED] to engage in the manufacture of Turkish and Mediterranean style specialty food products. Its business model is based on having a centralized production facility and shipment to retail branches and wholesale orders. The Petitioner claimed that it currently has one employee who fills orders for restaurants and caterers by purchasing specialty food items from an established bakery and reselling them at a profit. The Petitioner stated that the Beneficiary will serve as its operations manager and will have responsibility for the overall direction, policies, and expansion practices of the U.S. employer. Specifically, the Petitioner stated that the Beneficiary will perform the following duties:

- a. Planning, directing and coordinating company activities in relation to operations, services, and business organization;
- b. Participating in the formulation and administration of corporate policy;
- c. Developing long-term company goals and objectives;
- d. Conducting reviews of company activities to analyze and determine costs, future activities, profits and losses, expenditures, and progress;
- e. Hiring additional employees during the first year of operation.

The Petitioner further stated that the current employee, [REDACTED] would be responsible for supervising the additional hired staff. The Petitioner included a business plan, showing that the following positions would be hired within 30 to 45 days: Baker with helper; Administrative Assistant/Accountant; Seller/Marketer; and Distributor.

The Petitioner also included basic financial projections, which reviewed annual revenue from “bakeries in the state of New York, specifically around [REDACTED] and [REDACTED] County.” The Petitioner therefore predicted “conservative” revenue of \$155,000 for year one, \$168,000 for year two, and \$192,000 for year three.

Finally, the Petitioner included an organizational chart showing the Beneficiary as operations manager. According to the chart, the current employee, [REDACTED] holds the position of Supervisor and is shown reporting to the Beneficiary, and a baker, assistant/accountant, and seller/marketer are shown reporting to the supervisor. A distributor is shown reporting to the seller/marketer.

In a request for evidence (RFE) issued on March 14, 2014, the Director requested, among other items, evidence to demonstrate how the company will grow to be of sufficient size to support a managerial or executive position and that the Beneficiary’s proposed position will be in a managerial or executive capacity. Specifically, the Director requested information regarding the proposed

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nature of the office and the size of the U.S. investment, as well as an overview of the organizational structure of the foreign entity.

In response to the RFE, the Petitioner provided, among other documents, the following evidence to show the U.S. entity will support the executive position within one year of the petition's approval:

- Meeting minutes giving the beneficiary authority to set up the U.S. entity;
- Copy of wire transfer showing funds transferred from the foreign entity to the U.S. entity's bank;
- Bank statement of the foreign entity;
- Bank statements of the U.S. entity;
- Organizational chart of the foreign entity;
- Invoices for the U.S. entity;
- Receipts of products sold by the U.S. entity; and
- IRS Form W-2, Wage and Tax Statement, for 2013 for the sole employee of the U.S. entity, [REDACTED] at the time of filing.

The meeting minutes stated that the "150,000 American dollar" was invested and an additional investment of "500,000" was anticipated. A deposit account balance summary was also provided for the Petitioner, showing a current balance of \$2,114.44 on May 9, 2014 and an average 12-month balance of \$232.00. Finally, the Petitioner submitted evidence of a wire transfer from September 24, 2014, for "2700.00" from the foreign entity to the United States entity. Corresponding bank statements from this date were not provided.

The Director denied the petition on November 4, 2014, finding that the Petitioner had not established that the Beneficiary would be employed in a primarily managerial or executive capacity within one year of the petition's approval. The Director noted that the business plan lacked specificity and credibility. Specifically, the Director stated that the petitioner's financial projections lacked sufficient detail and did not appear to be realistic. In addition, the Director determined that the organization lacked sufficient financials to support a managerial or executive position with one year.

On appeal, the Petitioner contends that the Director did not apply the correct standard of proof and overlooked evidence of record.

Upon review of the petition and the evidence, and for the reasons discussed herein, the Petitioner has not established that the Beneficiary will be employed by the United States entity in a managerial or executive capacity within one year of the petition's approval.

Although we note the Petitioner's claim throughout the record that the Beneficiary will be employed in a position that is primarily executive, we will nevertheless evaluate the proposed position for compliance with the definitions of both managerial and executive capacity.

When examining the executive or managerial capacity of the beneficiary, we will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* Beyond the required description of the job duties, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's proposed organizational structure, the duties of the beneficiary's proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of other employees to relieve the beneficiary from performing operational duties at the end of the first year of operations, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. The petitioner's evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally* 8 C.F.R. § 214.2(l)(3)(v).

In the instant matter, the only description the Petitioner provided of the Beneficiary's duties is very broad, noting that he will plan, direct, and coordinate company activities; participate in the formulation and administration of corporate policy; develop long-term company goals and objectives; and conduct review of company activities. These duties merely paraphrase the statutory definition of executive capacity. *See* section 101(a)(44)(B) of the Act. Conclusory assertions regarding the Beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

While several of the duties broadly described by the Petitioner would generally fall under the definitions of managerial or executive capacity, the lack of specificity raises questions as to the Beneficiary's actual responsibilities. Overall, the position description alone is insufficient to establish that the Beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as the Petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the Beneficiary in the intended managerial or executive capacity. Accordingly, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering the Petitioner's anticipated staffing levels and stage of development within a one-year period.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* sections 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8

C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

The Petitioner shows that the Beneficiary will manage a subordinate supervisor who will oversee the bakery staff. The Petitioner, however, has not shown how the company will grow to be a sufficient size to support two managerial employees. The Petitioner claims that the subordinate supervisory position will supervise a baker, an administrative assistant/accountant, a seller/marketer, and a distributor. The Petitioner, however, has not provided any detailed information regarding payroll projections to establish that it has the ability to staff the additional four positions within 30 to 45 days of approval, as stated in its business plan. In addition, the Petitioner does not include any position descriptions, educational requirements, or salary information for the projected positions. The Petitioner, therefore, has not shown how the organizational structure would support the Beneficiary as Operations Manager, with a subordinate manager, and four full-time employees performing the daily operations of the business.

The evidence must substantiate that the duties of the Beneficiary and his subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or managerial position. The Petitioner has not provided evidence of an organizational structure sufficient to elevate the Beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees. Pursuant to section 101(a)(44)(A)(iv) of the Act, the Beneficiary's position does not qualify as primarily managerial under the statutory definitions.

Alternatively, the statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct[] the management" and "establish[] the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

Here, the Petitioner has not established that the Beneficiary will be employed in the U.S. in a primarily executive capacity. The Petitioner's business plan does not establish that the Beneficiary will supervise a subordinate level of managerial employees by the end of the first year of operations. Moreover, the record contains insufficient evidence to demonstrate that the Beneficiary will

primarily focus on the broad goals and policies of the organization, given that the Petitioner currently has only one employee and the proposed timeline for hiring subordinate staff that would otherwise perform the day-to-day operations of the enterprise does not seem feasible. Based on these deficiencies, we find that the Petitioner has not established that it will be able to support the Beneficiary in a primarily executive capacity by the end of the first year of operations.

Furthermore, our analysis of the Beneficiary's employment capacity and the Petitioner's ability to employ him in a qualifying capacity by the end of the first year of operations is severely restricted because the record does not include a credible business plan. As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefore. Most importantly, the business plan must be credible.

Id.

The Petitioner states on appeal that the parent company invested \$150,000 for start-up business costs. In response to the RFE, the petitioner provided meeting minutes from the parent company stating that "150.000 american dollar" was invested, and that it anticipated an additional investment of "500.000." The Petitioner, however, has not provided any evidence that \$150,000 was actually invested in the United States operation. In response to the RFE, the Petitioner also provided a copy of a wire transfer transaction for the amount of "2700.00" from the foreign affiliate to the U.S. petitioner. The transfer did not state whether the amount was in U.S. dollars or Turkish Lira, nor did the Petitioner provide any bank statements to show that the transfer was received in the U.S. account.

In addition to the Petitioner's lack of evidence substantiating an investment in the United States operation, the Petitioner has not identified with any specificity how much money is actually needed

to start-up the wholesale and retail bakery business. The Petitioner's only evidence regarding operational costs consisted of a lease for \$1,000 a month and a statement that the space included some equipment for the bakery. The petitioner has not shown any projection of goods and materials, personnel costs, marketing, legal, and/or administrative costs, nor has it identified any additional costs for equipment or space improvements that may be necessary for the first few months of operations. Furthermore, the Petitioner has not shown when it expects to become profitable to the point where its income may cover the business expenses. Without the Petitioner's projections regarding start-up costs, the Petitioner cannot show that the investment, if any, is sufficient to cover the necessary expenses of growing the business to a size where it can support a managerial or executive position within one year of approval. 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)).

Overall, the Petitioner's business plan does not provide with any specificity sales projections, specific start-up costs, income projections, and/or operational costs. The Petitioner's analysis of income is based loosely on income models from surrounding bakeries. The projections do not, as required, provide sales, cost, and income projections and detail the bases therefore. Specifically, without a detailed analysis of the Petitioner's anticipated expenses, its cost projections are not credible.

A review of the totality of the evidence submitted provides very little information regarding the actual number of employees to be hired, the timeline for hiring employees, the financial position of the U.S. company, the Petitioner's anticipated start-up costs and financial objectives for the first year of operations, and the physical premises secured by the U.S. company. The Petitioner's submission of a vague job description for the beneficiary, and a general business plan, falls significantly short of meeting its burden to establish that the company will be able to support a qualifying managerial or executive position within a twelve-month period. The regulations require the Petitioner to present a credible picture of where the company will stand in one year, and to provide sufficient evidence in support of its claim that the company will grow to a point where it can support a managerial or executive position within that time. As previously noted, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*

Overall, the vague job description provided for the Beneficiary, considered in light of the Petitioner's minimal business and hiring plans for the first year of operations, prohibits a determination that the Petitioner could realistically support the employment of the Beneficiary in a primarily managerial or executive position within one year. Accordingly, the appeal will be dismissed.

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C. Physical Premises to House the New Office

Beyond the decision of the Director, the record contains insufficient evidence to establish that the petitioner has secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

On the Form I-129, the Petitioner identified its mailing address [REDACTED] NY, [REDACTED]. The Petitioner identified this same address as the Beneficiary's intended worksite.

The Petitioner submitted an agreement pertaining to the premises located at this address. The document was titled "Standard Industrial/Commercial Single-Tenant Sublease- Gross." The lease is between [REDACTED] and the Petitioner. The lease starts on November 11, 2013, and runs for a two-year period. Section 1.11 of the lease, "Attachments," states that a landlord consent form is attached. A copy of the landlord consent, however, was not included with the lease. Without a copy of the landlord consent form, the Petitioner does not have sufficient evidence to show that it has secured sufficient physical premises to house the intended new office as of the date the petition was filed. As stated previously, 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. at 165.

Again, when a petitioner 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, that it has the financial ability to commence doing business in the United States, and that it will support the beneficiary in a managerial or executive position within one year of approval. *See generally* 8 C.F.R. § 214.2(l)(3)(v). Here the evidence of record is insufficient to establish that the Petitioner secured sufficient physical premises and was therefore able to commence business operations at the time of filing. Accordingly, the appeal will be dismissed for this additional reason.

IV. CONCLUSION

When we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that we abused our discretion with respect to all of our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1037 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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; *Matter of Otiende*, 26 I&N 127, 128 (BIA 2013). Here, that burden has not been met.

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ORDER: The appeal is dismissed.

Cite as *Matter of U-S-A-M-, Inc.* , ID# 13739 (AAO Sept. 11, 2015)