



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

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

In Re: 25133886

Date: JAN. 30, 2023

Appeal of California Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, a Ugandan company engaged in the sale of fireworks, fire prevention products, and medical and industrial gases, seeks to temporarily transfer the Beneficiary to the United States to serve as the chief operating officer of its new office¹ under the L-1A nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the California Service Center denied the petition, concluding that the record did not establish that the Petitioner's subsidiary had secured sufficient physical premises to house the new office and that the new office would support a managerial or executive position within one year. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). 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 or executive capacity. *Id.*

¹ The proposed U.S. employer is the Petitioner's subsidiary, [REDACTED] Inc., which was incorporated in Texas in [REDACTED] 2022. The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

The petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its intended operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

II. ANALYSIS

The issues before us on appeal are whether the Petitioner has established that (1) its U.S. subsidiary had secured sufficient physical premises to house the new office, and (2) the new office will be able to support a managerial or executive position within one year.

A. Sufficient Physical Premises

A petitioner filing a new office petition bears the burden of establishing that it has secured “sufficient physical premises” for the operation of the intended business. *See* 8 C.F.R. § 214.2(l)(3)(v)(A). To do so, it must clearly identify the nature of the business, the specific amount and type of space required to operate the business, and its proposed staffing levels, and document that the space can accommodate the new office’s growth during the first year of operations.

The Petitioner indicates that its U.S. subsidiary will be engaged in the sale and servicing of fire prevention and safety products, fireworks sales, and the sale of industrial and medical gases.

At the time of filing in June 2022, the Petitioner indicated that the Beneficiary had already secured office premises located in [] Texas and would need to acquire additional warehouse space for storage of fireworks inventory. The Petitioner submitted a copy of a three-year lease agreement between its U.S. subsidiary and lessor “[]” with a start date of May 1, 2022. The agreement specifies that the leased property is a 1500 square foot space intended to be used as a “corporate office,” but was incomplete as it did not identify the amount of monthly rent.

In a request for evidence (RFE), the Director advised that the submitted lease agreement was incomplete and that the initial evidence did not provide sufficient information to establish that the premises would be sufficient for the operation of the intended business. The Director provided a list of suggested evidence, including: a letter explaining why the location was selected for the U.S. entity and its intended use of the premises; if applicable, evidence that the owner or landlord had authorized a sublease of the property and a copy of the agreement between the owner/property manager and lessee; and (3) a copy of the floor plan for the leased location.

In its response to the RFE, the Petitioner submitted: a floor plan for the [] office suite; a “Property Summary” for the office building published by the building’s management company []; []; an amended page from the lease agreement indicating a monthly rent of \$600; and copies of two checks in this amount issued from the U.S. subsidiary’s bank account to []. The Beneficiary, on behalf of the U.S. subsidiary, provided a letter explaining that the site was chosen because it is in a heavily trafficked area and has sufficient office space for the company’s four anticipated employees, as well as space for the display of the company’s products.

The Petitioner also provided evidence that the U.S. company had signed a lease for 3500 square feet of warehouse space located in [] Texas, which would be used for the storage of fireworks, smoke alarms, fire extinguishers and other inventory. The lease, executed on August 1, 2022, was accompanied by photographs and a floor plan.

The Director concluded that the Petitioner did not establish that the U.S. subsidiary had secured sufficient physical premises to house the new office. The Director emphasized that the lease for the warehouse space was signed in August 2022 and therefore could not establish eligibility at the time of filing. Further, the Director determined that the Petitioner had not provided sufficient information to establish that the [] Texas location alone would provide adequate space for the operation of the new office's intended business.

On appeal, the Petitioner asserts that the Director applied an "improper standard for a new office" by declining to consider a lease that was signed after the date of filing. The regulation at 8 C.F.R. § 103.2(b)(1) provides that an applicant or petitioner must establish eligibility for a requested benefit at the time of filing a benefit request and must continue to be eligible for the benefit through adjudication. There is no exception to this provision for petitioners seeking to satisfy the initial evidentiary requirements for an L-1A new office petition at 8 C.F.R. § 214.2(l)(3)(v). Therefore, it was not improper for the Director to require the Petitioner to establish that its U.S. subsidiary had secured sufficient physical premises for the intended business at the time it filed the petition in June 2022.

Further, the Director also considered the evidence related to the [] Texas location identified in the earlier lease agreement and specifically addressed why this evidence was insufficient to establish that the Petitioner had secured sufficient physical premises for the new office. The Petitioner does not address this lease agreement on appeal or contend that the originally leased location would be sufficient for the operation of its subsidiary's intended business. Rather, the Petitioner has consistently stated that the U.S. subsidiary would require both an office suite and a separate warehouse, only one of which had been secured at the time of filing.

We further note that the Director advised the Petitioner in the RFE that it should disclose whether it had subleased its premises and, if so, document that the building owner or property management company had approved the sublease. The evidence submitted in response to the RFE indicated that the leased premises are in a multi-tenant office building managed by [] but the U.S. subsidiary's lease agreement is with [] rather than with the property manager. The Petitioner did not provide a letter from the property manager confirming that it authorized the sublease or other evidence pertaining to the sublease arrangement, as requested in the RFE. As such, the record does not establish that the lease is valid or that the lessor was authorized to sublease it to the Petitioner's subsidiary under the stated terms. Further, as noted, the Petitioner has consistently indicated its subsidiary's need for warehouse space based on the nature of the business and the [] premises does not contain such space.

Therefore, for the reasons discussed, we conclude that the Petitioner did not establish that it had secured sufficient physical premises to house the new office at the time of filing. Accordingly, the appeal will be dismissed.

B. Ability to Support Managerial or Executive Position Within One Year

The remaining issue addressed by the Director is whether the Petitioner established that its U.S. subsidiary would be able to support a managerial or executive position, as defined at section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44), within one year.

To qualify for L-1A nonimmigrant classification as a “new office,” the regulations require a petitioner to establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. Relevant to this requirement, a petitioner is required to disclose the proposed nature of the business, the scope of the entity, its organizational structure, and its financial goals, as well as the size of the U.S. investment and the financial ability of the foreign entity to remunerate the beneficiary and commence doing business in the United States. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

The denial decision reflects that the Director addressed the evidence submitted in support of these regulatory requirements and specifically explained why the Petitioner did not meet its burden to establish that the new office would, more likely than not, support a managerial or executive position within one year. On appeal, the Petitioner states that “[t]here was ample evidence submitted of the company’s financial ability in the United States,” but does not otherwise address the Director’s reasons for denial on this ground.

Regarding the issue of “financial ability,” the Director advised the Petitioner that its initial evidence contained inconsistent statements regarding the amount of the U.S. investment and did not include evidence that any funds had been transferred to the U.S. subsidiary or evidence that the necessary funds were available at the time of filing. The record supports this determination.

A cover letter submitted with the initial filing indicated that the Petitioner had requested a \$450,000 loan that would be used to pay the Beneficiary’s salary and “fully establish the business in the United States.” The Petitioner’s supporting letter mentioned its bank had approved the loan request and stated it would be disbursed after the Petitioner provided the bank with “appropriate government certification for its continued operations.” The only supporting evidence related to the loan was a copy of a cover letter the Petitioner submitted to the bank in February 2022, referencing its request for a \$450,000 loan for “factory construction and land.” The Petitioner did not address the amount of the investment it intended to make in the new U.S. subsidiary, or state that the funds obtained through the requested loan would be used for this purpose. Further, the initial evidence did not include a business plan or otherwise identify the start-up costs and financial goals for the new office.

With respect to its finances, the Petitioner provided its audited financial statement for the fiscal year ended June 30, 2021. This evidence indicated that the company had net profits of approximately \$13,000 and net current assets of approximately \$18,000, when converted to U.S. currency. The Petitioner provided its five-year financial projections indicating it expected its gross profits to approximately double in 2022.

In its response to the RFE, the Petitioner stated that the \$450,000 loan it requested in February 2022 had been approved but the loan had not yet been disbursed as of September 2022. It explained that, once the loan is disbursed, it intended to transfer \$200,000 to the U.S. subsidiary. The Petitioner also

provided evidence that it had recently transferred a total of \$75,000 to the U.S. subsidiary in August 2022 and indicated it expected this amount to be sufficient to support the new office's operations through the end of October 2022. The Petitioner did not submit any additional evidence from its bank regarding the loan, despite indicating that the loan was intended to be the primary source of investment funds for the new office.

Based on the foregoing facts, we agree with the Director's determination that the Petitioner did not establish the size of the investment in the new office or its financial ability to commence doing business in the United States. The Petitioner's general claim that it submitted "ample evidence" of such financial ability does not address the specific deficiencies discussed by the Director and is not supported by the record, which contains uncorroborated statements regarding the status of the company's requested loan and lacks recent evidence of the petitioning foreign entity's finances. Although the Petitioner documented its transfer of \$75,000 funds to its subsidiary, that transfer occurred post-filing, and the Petitioner acknowledged the amount is not sufficient to meet the financial needs of the new office for its first year. The record does not establish that the Petitioner had, at the time of filing, the funds to cover the planned investment of at least \$200,000 in the U.S. company. The Petitioner does not further address this ground for denial in its appeal.

However, in denying the petition, the Director did not solely address the size of the foreign entity's investment in the U.S. office or its financial ability to commence doing business in the United States. The decision reflects that the Director also considered the Petitioner's statements regarding the nature of the new office, the intended scope of the business, its proposed organizational structure, and its financial goals.

The Petitioner has consistently stated that its U.S. subsidiary intends to engage in the sale of fireworks, the sale of medical and industrial gases, and the sale and servicing of fire prevention and safety equipment and systems. However, the Petitioner provided vague and sometimes inconsistent statements regarding the expected timeline for the development and staffing of these distinct lines of business. For example, in its initial statement, the Petitioner indicated that it would take more than one year for its U.S. subsidiary to obtain the licenses needed to operate as a gas supplier and that this area of its business would not begin for approximately one and one-half years. However, in a "Business Plan Timetable" submitted in response to the RFE in September 2022, the Petitioner indicated that the Beneficiary would apply for the necessary licenses in "August or September 2022," and that the new office's medical and industrial gases business would be operational and under the oversight of a subordinate supervisor by April or May 2022. The Petitioner provided no explanation for this change in the proposed timeline.

The Petitioner similarly changed its initial claims regarding the U.S. subsidiary's fireworks business. At the time of filing, the Petitioner indicated the Beneficiary would begin to procure inventory from fireworks manufacturers after six months (approximately December 2022), would train "multiple individuals" for retail sales, and would hire a supervisory employee to take over the training and oversight of the retail workers "after about a year." In response the RFE, the Petitioner indicated that the Beneficiary would begin purchasing inventory as early as August or September, and that the U.S. company would be leasing up to 12 retail locations and hire 50 seasonal contract staff as early as February 2023, with those staff trained and supervised by an inventory and warehouse supervisor. Again, the Petitioner did not explain the changes to the timeline provided in its initial statement.

As a result of these unexplained inconsistencies, and due to the lack of detail in the submitted business plan timeline, the Petitioner has not established the extent to which the U.S. company is likely to be staffed and operational at the end of the requested one-year period on May 31, 2023.

Finally, as discussed by the Director, even if the new office were able to carry out the more accelerated business and hiring plan described in response to the RFE, the record does not show how the anticipated staff of three employees identified in the plan² would sufficiently relieve the Beneficiary from significant involvement in the non-managerial day-to-day operations of a business which plans to purchase, warehouse, sell and distribute three different types of products as well as offer fire safety equipment installation and inspection services. Although the Petitioner indicates that the U.S. company's fireworks sales business will rely primarily on seasonal contract workers, its financial projections do not indicate that it anticipates paying any contractor-related expenses.

The evidence submitted in support of a new office petition should demonstrate a realistic expectation that the enterprise will succeed and advance from the developmental stage to full operations, where there would be a need for an employee who will primarily perform the duties described in the statutory definitions of managerial or executive capacity. While the Beneficiary, as chief operating officer, will have the required level of authority over the U.S. company, the record does not demonstrate that the new office would more likely than not support a managerial or executive position within one year.

III. CONCLUSION

For the reasons discussed, the record does not establish that sufficient physical premises have been secured to house the new office and that the new office will be able to support a managerial or executive position within one year. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

² The business plan and a proposed organizational chart submitted in response to the RFE indicate that the Beneficiary would supervise an administrative assistant, a "Fire & Safety Prevention Supervisor" and an "Inventory Warehouse Supervisor."