U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-G-T- CO.

DATE: FEB. 27, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a shipping company, seeks to temporarily employ the Beneficiary as the executive director of its new office under the L-1A nonimmigrant classification for intracompany transferees. *See* 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, California Service Center, denied the petition. The Director concluded that the evidence of record did not establish that: (1) the Beneficiary has been employed abroad in a managerial or executive capacity; (2) the Petitioner had secured sufficient physical premises to begin doing business; and (3) the Petitioner will be able to employ the Beneficiary in a managerial or executive capacity within 1 year after the approval of the petition.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence (some previously submitted) and a brief in which the Petitioner asserts that it had met its burden of proof, and that the Director erred by requiring information beyond what the regulations require.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have employed the Beneficiary in a managerial or executive capacity, or in a specialized knowledge capacity, for 1 continuous year within 3 years preceding the Beneficiary's application for admission into the United States. In addition, under section 101(a)(15)(L) of the Act, 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 term "new office" refers to an organization which has been doing business in the United States for less than 1 year. 8 C.F.R. § 214.2(l)(1)(ii)(F). If the Form I-129, Petition for a Nonimmigrant Worker, indicates that the Beneficiary is coming to the United States in L-1A status to open or to be

employed in a new office, the Petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within 1 year. This evidence includes information regarding the new office's physical premises, 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. FOREIGN EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director denied the petition based, in part, on a finding that the Petitioner did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity.

The regulation at 8 C.F.R. § 214.2(l)(3)(iii)(v)(B) states that the Petitioner must submit evidence that the Beneficiary has been employed abroad in a managerial or executive capacity for 1 continuous year in the 3-year period preceding the filing of the petition.

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.

Further, "[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." *Id.*

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.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

A. Duties

When examining the managerial or executive capacity of the Beneficiary, we will look first to the Petitioner's description of the job duties. The Petitioner's description of the job duties must clearly describe the duties performed by the Beneficiary and indicate whether such duties are in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

The record reflects that the Beneficiary's foreign employer, based in the region of Iraq, is Translated official documents identify the Beneficiary as "the authorized manager of the company." A "general summary" on the Beneficiary's résumé stated that the "company offers services for import, export, customs clearance and shipping for the Arab States and foreign countries and airline reservations, hotels and tourist organize a group for the entire world" [*sic*]. has offices in the United Arab Emirates and China.

The Beneficiary's résumé identified him as executive director, and the company's articles of association indicate that he owns a 50% interest in the company. A letter from the general chairman of referred to the Beneficiary as "authorized man[a]ger," and a certificate shows that the Beneficiary "[p]articipated in the workshop of Leadership and Strategical Planning" at the These documents linked the Beneficiary to the company but did not explain his role therein.

The Director issued a request for evidence (RFE), stating that the Petitioner's initial submission did not include a description of the Beneficiary's day-to-day duties at The Director asked for payroll documentation to confirm the Beneficiary's continuous employment abroad and additional information to show that the Beneficiary's duties qualified as either managerial or executive.
In response, the Petitioner listed the following staff in Iraq:

[1] The stated name is taken from the company's printed letterhead. The record includes several alternative translations of the foreign company's full name.

- General Manager (the Beneficiary)
- Assistant Manager
- Logistics Manager
- Marketing Manager
- Marketing Person
- Warehouse Manager
- Assistant to Warehouse Manager
- Four Laborers (subordinate to Warehouse Manager)
- Accountant
- Secretary

Writing in his capacity as general manager, and referring to himself in the third person, the Beneficiary stated that he:

> [W]orks directly with the Warehouse Manager, Logistics Manager, and Accountant on a daily basis, and their primary duties [are] to monitor and report all activities to him. He directly supervises their work and ensures that client goals are met. primarily deals in logistics, specifically the transportation of goods from China to Iraq (primarily to and .
>
> [The Beneficiary] meets with clients after his secretary does the initial intake and schedules the meetings for him. Upon meeting with the client, he makes the determination as to whether the company is able to undertake the project and then he properly assigns the job to the appropriate staff member. [The Beneficiary] also works with the marketing manager to make sure advertisement of their services is placed in local newspapers, online, and on television.

The Beneficiary also cited "the duties of a chief executive" as described by the U.S. Department of Labor's Bureau of Labor Statistics.

The Petitioner asserted that the Beneficiary's résumé includes a job description, but that document consists primarily of an overview of the foreign company, with no discussion of the Beneficiary's specific role therein except the annotation that he is the executive director.

The Director denied the petition, in part because the job description did not contain enough information about the Beneficiary's duties. The Director noted that the Beneficiary claimed to be a "chief executive" while also citing duties that are more akin to those of a personnel manager. The Director stated that the Petitioner cannot establish eligibility with a "hybrid" position that combines some elements of a managerial capacity with some elements of an executive capacity; the Beneficiary's position must meet every element of either a managerial or an executive capacity.

On appeal, the Petitioner states: clearly described [the Beneficiary's] duties and role in the Iraqi office, and the Service merely copied and pasted sections to use as a basis of justifying what is

an incorrect decision." The Petitioner asserts that the Beneficiary has the broad discretionary authority of an executive, while also performing a managerial function by controlling and supervising the work of professional subordinates. Therefore, the Petitioner contends that the Director erred in concluding that "the beneficiary may not claim to be employed as a hybrid 'executive/manager.'"

The Petitioner does not clarify whether it claims that the Beneficiary has been primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. The Petitioner must clearly describe the Beneficiary's duties and indicate whether such duties are either in an executive or managerial capacity. The Petitioner must demonstrate that the Beneficiary's responsibilities meet all the requirements of one or the other capacity. It is for this reason that the Director stated that the Beneficiary cannot occupy a "hybrid" position that meets only some elements of each type of capacity.

Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *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). The actual duties themselves reveal the true nature of the employment. *Id.*

In this case, the Petitioner has provided minimal information about the Beneficiary's duties at the foreign company, except to state that he meets with clients, approves jobs, and ensures that the marketing director places advertisements. The description does not address his authority related to hiring and other personnel matters, which is a core element of managerial capacity, and it does not establish the extent to which the Beneficiary establishes the goals and policies of the organization, as required for executive capacity. The Beneficiary has essentially asserted that he runs the foreign company, without providing substantial evidence and information as to how he does so. The only specific duty attributed to him suggests that he is solely responsible for selling the company's services to clients, a task that is not shown to be managerial or executive in nature.

First, the Petitioner must show that the Beneficiary performs certain high-level responsibilities specified in the statutory definition of managerial or executive capacity. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Second, the Petitioner must prove that the Beneficiary is *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the foreign entity's other employees. *See, e.g., Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World, Inc. v. INS*, 940 F.2d 1533. The Petitioner's description of the Beneficiary's job duties does not establish what proportion of the duties is managerial or executive in nature. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

B. Staffing

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the company's

organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

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. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. 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) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(*4*). If a petitioner claims that a beneficiary directly supervises other employees, those subordinate employees must be supervisory, professional, or managerial, and the beneficiary must have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. Sections 101(a)(44)(A)(ii)-(iii) of the Act; 8 C.F.R. §§ 214.2(l)(1)(ii)(B)(*2*)-(*3*).

The Petitioner has not provided enough information about the Beneficiary's duties or the roles of his subordinates to demonstrate that the Beneficiary primarily acts as a function manager or as a personnel manager of the foreign company. The Petitioner listed the foreign entity's employees by name and job title, but did not provide information regarding their duties or educational qualifications. Without this evidence, we cannot determine whether there are any supervisory, professional or managerial employees, nor can we discern whether the staff relieves the Beneficiary from involvement in the foreign entity's day-to-day operations. The Petitioner did not articulate or attempt to support a claim that the Beneficiary primarily manages a specific function of the company.

Further, the Beneficiary's high level of authority at that company does not suffice to establish eligibility. The existence of a hierarchy of managers or supervisors under the Beneficiary's authority is not *prima facie* evidence that the Beneficiary *primarily* supervises the subordinates who are, themselves, supervisors or managers. In addition, as noted, the subordinates' job titles alone are sufficient to establish that their managerial or supervisory roles.

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 a beneficiary to direct and a beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. Again, the Petitioner has not provided enough information to show that the Beneficiary primarily directs the lower-level managers and otherwise directs the operation of the business, rather than primarily performing lesser tasks.

Based on the deficiencies discussed above, the Petitioner has not established that the Beneficiary has been employed in a managerial or executive capacity abroad.

III. NEW OFFICE

The remaining grounds for denial relate to the Petitioner's status as a new office. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(A) requires the Petitioner to have secured sufficient physical premises to house the new office. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) requires the Petitioner to show that the intended United States operation, within 1 year of the approval of the petition, will support a managerial or executive position, 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.

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 1 year to develop to a point that it can support the employment of a beneficiary in a primarily managerial or executive position. The Petitioner's evidence should demonstrate a realistic expectation that the enterprise is prepared to commence business operations 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.

A. Executive Capacity in the United States Within 1 Year[2]

On Form I-129, the Petitioner indicated that it intends to operate a "transportation/logistics" business and had one U.S. employee at the time of filing. The Petitioner's initial submission showed that the Beneficiary owns a 60% interest in the petitioning company and sits on its board of directors, but otherwise the Petitioner provided no information about the new U.S. office or the Beneficiary's intended role in the company.

[2] Early in the proceeding, the Petitioner did not specify whether the Beneficiary would work in a managerial or executive capacity in the United States, but on appeal, the Petitioner indicates that the Beneficiary's intended U.S. position would be that of an executive. Therefore, we need not examine the requirements for a managerial capacity.

In the RFE, the Director asked for information about the new office, such as a list of intended positions with job descriptions, and documentation showing how the foreign company concluded that the new U.S. office would be able to support a managerial or executive position within a year. The Director suggested the following types of evidence:

- A letter from the foreign entity describing the new U.S. company, indicating the proposed number of employees and types of positions they will hold, the amount of the U.S. investment, and explaining how the new office will support a managerial or executive position within a year;
- A copy of a market research or feasibility study showing how the foreign company determined that the new U.S. office would support a managerial or executive position within a year;
- A copy of the new office's business plan or executive summary, including a timetable for the first year's proposed activities;
- Meeting minutes from the foreign entity regarding the decision to open a new U.S. office; and
- An organizational chart for the new U.S. office, with job descriptions and requirements for each position.

In response, the Petitioner stated "the company's goals is to primarily serve the logistic needs of Iraqi nationals currently living in the United States by engaging in services such as shipping cars, clothes, trucks, heavy duty equipment, and charitable donations from the United States to Iraq."

The Petitioner also submitted an unsigned statement on [redacted] letterhead stating that the new U.S. office currently employs a secretary, and that, within the first year of operation, it intends to hire an assistant manager, an accountant, and a logistics manager. The Petitioner did not provide job descriptions for these positions. The statement further indicated that the company "also plans to rent a warehouse," for which it would hire a warehouse manager and a marketing manager, and use contract labor "to load and unload containers."

In the Beneficiary's statement on behalf of [redacted] he stated:

> [The Beneficiary] intends to hire the following positions in the United States within the first year: 1) an Assistant; 2) an Accountant; and 3) a Warehouse Manager. The company seeks to advertise in local newspapers for these open three (3) positions within the first few monoths of his arrival in the United States. [The Beneficiary] also plans to hire a Marketing Manager who will advertise their services in community and local newspapers. [The Beneficiary] will be directly responsible for overseeing all these positions. He will personally oversee their hiring and will work directly with each employee to ensure that their objectives are met and they are competent in their position before he departs the United States upon completion of his one (1) year assignment.

> The Beneficiary's other executive duties will involve handling financial obligations, meeting with financial firms to prepare financial documents, reports and taxes, as well as, meeting with legal counsel to make sure service contracts were on terms favorable to [the Petitioner], and to ensure that they are in compliance with U.S. laws. [The Beneficiary] will directly train the chief operating officer to manage and run the U.S. office. . . .

The two statements in the RFE response are not consistent with respect to the Petitioner's intended staffing. Most significantly, the Beneficiary referred to a chief operating officer, a position not mentioned on the unsigned statement, while the statement refers to an assistant manager, a position not mentioned in the Beneficiary's statement. As with the Beneficiary's foreign duties, the Petitioner has not provided sufficient information about the duties the Beneficiary will perform in the United States. Instead, the emphasis has been on his oversight of duties to be performed by others. Concerning the training of the chief operating officer, employee training is not an executive function.

Overall, the position description alone is insufficient to establish that a 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 a petitioner's business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the intended managerial or executive capacity. A petitioner has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within 1 year. Accordingly, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering a petitioner's anticipated staffing levels and stage of development within a 1-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

The Petitioner submitted copies of bank statements showing that the company received an international wire transfer for $209,950 on April 19, 2016, and a that contains very little information about the Petitioner except to say that the company began operations in 2016. This material establishes the existence and starting capital of the company, but does not address the Director's other stated concerns regarding the new office's business plan.

In the denial notice, the Director stated that the list of four current or prospective positions at the new office was not sufficient to show the nature of their duties or establish how they would support the Petitioner's business operation. The Director also found that the submitted bank statements did not show that the funds were sufficient to start up the U.S. company or establish the foreign entity's ability to pay the Beneficiary and commence business in the United States.

On appeal, the Petitioner stated that the prospective "positions listed are pretty self-explanatory," and that "[t]he regulations . . . do not require that the petitioner provide details regarding the nature of the proposed subordinate staff's duties and how they will support the company's business

operations." The Petitioner adds that the regulations contemplate that, during the first year of a new office's existence, a beneficiary may temporarily have to perform non-qualifying functions.

Regarding foreign funding and support, the Petitioner maintains that it has shown that the foreign company has provided a substantial sum to the new office, and that documented shipments to Iraq from the United States and Canada show an ongoing relationship between the Petitioner and the foreign entity.

The regulations, as worded, require the Petitioner to submit information regarding "[t]he proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals." 8 C.F.R. § 214.2(l)(3)(v)(C)(*1*). The Petitioner did not satisfy these requirements. A list of four subordinate positions does not establish the new office's organizational structure, and the Petitioner has not described the scope of the entity or its financial goals. The Petitioner has offered only the general assertion that it seeks to ship, or facilitate the shipment, of goods from the United States to Iraq. The Petitioner has received funds from overseas, but has not shown how these funds compare to the Petitioner's anticipated start-up costs and initial operating expenses. The Petitioner is required to disclose the size of the financial investment, but must also show how that investment is sufficient for the company to carry out its specific first-year business plans. *See generally* 8 C.F.R. 214.2(l)(3)(v)(C)(*2*). Without this information, we cannot determine whether it would even be feasible for the petitioner to hire the stated number of employees within the first year.

For these reasons, the Director's request for a business plan, information regarding the proposed employees, and similar information describing the intended nature, scope, organizational structure and financial goals of the new office was reasonable and well within her discretion. *See* 8 C.F.R. § 214.2(l)(3)(viii) (providing that a service center director has the discretion to request "such other evidence . . . he/she may deem necessary").

Due to the above deficiencies, we find that the Petitioner has not established that it would be able to employ the Beneficiary in an executive capacity within 1 year after approval of the petition.

B. Sufficient Physical Premises

As noted above, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(A) requires the Petitioner to show that it has secured sufficient physical premises to house the new office. The Director found that the Petitioner's evidence in this regard is insufficient and lacking in credibility.

The Petitioner initially submitted a copy of a lease agreement, dated April 25, 2016. The agreement described the leased property as "a Leasable Area of 1100 square feet" at [redacted] Illinois. (That same address is also the stated address of the landlord named on the lease agreement.) The lease agreement specified that the only "Permitted Use" of the property was as a "retail store."

In the RFE, the Director stated that the Petitioner had not provided enough details to show that the leased space would be sufficient for the Petitioner to conduct its business.

In response to the RFE, the Petitioner submitted an unsigned statement indicating that the rented space "will be converted into open space cubicles for workers to sit in, and that the company "also plans to rent a warehouse" for which it would hire additional staff as described previously. The statement indicated that the Petitioner needs the warehouse as "a secure place to store cars, clothes, charitable donations to be sent to Iraq, trucks, and heavy duty equipment." The Petitioner did not specify when it intended to rent the warehouse, but it did state that it intended to hire a warehouse manager "within the first year."

The Petitioner submitted four photographs of its intended place of business:

- An interior photograph of an empty and unfinished commercial space shows the address number visible through a window above a glass door that is largely blocked by a wooden panel. Vertical blinds obscure a plate glass window.
- An exterior photograph shows part of a glass door. Decals on the door and an adjacent mailbox show the address number
- A second exterior photograph shows a plate glass window with vertical blinds inside. To the left is another plate glass window, with nothing visible inside except a "For Rent" sign. To the right is a pharmacy, its windows filled by a promotional display.
- A third exterior photograph shows the door numbered next to the window with vertical blinds, with the pharmacy visible to the right.

In the denial notice, the Director noted that "the photographs show the interior of a space numbered and the exterior of a space numbered No explanation was provided to address this discrepancy." The Director also noted that the lease specifies that the tenant may only use the space for a "retail store." Finally, the Director found that, although the Petitioner stated that it will need warehouse space and employ a warehouse supervisor, the Petitioner had not secured a warehouse.

On appeal, the Petitioner asserts that all the photographs show the same space. Closer examination of one of the exterior photographs shows that the same space, for reasons unexplained, is numbered both and This resolves the issue of the numbering, but other questions remain.

A copy of the plat of survey for the building shows handwritten annotations on three adjacent properties: "Pharmacy For Rent The document does not identify who made these handwritten additions to the plat, or explain the apparent absence of a property numbered Also, the Petitioner does not explain how it will be able to operate out of if the landlord operates out of the same address as the lease agreement indicates.

The above issues may relate to peculiarities in address designations over which the Petitioner had no control, but other questions are of more direct concern. The Director noted that the lease requires

the Petitioner to use the space as a "retail store," whereas the Petitioner has stated that it will use the space only for offices. The Petitioner does not address this significant concern on appeal.

Regarding the warehouse, the Petitioner states:

> There is no requirement in the statute for [the Petitioner] to have a warehouse open prior to filing of the petition. [The Petitioner] clearly explained its operations, and has been currently operating without a warehouse. To get about the issue of not having a warehouse shipping directly without warehouses for example, if a client wants to buy a car and send it to Iraq, [the Petitioner] provides direct shipping and give [*sic*] shippers information. A typical example will be if you want to buy a car from a Toyota dealership, [the Petitioner] contacts the dealership directly, makes the purchase and ha[s] Toyota directly ship the car to Iraq, and then they collect directly from the client in Iraq or the United States. (*see* Invoices, Bill of Lading, and Waybills, hereto attached as ***Group Exhibit E***).

The documents in group exhibit E do not document any business activity by the Petitioner, although some of the documents identify a U.S.-based shipper. They show the name and address of the foreign entity. Therefore, the documents do not show that the petitioning U.S. office has been, or will be, able to conduct business without a warehouse.

Furthermore, the Petitioner had previously indicated that its business plans included renting a warehouse as "a secure place to store cars, clothes, charitable donations to be sent to Iraq, trucks, and heavy duty equipment." It had previously described the warehouse as an integral element of its business. If the Petitioner had not acquired any warehouse space at the time it filed the petition, then we must conclude that the Petitioner had not secured sufficient physical premises to house the new office as the regulations require.

IV. CONCLUSION

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of H-G-T- Co.*, ID# 227575 (AAO Feb. 27, 2017)