U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-, INC.

DATE: JAN. 3, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner,[1] which intends to operate a retail business, seeks to temporarily employ the Beneficiary as chief financial officer (CFO) of its new office[2] 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 of the Vermont Service Center denied the petition, concluding that the Petitioner did not establish, as required, that: (1) the new office would support a managerial or executive position within one year of approval of the petition; and (2) the Beneficiary has been employed abroad in a managerial or executive capacity.

On appeal, the Petitioner submits additional evidence and asserts that the evidence satisfied all requirements for the requested classification.

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

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification for 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. 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. Section 101(a)(15)(L) of the Act. The petitioner must also establish that the beneficiary's prior education, training, and employment qualifies him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

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[1] The Petitioner provided evidence that its registered name is "[redacted]" but identified itself as "[redacted]" on the Form I-129 and many supporting documents.

[2] 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 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).

The statute defines "managerial capacity" as an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; 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; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

The term "executive capacity" is defined as an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director determined that the Petitioner did not establish that its new office would be able to support a managerial or executive position within one year of approval of the petition. Specifically, the Director found that the Petitioner did not establish that the Beneficiary would supervise subordinate managers, supervisors, or professionals, or that the company would have sufficient staffing within one year to remove the Beneficiary from performing non-qualifying duties.

On appeal, the Petitioner asserts that "the beneficiary's position is far beyond the scope and authority of any first line supervisor" and cites unpublished AAO decisions involving L-1A beneficiaries who supervised only a small, non-professional staff. The Petitioner indicates that the Beneficiary can be considered a function manager, and also refers to his "executive position."

In the case of a new office petition, beyond the description of a beneficiary's proposed job duties, we review the 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 one year. Accordingly, the totality of the evidence must be considered in analyzing whether the proposed managerial or executive position is plausible considering a petitioner's anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

A. Projected Staffing and Business Plan

The Petitioner stated on the Form I-129 that it intends to engage in "retail sales," and a letter from the Petitioner's president and claimed owner indicates the company's intent to open a retail location for jewelry sales. As discussed further below, the photograph accompanying the Petitioner's lease agreement shows a retail shopping center, and the leased premises appears to be a restaurant. The Petitioner did not explain how it would operate a jewelry business in a fast food restaurant or indicate that it intended to remodel the premises.

In addition, the Petitioner's business plan indicates that it intends to sell jewelry through its own website and through "selected galleries and art shows" and does not indicate that the company will open its own retail store. The business plan's start-up costs and all financial projections are based on this model, and not on the operation of a store.

Therefore, there are fundamental inconsistencies in the record regarding the intended nature of the business which impact the probative value of the Petitioner's statements and business plan and our review of the company's projected organizational structure, scope, and staffing plans.

The Petitioner provided a proposed organizational chart indicating that the Beneficiary, as chief financial officer, would report to the company president and would directly supervise a jewelry designer and an office manager. The office manager would supervise a bookkeeper and a sales representative. The business plan, however, does not mention the Beneficiary or indicate that the Petitioner even intends to include the offered position of chief financial officer in its organizational hierarchy. Rather, the personnel plan for the first three years of operation includes the president, jewelry designer, and the office manager (all identified by name), as well as a bookkeeper and part-time sales representatives. While the Petitioner has provided letters from the president indicating that the Beneficiary has been offered the CFO position, the position's absence from the company's personnel and business plans is at odds from the claim that the CFO will be the employee responsible for managing "all fine jewelry operations including global manufacturing and international sales."

Finally, there are unexplained ambiguities in the record regarding the size of the U.S. investment and the financial ability of the U.S. company to commence operations. The business plan contains a "Start-up Funding" table indicating that the company requires a total of $200,000 in initial funding. However, the Petitioner indicates that it anticipates an investment of $100,000 from its claimed owner. The Petitioner's January 2016 bank account showed a balance of $2060.89 and total deposits to date of $2,300. This petition was filed in February 2016 and the Petitioner did not provide evidence that it has received the claimed investment, that its claimed owner has $100,000 available to invest, nor has it indicated where it would obtain an additional $100,000.

All of these inconsistencies and deficiencies undermine the Petitioner's claim that it would be able to support a chief financial officer performing primarily managerial or executive duties. Without consistent information regarding the nature of the business, the size of the investment, and the

company's planned staffing and organizational structure, we cannot determine that the Petitioner would employ the Beneficiary in managerial or executive capacity within one year.

The Director nevertheless reviewed the proposed organizational chart and determined that the Petitioner did not show that the Beneficiary would be supervising subordinate managers, supervisors, or professionals.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 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. 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."[3] Section 101(a)(44)(A)(iv) of the Act.

We agree with Director's assessment that the Beneficiary would not be employed as a personnel manager within one year, based on the organizational chart and accompanying position descriptions. While the Petitioner indicated that the jewelry designer "oversees the management of the daily affairs of the business," the organizational chart depicts this employee with no subordinates and the business plan focuses on his responsibility for jewelry design without mentioning any management or supervisory responsibilities. Further, the office manager who would purportedly report to the Beneficiary is not charged with supervisory or managerial functions. The Petitioner indicates that both of these employees have bachelor's degrees, but have not shown that either position requires such a degree.

In sum, without detailed, consistent, and credible information regarding the intended nature and scope of the business, its organizational structure, financial objectives, and evidence relating to the size of the U.S. investment, we cannot determine that the petitioning company would develop to the point where it would require a CFO to perform primarily managerial or executive duties within one year, particularly given that the Petitioner's own business plan does not indicate a need for the offered position.

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[3] In evaluating whether a beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

Therefore, we must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity.

B. Duties

The Petitioner stated that the Beneficiary will manage "all fine jewelry operations, including global manufacturing and international sales" and will spend at least one hour daily performing "non-executive functions" by "randomly overseeing the client services his staff provides." The Petitioner also provided a breakdown of the Beneficiary's proposed duties noting that his responsibility for the production of various monthly reports (sales, cash flow, variance reconciliation, bank reconciliation, inventory, loss prevention, etc.) would require 30% of his time. The Petitioner indicates that these reports would be used to generate corporate financial statements, which the Beneficiary would also produce. Based on the broad description provided for this responsibility, the Petitioner has not established that producing and preparing reports would be a qualifying managerial or executive task.

The Petitioner indicated that another 20% of the Beneficiary's time would be spent reviewing "contracts and financial agreements" and that he would have the discretionary authority to change language "to establish a sale with the client." However, the Petitioner did not explain this duty within the context of the intended business. As noted, the Petitioner has stated that it will either operate a retail jewelry store, or that it will sell jewelry to individual buyers through a webstore, and distribute products through art shows and galleries. The Petitioner has not explained how either type of business would require the Beneficiary to spend 20% of his time reviewing and re-wording sales contracts.

Another 20% of the Beneficiary's time would be devoted to broadly-described market analysis and marketing functions such as building "product-level expertise through industry and competitive trend analysis," managing "product category," and developing "product-focused programs to create growth supported by a compelling business case." According to the Petitioner's business plan, the company president would be charged with these business development functions, with the assistance of part-time sales representatives. Nevertheless, these duties are too vague to establish the nature of any marketing duties that may be assigned to the Beneficiary and we cannot conclude he would perform managerial or executive duties related to marketing or business development. 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).

On appeal, the Petitioner argues that the Director did not consider whether the Beneficiary qualifies as a function manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that "(1) the function is a clearly defined activity; (2) the function is 'essential,' i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with

respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations." *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

Due to the lack of specificity in the job description, especially considered in light of the inconsistencies in the record regarding the intended nature, scope, and structure of the business, its financial objectives and the size of the investment, the Petitioner has not supported its claim that the Beneficiary would manage or direct an essential function within one year.

Finally, the Petitioner refers to unpublished decisions in which we determined that a beneficiary met the requirements of serving in a managerial capacity for L-1 classification even though he or she supervised only a small, non-professional staff. The Petitioner has not established that the facts of this petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on U.S. Citizenship and Immigration Services (USCIS), unpublished decisions are not similarly binding.

The Petitioner has consistently stated that the Beneficiary will occupy one of the senior positons in the new office, but has not submitted a job description or consistent, credible supporting evidence sufficient to demonstrate that he would primarily engage in managerial or executive duties, or that the new office would support a managerial or executive position, after the initial year of operations.

III. EMPLOYMENT ABROAD IN A MANAGERIAL OR EXECUTIVE CAPACITY

The remaining issue addressed by the Director is whether the Petitioner established that the foreign entity has employed the Beneficiary in a managerial or executive capacity. In the denial decision, the Director found that the Petitioner submitted vague and generic job descriptions for the Beneficiary and other foreign employees, did not submit requested payroll evidence to corroborate the foreign entity's staffing levels, and did not explain who performs the foreign entity's day-to-day operations, given that more than half of the staff have managerial job titles.

On appeal, the Petitioner submits additional foreign entity payroll reports and tax returns and asserts that the Beneficiary, as the foreign entity's controller, is employed in a qualifying managerial or executive capacity with discretionary authority to make personnel decisions, signatory authority on company accounts, and the authority to sign contractual agreements for the company.

A. Duties

The definitions of executive and managerial capacity have two parts. First, the Petitioner must show that the Beneficiary will perform certain high-level responsibilities. *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 will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See, e.g.*, *Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533.

The Petitioner stated on the Form I-129, L Classification Supplement, that the Beneficiary has served as the foreign entity's controller since February 2008. On the same form, the Petitioner stated he has been employed as "the Accountant" and summarized his duties as follows:

> [The Beneficiary] is responsible for the accounting operations of the company, to include the production of periodic financial reports, maintenance of an adequate system of accounting records, and a comprehensive set of controls and budgets to mitigate risk, enhance the accuracy of the company's reported financial results, and ensure that reported results comply with generally accepted accounting principles or financial reporting standards.

The Petitioner's initial evidence also included an expanded job description for the controller position, noting that the Beneficiary allocates his time as follows:

> 25% of time is spent
> - Direct accounting activities as it relates to internet, retail and wholesale operations, including accruals, allocations and other activities;
> - Coordinate the monthly accounting close process;
> - Coordinate the review and reporting of financial information;
>
> 10% of time is spent
> - Serve as chief liaison between President and Management staff;
> - Serve as a resource for financial information and analysis;
>
> 25% of time is spent
> - Oversee the accounts payable function;
> - Oversee the fixed asset function;
> - Monitor the operation and effectiveness of internal controls.
> - Analyze material balance sheet and income accounts;
> - Coordinate analysis for store acquisitions/disposition.
>
> 20% of time is spent
> - Preparation of the quarterly budget, meets and reviews with President;
> - Reviews department budgets and makes changes based on the company's overall budget projections.
> - As the Controller, he works closely with the President;
>
> 20% of time is spent
> - Responsible for preparing the corporate year end taxes as well as preparing and reporting the payroll for the employees.
> - Responsible for paying all taxes timely and in full.

The Petitioner added that the foreign entity's president consults with the beneficiary about purchases, product costs, pricing, employee hours, staffing, and lines of credit.

The Petitioner did not provide sufficient evidence to establish that the Beneficiary has performed primarily managerial or executive duties related to the foreign entity's financial and accounting activities. First, it is unclear why the Petitioner referred to the Beneficiary as the foreign entity's accountant on the Form I-129, as the foreign entity's organizational chart shows that the Beneficiary's sole subordinate's job title is "accountant."

Further, the description contains a number of duties which are overly broad and do not provide sufficient insight into the nature of the Beneficiary's day-to-day activities. For example, the Petitioner does not describe the specific tasks he performs to "oversee" the fixed asset and accounts payable functions, to "direct" accounting activities, or to "coordinate" monthly accounting processes, the review of financial information, or "analysis for store acquisitions/disposition." Although the Petitioner indicates that the Beneficiary has a subordinate accountant, the job description provided for her does not indicate that she supports the Beneficiary in all of these activities. As such, we cannot determine that the Beneficiary is relieved from performing the non-qualifying duties associated with the accounting and financial functions he is claimed to direct, oversee, and coordinate. We cannot determine whether his actual duties, as they related to these functions, are managerial or executive in nature.

Further, the Petitioner did not establish how duties such as analyzing accounts, providing financial information and analysis, and preparing financial reports, taxes, and payroll, qualify as managerial or executive level duties. Finally, the Petitioner indicates that the Beneficiary allocates significant portions of his time to activities that would reasonably be performed only intermittently, such as preparing quarterly budgets, preparing year-end taxes, and coordinating the monthly accounting close process.

Overall, the description includes a mixture of vaguely-defined oversight duties, non-qualifying duties, and duties which the Beneficiary would not reasonably need to perform on a regular basis. This combination leaves us with a limited understanding of what the Beneficiary actually does as a part of his daily routine and is insufficient to establish that his duties have been primarily managerial or executive in nature.

Even though the Beneficiary is depicted as the senior employee in the foreign entity's two-person finance or accounting department, the fact that the Beneficiary will manage a department or function of a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44)(A) or (B) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" managerial or executive in nature. Section 101(A)(44) of the Act. Here, the job description alone is insufficient to establish that the Beneficiary's foreign position meets that requirement.

B. Staffing

Beyond the required description of the job duties, USCIS examines 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 Petitioner submitted an organizational chart dated 2015 which indicates that the Beneficiary, as the controller, supervises an accountant and reports to the president. The president also directly supervises a jewelry designer who ultimately supervises all other employees in the company, including a general manager, sales manager, two salespersons, and one driver. The Petitioner provided a payroll document for December 2015 which lists all employees named on the organizational chart. On appeal, the Petitioner provides similar monthly payroll documents for all of 2016.

The Petitioner indicates that the foreign entity's accountant performs the following duties:

- Responsible for [a]nalysis, [r]ecording and GL account maintenance Reserves as well as related [r]eceivables & [p]repayments/[d]eferred [r]evenue.
- Reviews daily Cash Ledger uploads.
- Oversees the completion and review of selected bank reconciliations.
- Complete thorough & meaningful analyses of selected GL accounts ensuring accurate & timely month-end [c]lose.
- Frequent international with the corporate officers.
- Supports month-end and quarter-end reporting through analyses and schedule preparation. Contributes toward a positive, pleasant & productive atmosphere for all co-workers;
- Maintains a cooperative and team-oriented demeanor.

The Petitioner stated that this position "Requires 5 yrs experience/Bachelor Degree" but did not indicate whether the individual who holds the positon has a degree. Therefore, the Petitioner did not establish that this is a professional position or that the Beneficiary primarily is employed as a personnel manager, who oversees a subordinate staff of managers, supervisors, or professionals. See section 101(a)(44)(A)(iv) of the Act.

The Petitioner has not established, in the alternative, that the Beneficiary is primarily managing or directing the foreign entity's finance and accounting function. As noted, his job description contains overly broad responsibilities that do not provide insight into his typical day-to-day tasks, as well as non-qualifying duties associated with the company's financial analysis, payroll, and tax matters. While the Petitioner indicated that the Beneficiary "oversees," "directs" and "coordinates" various financial and accounting activities, the accountant's brief job description does not indicate that he or she relieves the Beneficiary from substantial involvement in the foreign entity's non-managerial accounting and finance activities. There are a number of activities under the Beneficiary's oversight which are not assigned to the accountant, which suggests that the Beneficiary himself is performing, rather than directing, coordinating, or overseeing some of these activities. The record does not sufficiently explain how routine finance and accounting duties are divided between the Beneficiary and his subordinate and does not show that he is primarily managing these functions, rather than performing them.

Although the Petitioner has referred to the Beneficiary as an executive at times, it has not established, in the alternative, that his role as controller for the foreign entity's jewelry store is in an executive capacity. 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. 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 they 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. A 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.* The record does not support a finding that the Beneficiary is primarily concerned with the broad policies and goals of the foreign sole proprietorship or that he is directing the management of the company.

For these reasons, the Petitioner has not established that the Beneficiary has been employed abroad in a managerial or executive capacity.

IV. QUALIFYING RELATIONSHIP

Although not addressed in the Director's decision, the Petitioner did not provide sufficient evidence to establish that it has a qualifying relationship with the Beneficiary's foreign employer.

To establish a "qualifying relationship," the Petitioner must show that the Beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See* section 101(a)(15)(L) of the Act; *see also* 8 C.F.R. § 214.2(l)(1)(ii) (providing definitions of the terms "parent," "branch," "subsidiary," and "affiliate").

The Petitioner claims to be an affiliate of the foreign entity and indicates that both entities are wholly owned by the same individual , and therefore satisfy the statutory definition of "affiliates" at 8 C.F.R. § 214(l)(1)(ii)(L)(*1*).

The Petitioner provided evidence that owns the foreign entity, a sole proprietorship located in India. The Petitioner submitted a copy of its certificate of formation and by-laws; however, the record does not contain supporting evidence of the petitioning corporation's ownership, such as copies of its stock certificates, stock ledger, stock purchase agreements, minutes of relevant shareholding meetings, or evidence that purchased the Petitioner's stock. Without such

evidence, we cannot determine who owns the petitioning company or whether it has an affiliate relationship with the foreign entity. For this additional reason, the petition will be denied.[4]

V. PHYSICAL PREMISES

Another issue not addressed by the Director is whether the Petitioner established that it has secured sufficient physical premises to house its new office. 8 C.F.R. § 214.2(l)(3)(v)(A).

The Petitioner's mailing address on the Form I-129 and bank statements is in Texas. The Petitioner did not provide a different address where asked to identify the physical location the Beneficiary would work. The Petitioner did not submit a lease agreement for the location.

However, the Petitioner submitted a commercial lease agreement for 1500 square feet of space located at in Texas with a commencement date of December 1, 2015. The Petitioner provided photographs of a shopping plaza. The only legible building number is " on a Chinese restaurant, which is directly adjacent to a restaurant and a nail salon.

The Petitioner's business plan does not describe the company's leased premises or space requirements for its jewelry business, nor does the record contain consistent information regarding the nature of the intended business. However, it is unclear how the Petitioner would commence business operations from a or a nail salon, and the business plan does not include projected expenses for the remodeling of a retail location. Based on the limited information provided, the Petitioner has not met the physical premises requirement for its new office.

VI. CONCLUSION

The Petitioner has not established that it will employ the Beneficiary in a managerial or executive capacity within one year, that the Beneficiary has been employed abroad in a managerial or executive capacity, that it has a qualifying relationship with the Beneficiary's foreign employer, or that it has secured sufficient physical premises for its new office.

ORDER: The appeal is dismissed.

Cite as *Matter of B-, Inc.*, ID# 905287 (AAO Jan. 3, 2018)

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[4] In addition, we note that, according to information obtained from the Texas Comptroller, the Petitioner's right to transact business in Texas has been "Forfeited." *See* Website of Texas Comptroller of Accounts, Franchise Tax Account Status, https://mycpa.cpa.state.tx.us/coa (last accessed on Dec. 20, 2017). In order to establish that the new office is a qualifying organization, the Petitioner must show that it is or will be doing business in the United States. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G). While we are not denying the petition based on this adverse information obtained from public sources, the Petitioner should submit evidence addressing its corporate status and right to transact business in any future filing.