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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 07 240 54139 Office: CALIFORNIA SERVICE CENTER Date: **FEB 20 2008**

IN RE: Petitioner:
Beneficiary:



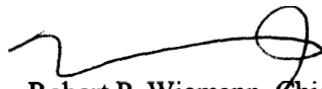
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office


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 The decision of the director will be withdrawn, and the appeal will be sustained.

The petitioner filed this nonimmigrant visa petition seeking to employ the beneficiary as its plant manager as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized under the laws of the State of Michigan and is a manufacturer of specialty industrial lubricants.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary was employed abroad in an executive or managerial capacity for one continuous year within the three years preceding the filing of the petition.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the director erred and that the beneficiary was employed abroad in either a managerial or specialized knowledge capacity.

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 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.

Upon review, the AAO concludes that the petitioner established that the beneficiary was employed abroad for at least one year in a managerial capacity, and the director's decision will be withdrawn. The petitioner established that the beneficiary, the holder of a *diplome d'ingenieur* from the School of Chemistry, Physics, and Electronics of Lyon, France, was employed abroad by the foreign employer in two capacities within the past three years. From January 2003 until March 2006, the beneficiary was employed as manager of the foreign employer's industrial lubricants and engineering laboratory. In that capacity, the beneficiary managed both the laboratory and its staff consisting of six persons, including professional employees. Beginning in April 2006, the beneficiary became employed as the powder production unit plant manager. In that capacity, the beneficiary managed a subordinate tier of shift supervisors who, in turn, supervised subordinate workers. The beneficiary supervised, directly or indirectly, a total of 26 workers in France in his last assignment.

Consequently, the petitioner has established that the beneficiary managed a subdivision of the foreign employer, supervised and controlled the work of other supervisory and/or professional workers, had authority over his subordinates, and exercised sufficient discretion over the operations of the activity for which the beneficiary had authority. Furthermore, it does not appear as if the beneficiary was a first-line supervisor of non-professional workers.

Therefore, the petitioner has established that the beneficiary was employed abroad for at least one year in a managerial capacity, and the director's decision will be withdrawn.¹

¹While counsel on appeal asserts that the beneficiary was also employed abroad in a capacity involving specialized knowledge, it is noted that the petitioner failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced workers

Accordingly, the director's decision will be withdrawn, and the appeal will be sustained.

ORDER: The appeal is sustained.

employed by the petitioning organization or in the industry at large. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).