

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



07

DATE: JUL 02 2012 Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
 Beneficiary: [REDACTED]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal and approve the petition.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary 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 was formed as a corporation under the laws of the State of Delaware in 2005, and is an aircraft leasing business. It claims to be a subsidiary of [REDACTED]. The petitioner is seeking L-1A status for the beneficiary as President for an initial period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the evidence of record is sufficient to satisfy the petitioner's burden of proof and establishes that the beneficiary is, and will be, employed in the United States in a managerial capacity.

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate 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.

II. The Issue on Appeal

The sole issue to be addressed is whether the petitioner established that the beneficiary will be employed in the United States in a managerial or executive capacity.

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

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

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

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

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on November 19, 2009. The petitioner established that it is a member of a group of affiliated companies that are engaged in the acquisition, refurbishment, heavy maintenance, and leasing of aircraft. Specifically, the petitioner is a

The petitioner stated the beneficiary will be moving his base of operations to their office in [REDACTED]. The beneficiary has served as the worldwide operations Chief Executive Officer since September of 2000. The beneficiary's job duties in the United States will be "substantially similar to the job duties he performs in South Africa." The beneficiary's stated job duties included managing the daily operations; recruitment and training of staff; day-to-day cash flow management; planning and implementing policies, objectives, and activities to increase productivity; directing development of new products and services company-wide; and developing new markets and soliciting new accounts.

The director issued a request for additional evidence ("RFE") on November 25, 2009. The director requested that the petitioner provide, *inter alia*: (1) a more detailed description of the beneficiary's duties in the U.S. including the percentage of time spent on each of the listed duties; (2) a copy of the petitioner's line and block organizational chart and brief description of duties including educational level of all employees under the beneficiary's supervision; and (3) the petitioner's California Employment Development Department (EDD) Form DE-6, Quarterly Wage Reports for all employees for the last four quarters along with W-2's and W-3s.

In response, the petitioner submitted an affidavit from the Chief Operating Officer providing a detailed overview of the position and how the beneficiary will be functioning in a managerial capacity. The petitioner states the following with respect to the beneficiary's managerial duties:

The Beneficiary will define the direction of Global Aviation's United States operations. He will facilitate, direct and ensure completion of worldwide business initiatives. Beneficiary will coordinate tasks, and monitor progress to ensure that services are delivered on time, within budget, and meet/exceed company and client expectations.

The COO provided a list of 22 managerial duties the beneficiary will perform as President with a percentage of time spent on each duty. The beneficiary's job duties were listed generally as follows: hire and train staff; day-to-day cash flow management; develop a financial management structure; provide corporate guidelines; direct preparation of financial statements; determining areas of cost reduction; develop new markets and solicit new accounts; create and direct flight instruction and pilot testing programs; oversee and direct worldwide aircraft maintenance programs; report progress to company directors and shareholders; and negotiate contracts.

The COO stated that the beneficiary will spend "the majority of his day developing and overseeing new products and business." The beneficiary's managerial authority will include "day-to-day discretionary authority over the work and staffing of the U.S. operations." The beneficiary will be "directly responsible for implementing policies, goals, objectives, development strategies and company activities to meet company-wide targets." Finally, the beneficiary will be "responsible for strategic management of [the] company, including performing executive and high-dollar decision making duties."

The petitioner submitted an organizational chart for the United States office, details on the beneficiary's subordinates, and the requested forms verifying the United States staffing levels. The organizational chart showed the beneficiary at the top of the chart, reporting generally to the shareholders and board members. Reporting to the beneficiary was a Chief Operating Officer, and three positions entitled "Purchasing," "Shipping," and "Technical."

The petitioner stated that the beneficiary will be responsible for supervising a team of nine employees. Four of the beneficiary's employees are located at the petitioner's office in the United States and five employees are located at offices worldwide. The petitioner provided the name, title, educational background, years of experience, current immigration status, and job description for each of the beneficiary's direct subordinates in the United States. As described by the petitioner, the Chief Operating Officer "manages day to day operations including oversight of all purchases of aircraft parts and shipments," as well as establishing and monitoring monthly budgets, performing general administrative matters, and managing legal matters. The COO holds a B.A., J.D., and M.B.A. The Purchasing Director manages the purchasing of aircraft parts for the fleet of 15 global aviation aircraft worldwide. The Technical Officer manages aircraft maintenance work. The Head of Shipping manages the worldwide company supply chain for parts and expendables. The Purchasing Director and Technical Officer hold Bachelor's degrees. The Head of Shipping has a High School Diploma.

The petitioner provided the job titles but did not include the job duties for the five employees abroad reporting to the beneficiary. Those employees are the [REDACTED]

[REDACTED] and General Manager, Flight Operations.

The director denied the petition on January 15, 2010, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. In denying the petition, the director determined that it appears that the beneficiary "has been and/or will be performing many aspects of the day-to-day operations of the business." Furthermore, the director found that the petitioner failed to establish that the subordinates are professional employees and therefore the beneficiary's position is that of a "first-line supervisor of non-professional employees."

On appeal, counsel asserts that the evidence establishes that the beneficiary's role is in a managerial capacity pursuant to section 101(a)(44)(A) of the Act and that the denial is based on a misapplication of law. Specifically, counsel states that the denial "incorrectly concludes that the Beneficiary will be performing many aspects of the day-to-day operations of the business." Counsel further concludes that the decision must take into account the "reasonable needs of the organization in light of the overall purpose and stage of development in the organization." Furthermore, counsel concludes that the beneficiary meets "the two pronged test set forth in *Champion World, Inc. v. INS*."

III. Conclusion

Upon review, the petitioner's assertions are persuasive. The AAO finds sufficient evidence to establish that the beneficiary will be employed in a primarily managerial capacity. The director's determination appears to be based in part on the director's pre-conceived impression of what duties are typically performed by a President of an aircraft leasing business rather than on the evidence submitted by the petitioner. The director should not hold a petitioner to his undefined and unsupported view of the standard duties of an occupation in

making a determination as to whether the beneficiary will be employed in a primarily managerial or executive capacity. The director should instead focus on applying the statute and regulations to the facts presented by the record of proceeding.

The evidence submitted establishes that the beneficiary supervises and controls the work of professional-level employees and possesses authority to recommend personnel actions for employees under his supervision. *See* sections 101(a)(44)(A)(ii) and (iii) of the Act.

The AAO does not agree with the director that "the description of the beneficiary's duties is too broad and nonspecific to convey any understanding" of the beneficiary's duties. The record indicates that the beneficiary is responsible for the management of the United States office including four subordinate employees and is charged with overseeing new products and business development. The petitioner established a reasonable need for a managerial-level employee to oversee the United States operations. In addition, the beneficiary has managerial authority over five other managerial-level employees at offices abroad to carry out the day-to-day tasks related to the functions of the petitioner. Finally, the AAO is satisfied that the beneficiary exercises discretion over the day-to-day operations of the petitioner as required by section 101(a)(44)(A)(iv) of the Act.

While the beneficiary will undoubtedly be required to apply his technical expertise in carrying out his job duties and perform some administrative tasks, the petitioner has established by a preponderance of the evidence that the majority of the day-to-day non-managerial tasks required to produce the products and provide services for the client are carried out by the beneficiary's subordinate staff. The petitioner need only establish that the beneficiary devotes more than half of his time to managerial duties. The petitioner has met that burden.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has sustained that burden. Accordingly, the director's decision dated January 15, 2010 is withdrawn.

ORDER: The appeal is sustained.