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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

DATE: **MAY 07 2013**

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,


Ron Rosenberg

Acting 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 The decision of the director will be withdrawn and the appeal will be sustained.

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 Michigan in 2009, and is a golfing equipment retailer and distributor. It claims to be an affiliate of [REDACTED] located in Canada. The petitioner seeks to employ the beneficiary as its Product Development Director for a 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, the petitioner submits a brief and additional evidence. Counsel for the petitioner asserts that the director based his decision on erroneous conclusions of fact and law.

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), provides:

The term "managerial capacity" means 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 is a distributor of golf products and accessories. It operates a 23,000 square foot store and driving range in Michigan and also makes significant web-based sales. The petitioner claimed 65 current employees, a gross annual income of \$9,271,385, and a net annual income of \$963,009. The petitioner stated the beneficiary will be working as its Director of Product Development. The petitioner provided a detailed description of the beneficiary's proposed duties on its Form I-129, Petitioner for a Non-immigrant Worker, and in its letter of support accompanying the petition. It also provided a letter from the foreign entity explaining how why the petitioner is particularly qualified for the proposed position.

The petitioner stated that the beneficiary, as Product Development Director, will be entrusted with developing and approving all elements of product line launches, including manufacturing specifications, packaging requirements, collateral materials, merchandising tools, advertising materials and sales support. He will be responsible for identifying new materials, technologies and/or manufacturing processes to create new product lines, as well as developing and enhancing relationships with other manufacturers of golf sporting products. The petitioner's initial evidence included the petitioner's letter of support, the foreign entity's organizational chart, numerous financial documents, and pages from the petitioner's online catalog.

The director issued a request for additional evidence (RFE). The director requested that the petitioner provide, *inter alia*: (1) documents pertaining to the United States business to establish a qualifying relationship, such as income taxes, a list of owners, and articles of organization; (2) documents pertaining to the proposed United States position to show the beneficiary will be employed in a managerial or executive capacity, such as a more detailed list of duties in the proposed position, the petitioner's organizational chart, and the petitioner's state quarterly wage reports; (3) documents pertaining to the foreign business to demonstrate a qualifying relationship, such as a detailed list of owners; and (4) documents pertaining to the foreign position to show the beneficiary was employed in a managerial or executive capacity, such as a more detailed list of the beneficiary's duties abroad and a foreign organizational chart.

In response to the RFE, the petitioner provided a thorough response addressing each of the issues raised by the director. The documents submitted included tax returns for the petitioner and the

foreign entity, updated organizational charts for both entities, and updated letters of support from both entities with more detailed descriptions of the beneficiary's duties with each.

The director denied the petition, 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 the petitioner did not establish its organizational structure was sufficiently complex to support a managerial or executive employee. In addition, the director found the organizational chart submitted with the original petition conflicts with the subsequently submitted organizational chart.

On appeal, counsel states that the reasoning underlying the director's determination is based on erroneous assumptions and interpretations of the evidence submitted. Specifically, with regard to the allegation of inconsistent organizational charts, the petitioner states that the charts were submitted for different purposes. The first chart was presented to show the petitioner's position as directly under the CEO of the company. The second chart was submitted in response to the RFE, which asked for a more specific chart showing only the beneficiary's subordinate employees. The petitioner further emphasizes that it has demonstrated the beneficiary will be hired as a functional manager who primarily performs executive level tasks. Counsel references the letters previously submitted by the petitioner and contends that the director's conclusion that the beneficiary will primarily perform the tasks necessary to run the business fails to consider these letters.

III. Discussion

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 employees in the petitioner's industry. 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 relevant facts presented by the record of proceeding.

The AAO finds that the evidence establishes the beneficiary will directly manage the product development function of the petitioner's business. The evidence submitted establishes that the beneficiary possesses authority over all aspects of product development, and that this is a legitimate and necessary function as related to the petitioner's business. The petitioner has demonstrated that its business is of the size and type such that it can support an employee who acts primarily as a function manager of product development. It has also demonstrated a reasonable need for an employee in such a position.

Further, the petitioner sufficiently explains the organizational charts submitted to show that they are not inconsistent, contrary to the director's finding.

While the beneficiary will undoubtedly be required to 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 of the company are not carried out by the beneficiary. The petitioner has established that the beneficiary will be employed in a qualifying managerial capacity. Accordingly, the director's decision will be withdrawn.

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.

ORDER: The appeal is sustained.