



U.S. Citizenship
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Services

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DA

FILE: WAC 06 096 50397 Office: CALIFORNIA SERVICE CENTER

Date: APR 10 2007

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:

SELF-REPRESENTED

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 appeal will be rejected as untimely filed.

The petitioner, a California corporation, claims to be the parent company of the beneficiary's foreign employer, [REDACTED] located in India. The petitioner states that the United States entity is engaged in the delivery of high quality cost effective software solutions. The petitioner filed this nonimmigrant petition seeking to employ 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 seeks to employ the beneficiary in the position of senior consultant for a three-year period.

The director denied the petition on August 2, 2006, concluding that the record contains insufficient evidence to demonstrate that the beneficiary will be employed in a primarily executive or managerial capacity by the U.S. company. The director noted that it did not appear that the beneficiary supervises a staff of professional, managerial, or supervisory personnel who will relieve him from performing non-qualifying duties, and thus the beneficiary will be primarily involved in performing the day-to-day services essential to running a business. In addition, the director noted discrepancies between the employees listed on the company's state tax return, Form DE-6, Quarterly Wage and Withholding Report, and the submitted list of employees supervised by the beneficiary.

The record reflects that the director's decision of August 2, 2006 was sent to the petitioner at its address of record. The director properly notified the petitioner that any subsequent appeal must be filed with the California Service Center. According to the date stamp on the Form I-1290B Notice of Appeal, the proper office received the appeal 54 days later on September 25, 2006. Thus the appeal was untimely filed.¹

Under the regulations, an affected party has 30 days from the date of an adverse decision to file an appeal. *See* 8 CFR § 103.3(a)(2). If the adverse decision was served by mail, an additional three-day period is added to the prescribed period. *See* 8 CFR § 103.5a(b). In accordance with 8 C.F.R. § 103.2(a)(7)(i) an application received in a CIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct file. For calculating the date of filing, the appeal shall be regarded as properly filed on the date it is so stamped by the service center or district office.

¹ On September 5, 2006, the AAO rejected the Form I-1290B and returned the form to the petitioner since the Notice of Appeal must be filed with the office that made the unfavorable decision, in this case, the California Service Center. *See* 8 C.F.R. § 103.3(a)(2)(1). The petitioner subsequently re-filed the I-1290B to the correct office without the required filing fee on September 12, 2006, thus the appeal was again returned to the petitioner. The appeal was finally received as properly filed and date-stamped by Citizenship and Immigration Services (CIS) on September 25, 2006, which was 54 days after the date of the decision.

Moreover, in reviewing the merits of the appeal, the instant petition was properly denied. On appeal, counsel for the petitioner contends that it was erroneous for CIS to verify the existence of the beneficiary's subordinates using California Form DE-6, Quarterly Wage and Withholding Report. The petitioner asserts that the beneficiary's "activities are national in nature and his skills are required in States other than California as well." The petitioner asserts that the beneficiary is working in Blue Bell, Pennsylvania, as well as his primary location in Southborough, Maine and thus the beneficiary's subordinates are not working in California and therefore are not listed on the California Form DE-6, Quarterly Wage and Withholding Report. In addition, the petitioner asserts that the beneficiary is managing an essential function of the company. Finally, the petitioner asserts that the beneficiary was previously granted L-1 classification.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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.

On review, the petitioner provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary's duties include "building and maintaining a good relationship with the client and understanding client expectations"; "coming up with strategies to meet client expectations"; "interfacing with offshore to ensure quality and timely deliveries"; and "working with the client on new opportunities/assignments which contribute to the growth of the account." The petitioner did not, however, define the beneficiary's goals and policies, or clarify the role of the subordinates that the beneficiary will supervise. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *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 job description also includes several non-qualifying duties such as the beneficiary will be responsible for "increasing revenues from existing accounts through Client Management, Manage relationship with SAP"; "managing the customer relationship at senior management levels"; "customer creation for new products offerings and take case specific profitability decision"; and "develop and manage key accounts and orchestrate post-sales professional services." In reviewing the brief job descriptions of the beneficiary's subordinates, it appears that the beneficiary is the only person that interacts with the customer and handles customer requests. Thus, it appears that some portions of the beneficiary's time will be devoted to non-managerial duties associated with developing and marketing the services of the business rather than directing such activities through subordinate employees. Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. The petitioner's description of the beneficiary's job duties does not establish what

proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

The petitioner submitted an organizational chart indicating that the beneficiary will supervise two project managers, eleven team leaders, four project leaders, one onsite coordinator, and one senior designer. In addition, the petitioner submitted with its response to the director's request for evidence a copy of the California Form DE-6, Quarterly Wage and Withholding Report, for the quarter ended March 31, 2006. As noted by the director, none of the individuals that will be supervised by the beneficiary are listed on the company's quarterly report. On appeal, the petitioner asserts that the beneficiary works in several states, including Pennsylvania and Maine, and thus it was erroneous to confirm the employment of the beneficiary's subordinates by reviewing California Form DE-6, Quarterly Wage and Withholding Report. However, the petitioner did not submit any documentation evidencing that these individuals are actually employed by the U.S. company. The petitioner did not provide any financial documents for the U.S. entity, which would show salaries, paid to the employees, tax forms, or financial statements. 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)).

On appeal, the petitioner asserts that the beneficiary is managing an "essential component with our clients and his duties include building and maintaining corporation relationships" and he is responsible for "strategizing with clients to determine staffing and operational needs." 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, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)). In this matter, the petitioner did not provide evidence that the beneficiary manages an essential function.

As discussed above, the totality of the record supports a conclusion that the beneficiary would be required to perform primarily non-qualifying duties associated with the petitioner's day-to-day functions, as the petitioner has not identified sufficient staff within the petitioner's organization, subordinate to the beneficiary, who would relieve the beneficiary from performing routine duties inherent to operating the development functions for the business. The fact that the beneficiary has been given a managerial job title and general oversight authority over the business is insufficient to elevate his position to that of a "function manager" as contemplated by the governing statute and regulations.

Based upon the lack of a comprehensive job description, the beneficiary's apparent performance of many non-managerial duties, and the lack of evidence of the company's staffing levels, it cannot be concluded that the beneficiary will be employed by the U.S. entity in a managerial or executive capacity. Therefore, the director's decision was appropriate based on the evidence submitted.

Furthermore, the petitioner states on appeal that the beneficiary has previously been granted L-1A classification. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). The prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Any appeal that is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

ORDER: The appeal is rejected.