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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**

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DATE: **NOV 09 2011**

Office: CALIFORNIA SERVICE CENTER

FILE:

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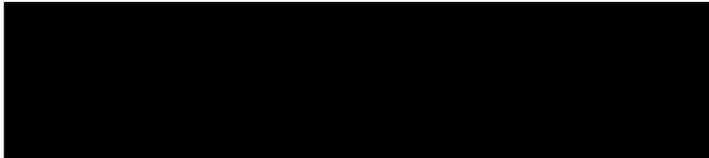
Petitioner:



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:

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,

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.

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, a Michigan corporation established in 2009, indicates that it is an affiliate of the beneficiary's last foreign employer, located in the Czech Republic. The petitioner's corporate group is engaged in the development, manufacture and wholesale of automotive parts. The beneficiary was previously granted L-1A classification authorizing employment with [REDACTED]. The petitioner indicates that its United States operations have been reorganized, resulting in the creation of a new U.S. entity which will serve as the beneficiary's employer under the amended petition. The petitioner seeks to employ the beneficiary in the newly-created position of Business Unit Manager – NAFTA, for a period of two 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 clearly demonstrates that the beneficiary will be employed in a managerial capacity in the United States based on his management of an essential function of the organization. Counsel further contends that the director erred by failing to consider that the beneficiary will be overseeing and managing an international team comprised of fifteen managers and professionals located in Germany, Mexico and the Czech Republic.

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.

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed by the United States entity in a managerial capacity. The petitioner does not claim that the beneficiary will be employed in an 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.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on September 22, 2009. The petitioner initially described the beneficiary's duties in a letter dated September 14, 2009, and subsequently, in a response to the director's request for evidence, supplemented the description in a letter dated October 26, 2009. The latter description delineated the beneficiary's responsibilities as follows:

1. Customer base development and management in NAFTA in respect to [company]
Group business strategy: 27%
2. Program Management: 27%

3. Supplier base development and management: 13%
4. Engineering Management: 25%
5. Cost Estimation Management: 3%
6. Local Market development and competitor monitoring: 5%

The job description was approximately two pages in length and identified a total of 25 specific duties the beneficiary would perform in relation to these responsibilities and assigned a percentage to each of them. For example, the petitioner indicated that the beneficiary's project management responsibilities would require him to manage an international team comprised of employees from the group's German, Czech Republic, Mexican and, eventually, U.S. operations through telephone conferences and web meetings. The petitioner stated that this responsibility would include assigning and controlling tasks and providing direction to the employees and making strategic decisions related to North American projects. The petitioner further stated that the beneficiary's engineering management responsibility would entail assigning and controlling of subordinate employees in product engineer, CAD engineering and process engineering, and holding signatory authority for the release of all internal and customer drawings, specifications and testing reports.

The petitioner also submitted a business plan for the newly re-organized U.S. operation, noting that the company is already working with its client, [REDACTED] as a Tier 2 supplier of actuators for use in the new [REDACTED] in North America.

In the request for evidence ("RFE") issued on September 28, 2009, the director requested information regarding the total number of employees working at the U.S. location, a detailed organizational chart for the U.S. company, evidence of wages paid to employees in the United States, and clarification as to why the petitioner requires an additional manager or executive.

In response, the petitioner clarified that the beneficiary is currently the sole employee of the U.S. company, which expects to hire five employees by 2012. The petitioner emphasized that the beneficiary supervises and controls the work of managerial and professional employees located in Germany, Czech Republic and Mexico, who directly support his function in the United States.

The petitioner provided a detailed explanation as to why the beneficiary was chosen to launch the petitioner's reorganized business unit and new actuator product line in the United States. In addition, the petitioner explained that the beneficiary has been largely responsible for the corporate group's award of the actuator project for the [REDACTED] in North America, which is projected to bring annual sales of \$3.5 million annually. The petitioner emphasized that the beneficiary will manage the company's relationship with [REDACTED] North American operations, and will manage a supplier base for the new actuator product line, which will be adapted from technologies currently manufactured for use in Europe.

The petitioner further described the beneficiary's project management responsibilities as follows:

Based on the customer input, [the beneficiary] will assign tasks to the international NAFTA team. He will manage all project activities and control the team. [The beneficiary] will give the team direction about how to approach individual tasks and make strategic decisions about projects driven by customers in North America. He will also assign tasks to [company] suppliers in North America and make strategic decisions about sourcing suppliers in North

America. Moreover, he will manage the actuator project activities on the supplier level. Based on his experience, he will be able to make decisions about new employees in North America who best fit the team to support current and future projects. [The beneficiary] will be responsible for everything [the company] presents at North American actuator customers. He will also handle engineering and commercial issues at a senior level with both the customer base and supplier base. He will make final decisions on engineering approval for the customer and the internal team.

The petitioner submitted an organizational chart depicting the foreign employees who will be responsible for supporting the NAFTA Business Unit in the United States. The Germany-based employees include a manager of pneumatic actuator development, the head of testing/prototyping, product and process engineers, a testing engineer, and a manager of assembly planning. The Czech Republic-based employees include the head of development for electrical components, the head of pneumatic actuator development, and product/CAD mechanical engineers. Finally, the Mexican employees include a sales/engineering manager, a purchasing employee, a process engineer, a product engineer, and a quality engineer.

The director denied the petition on October 29, 2009, 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 petitioner found that the beneficiary's job description "is more indicative on an employee who is performing the necessary tasks to provide a service or to produce a product," rather than one who is primarily engaged in managerial or executive duties. The director further emphasized that the beneficiary is the sole employee of the U.S. company, and observed that "employees with the foreign entity that are claimed to be managed by the beneficiary while rendering his or her services in the United States cannot be considered for purposes of qualifying in a managerial or executive capacity." Finally, the director determined that the beneficiary does not qualify as a function manager, as he does not have subordinate employees in the United States to carry out the day-to-day activities of the function he is claimed to manage.

On appeal, counsel for the petitioner asserts that, contrary to the director's findings, the petitioner demonstrated that the beneficiary will be performing duties that are primarily managerial and therefore will be managing an essential function or component of the organization. Counsel emphasizes that the petitioner provided a lengthy and detailed description of the beneficiary's duties, noting that the specific duties deemed by the director to be non-managerial represent a very small percentage of the beneficiary's overall responsibilities. Counsel contends that the beneficiary will spend more than 50 percent of his time on engineering management and program management alone, and that such duties are in fact typically considered to be managerial in nature. Finally, with respect to the beneficiary's oversight of foreign employees, counsel asserts that the director erred by excluding from consideration the functions they perform in support of the U.S. company's business activities.

Upon review of the totality of the record, the petitioner has established that the beneficiary will be employed in a managerial capacity.

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, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. 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).

Within the context of the facts presented in this petition, the petitioner has met its burden to establish that the beneficiary "manages the organization, or a department, subdivision, function, or component of the organization," as required by section 101(a)(44)(A)(i) of the Act. The petitioner has described in detail the purpose and function of the beneficiary's position in the petitioner's newly re-organized U.S. operations, and the need for a management-level employee in the United States. The petitioner explains that it will maintain close ties to its foreign parent company and affiliates, and is part of multinational organization with 2,800 employees and sales of 412 million euros. The petitioner has also clarified that the U.S. subsidiary is a key component of the multinational organization charged with program management over the design and delivery of modified components suitable for the North American automobile market. While the petitioner is newly incorporated, the record establishes that the petitioner's group already has at least one major multimillion dollar project underway in the United States which reasonably requires the local presence of an experienced manager.

In addition, the petitioner has established that the beneficiary will exercise discretion over the day-to-day operations of the activity or function for which he has authority, as required by section 101(a)(44)(A)(iv) of the Act. USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. In the case of a function manager, where no subordinates are directly supervised, these other factors may include the beneficiary's position within the organizational hierarchy, the depth of the petitioner's organizational structure, the scope of the beneficiary's authority and its impact on the petitioner's operations, the indirect supervision of employees within the scope of the function managed, and the value of the budgets, products, or services that the beneficiary manages.

Here, the petitioner has established that its products are developed, engineered and manufactured by its foreign operations. While the beneficiary may not be considered a personnel manager based on his oversight of the foreign employees, the petitioner persuasively asserts that the beneficiary will devote approximately half of his time to program and engineering management issues, and that he will have the authority to review and approve the work of foreign engineers and other specialists within the scope of managing the delivery of custom-manufactured components for the petitioner's client, [REDACTED] and [REDACTED], for ultimate use by a major U.S. automaker.

Here, the director concluded that the beneficiary must be engaged in the operational tasks of the company due to the fact that the beneficiary is the sole U.S. based employee. The evidence establishes, however, that the petitioner works closely with other companies within its corporate group and has available to it resources beyond the staff of the U.S. office. The petitioner's parent company has explained its reasonable need to place a *bona fide* manager in charge of the newly reorganized U.S. company to oversee its growth and U.S.-based projects being developed for its long-time customers. The scope of the U.S. operation at present is not large, and, given the complex and highly technical nature of the petitioner's products, its existing customer relationships, and its close ties to its foreign parent and affiliate, it does not appear to require the presence of

lower-echelon employees to relieve the beneficiary from performing non-managerial tasks at this time. While the beneficiary will undoubtedly be required to apply his technical expertise in carrying out his job duties and perform some administrative tasks, the AAO is persuaded that the position is primarily managerial in nature. The petitioner need only establish that the beneficiary devotes more than half of his time to managerial duties.

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. For the foregoing reasons the decision of the director will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.