



U.S. Citizenship  
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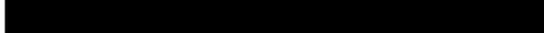


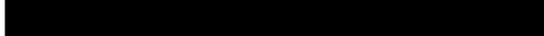
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DATE: **OCT 18 2011**

OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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:

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 petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner filed this nonimmigrant visa petition seeking to classify the beneficiary as an L-1A 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 [REDACTED]-based manufacturer and distributor of electronic parts, claims to be an affiliate of the beneficiary's foreign employer, [REDACTED], located in the [REDACTED]. The petitioner seeks to employ the beneficiary in the position of [REDACTED] for a period of three years.

The director denied the petition on April 10, 2009, 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 petitioner filed Form I-290B on February 18, 2009.

The petitioner was established in 2009, with eight employees and a gross annual income of \$5.98 million. The organizational chart indicated that the company is headed by the Secretary, CEO and CFO. The Vice President of Purchasing, the position offered to the beneficiary, is directly under the Chief Operating Officer and at the same level as the marketing manager. The [REDACTED] will supervise the [REDACTED] who supervises the Buyer. The organizational chart includes two vacant positions, the assistant buyer and the clerk, that will be supervised by the vice president of purchasing once the positions are filled. The petitioner provided a description of the duties to be performed by the vice president of purchasing and the responsibilities of the quality assurance coordinator, the buyer and the warehouse manager. On appeal, counsel contends that the beneficiary supervises professional employees who relieve the beneficiary from performing non-qualifying duties. Counsel submits a brief and documentation in support of the appeal.

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.

The regulation at 8 C.F.R. § 214.2(l)(3) further 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 issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily 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), provides:

The term "executive capacity" means 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.

*Upon review of the record, the AAO withdraws the director's decision and sustains the appeal. The Form I-129 indicates that the beneficiary will be employed in the position of Vice President of Purchasing for three years. The petitioner provided a description of the job duties for the proffered position and further clarified the beneficiary's proposed duties in the United States when responding to the request for evidence and in its brief on appeal. According to the documentation, it appears that the beneficiary is supervising professional employees who will relieve her from performing non-qualifying 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, that burden has been met. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.