

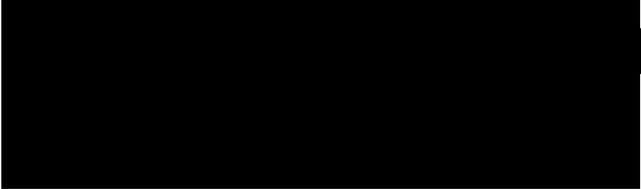
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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DATE: FEB 08 2012

Office: CALIFORNIA SERVICE CENTER

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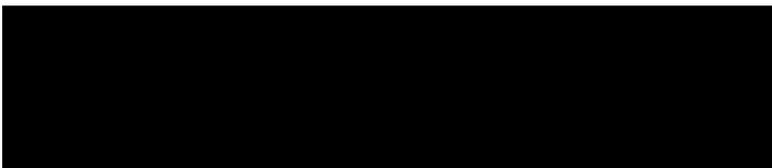
Petitioner:

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 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 limited partnership under the laws of the State of Maryland in 2004, and is a business information technology consulting firm. It claims to be an affiliate of Tata Consultancy Services Limited in Mumbai, India. The petitioner is seeking L-1A status for the beneficiary as Business Development Manager for an additional 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 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 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'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 "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Intn'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 5, 2009. The petitioner established that it is a member of a group of affiliated companies that provides product development and consulting services in all aspects of systems and software engineering to companies throughout the world.

Specifically, the petitioner is a subsidiary of [REDACTED]. The [REDACTED] has approximately 160 offices operating in more than 30 countries and development centers in 10 countries. Annual revenues for TCSL in the fiscal year prior to filing exceeded \$6 billion.

The petitioner stated the beneficiary will be working as a Business Development Manager for its client, AT&T, in Bothell, Washington. The beneficiary held this position since July of 2008. The beneficiary will be responsible for “managing and coordinating the engagement that [the petitioner] has with AT&T through four of these different projects: Enterprise Environment Management, Network Information Systems, Enterprise Data Warehousing, and Application Development and Testing.” The project is valued at \$800,000. The petitioner provided a lengthy explanation of the beneficiary’s duties in a letter dated September 29, 2009. In part, the petitioner described the proposed managerial position in the United States as follows:

[The beneficiary] will manage the overall delivery between TCSL and AT&T and will be responsible for setting, reviewing, and managing client expectations. He will ensure that the service level agreements are adhered to, and will work with the client in order to develop a required staffing plan.

[The beneficiary] will be responsible for interacting with AT&T Management, including IT Directors and IT Managers, in order to discuss the overall strategy, current projects, and future requirements/projects and to study the entire application management process, procedures, and identify areas for improvement, including best practices and implementation. . . . He will monitor the overall program plans and ensure that all of the development projects are completed on time. . . .

The petitioner stated that the beneficiary will be responsible for supervising a team of four onsite managerial employees, who will each in turn be responsible for supervising three professional employees. The petitioner stated that the beneficiary is responsible “for making critical personnel decisions such as estimating the number of resources and skill set levels required to bring the project to fruition.” Furthermore, the beneficiary will make “decisions to promote subordinates to the suitable position or role which will benefit both the employee and the project.” Specifically, the beneficiary has responsibility for approving leave and time off as well as conducting the employee performance evaluations on a six month basis. Finally, the beneficiary will make recommendations regarding salary increases, promotions, or removal from the projects if necessary.

The petitioner described the beneficiary’s decision making authority as follows:

[The beneficiary] will be required to exercise discretion over the day-to-day operations of the project under his discretion. He will be responsible for developing the project plan and timeline and for defining the scope of the project by reviewing and approving the requirements provided by his subordinate team. He will delegate work among members of the team based upon their workload and the nature of the requests and will set a deadline for each task. He will be responsible for sequencing project events based on the availability of resources and the priorities defined through discussions with the client.

The petitioner submitted an organizational chart for the project in the United States, details on the beneficiary's subordinates, and an annual report. The organization chart showed the beneficiary reporting to the Business Relationship Manager. Reporting to the beneficiary were three project managers and one project leader. In turn, each of the project managers and the project leaders supervised three subordinates. The subordinates held various titles including project leader, developer, tester, lead analyst, and technical architect.

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. Three of the subordinates are listed as Project Managers and one as a Project Leader. The petitioner described both the Project Manager's and Project Leader's job duties to include: reviewing business and functional requirements to scope projects; planning, coordinating, and managing projects; tracking status of projects, risk mitigation, and resource planning for each project; assigning work to project team members and participating in strategy and periodic business meetings; appraising performance of subordinates and recommending pay increases, promotions, and hiring required for each project. The beneficiary is also responsible for supervising one offshore Project Manager with the same duties as those listed above.

The director issued a request for additional evidence ("RFE") on October 26, 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 percentage of time spent on each of the listed duties; (2) copies of work product of the beneficiary; and (3) evidence of the number of hours the beneficiary supervised the employees for the last six months and college transcripts for each employee supervised.

In response, the petitioner submitted a letter 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:

In his Business Development Manager role, the Beneficiary facilitates the execution of any NIS project being performed as part of the AT&T IT support program. He holds overall responsibility for managing the group within budget, determining and controlling the resource requirements, supervising the allocation of tasks to his project team, and coordinating between the client and senior-level TCSL management.

The petitioner provided a multi-page detailed explanation of the beneficiary's job duties as Business Development Manager. The petitioner further explains with respect to the beneficiary's managerial decision making authority that:

As Business Development Manager, the Beneficiary has discretionary authority over critical program resources and personnel matters, which enables him to ensure the successful completion of each NIS engagement. For example, he possess managerial responsibility for determining, planning, and reviewing project resource requirements based on each NIS project's projected activities. He also coordinates with AT&T's management team to determine and identify TCSL resources for allocation to the AT&T Program. The allocation or hiring or any managerial professionals to an NIS project requires the beneficiary's approval.

The petitioner also submitted a list of eleven job duties with percentage breakdown of each duty, with each duty further broken down into sub-duties. The duties of the beneficiary were listed generally as follows: interact with AT&T management; monitor program plans and lead the preparation of project documents; provide strategic and tactical direction for the project; track and mitigate risks; appraise the performance of subordinates; and review the status of all account projects.

The petitioner included evidence of the beneficiary's managerial duties including the beneficiary's monitoring chart showing in progress tasks for each project, the subordinate, the assign date, and the completion date. Also included are e-mails to and from the beneficiary and AT&T's management team to determine the scope of proposed enhancement activities.

The petitioner provided evidence with respect to the management of the beneficiary's subordinates. Included in the response were e-mails from the beneficiary regarding recommendations and approvals on subordinate promotions; subordinate performance appraisals; and implementation and coordination of training programs. The petitioner included the bachelor's or master's degrees for each of the direct subordinates as well as degree certificates for the beneficiary's indirect subordinates. The petitioner submitted additional evidence that the TCSL employees are serving in a managerial capacity by providing detailed descriptions of the subordinates' job duties with percentage breakdown of time spent in each of the listed duties.

The director denied the petition on December 15, 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 director determined that the beneficiary does not function at a high level within the organization as the beneficiary appears to be two levels above the lowest level employee. The director found that the beneficiary's duties are primarily to perform the day-to-day work to "ensure that the projects for which the beneficiary is responsible are performing correctly."

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 and "because the Service failed to fully consider the facts in evidence when making the determination." Specifically, counsel states that the denial "incorrectly relies on a comparison between the size of TCSL's overall global organization and the Beneficiary's sixteen-member project team to conclude that he does not meet the statutory definition of managerial capacity." Counsel states 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 four-part definition of managerial capacity under 8 U.S.C. § 1101(a)(44)(A). Specifically, counsel states that the petitioner's response to the request for evidence demonstrates how the beneficiary's position meets each of the four criteria. Finally, counsel asserts that the "Service erroneously concludes that the Beneficiary's job duties are primarily to perform the day-to-day services we are providing to our client." Counsel explains that "through its finding that project planning, resource management, and operational management are not managerial duties as defined by the regulations 'the Service has adopted such a narrow interpretation of this primary purpose' test that only a manager at the most senior organizational level could satisfy."

### 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 project managers or program managers for IT workers 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 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.

Furthermore, the AAO does not agree with the director that "given the number of employees the petitioner employs, the beneficiary cannot possibly function at a high level within the organization when the beneficiary only controls sixteen employees." The record indicates that the client account for which the beneficiary is responsible generates significant revenue, and the beneficiary manages four major projects assigned to the account. Sec. 101(a)(44)(C) of the Act. The petitioner established a reasonable need for a managerial level employee to manage projects delivered to this account. In addition, the beneficiary does not directly oversee such projects, but rather oversees subordinate project managers, who, in turn, supervise the technical resources. Finally, the AAO is satisfied that the beneficiary exercises discretion over the day-to-day operations of the projects under his responsibility, 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 project managers and technical 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 December 15, 2009 is withdrawn.

**ORDER:** The appeal is sustained.