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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**

D7

DATE: JUL 27 2012

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,

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 approval of the beneficiary's employment as a 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 Delaware corporation, states that it manufactures [REDACTED] brand brass plumbing fixtures and other home improvement products. It claims to be an affiliate of [REDACTED], located in Shenzhen, China. The petitioner has employed the beneficiary in L-1A status since March of 2007, and now seeks to extend the beneficiary's stay for an additional two years in L-1A status so that she may continue to serve in the position of Fittings Product Development Manager.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary will 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 for review. On appeal, counsel for the petitioner asserts that the director misapplied applicable law and came to erroneous conclusions of fact in the denial. Counsel submits a brief and additional evidence in support of the appeal.

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 three years preceding the beneficiary's application for admission into the United States. In addition, 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) 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 in the United States in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as 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 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). 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).

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. *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'r 1988)).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on November 20, 2009. The petitioner indicated on the Form I-129 that it manufactures [REDACTED] brand brass plumbing fixtures and other home improvement products with 62 employees and gross annual income of \$102 Million. In a letter dated November 18, 2009, the petitioner stated that since approval of the initial petition, the beneficiary has worked as [REDACTED] and will continue to serve in this position upon approval of the extended petition. The petitioner stated that the beneficiary will "continue to be responsible for the new fitting product development, as well as day-to-day and life cycle management of fittings products." The petitioner further described the position as follows:

More specifically, [the beneficiary] will interact with a range of company, client, and industry contacts to determine key drivers for the Petitioner's product improvements and enhancement. Her responsibilities will include management of new project development activity, specifically driving initiatives from product concept to commercialization, which will include product enhancement and new project development, establishing a product vision for [REDACTED] branded products based on market trends and customer behavior, supporting and leading new product development efforts for [REDACTED] branded products, and management of the new product development process in conjunction with [REDACTED] and its affiliates in Taiwan and China.

The petitioner further details the beneficiary's duties with respect to coordinating cross-functional work associated with the product development process, proposing and implementing product modifications, market analysis, product promotion, training, field support, pricing, financial analysis, metrics, and industry relations.

The petitioner stated that the position of [REDACTED] qualifies as employment in a managerial capacity in that the beneficiary will manage an essential function within the organization, specifically "managing the entire product line, product development, product introduction, and market analysis for the [REDACTED] branded fittings product." The petitioner further stated that the beneficiary will function at a senior level within the organization and will report directly to the Director of Marketing. Furthermore, the beneficiary will exercise full discretion over the day-to-day operations of the function.

The petitioner submitted a copy of the company's organizational chart for the [REDACTED] division. The organizational chart shows the beneficiary reporting to the Director of Marketing. There are no subordinates reporting to the beneficiary.

The director issued a request for additional evidence ("RFE") on November 25, 2009 in which she instructed the petitioner to submit, *inter alia*, the following: (1) a copy of the United States company's organizational chart for each subdivision, as well as complete position descriptions for the United States entity's employees under the beneficiary's supervision and source of remuneration for all employees; (2) a more detailed description of the beneficiary's duties in the U.S. including whom the beneficiary directs and the percentage of time the beneficiary will spend on each of the listed duties; (3) copies of the U.S. company's payroll summary, W-2's and W-3's evidencing wages paid to employees; and (4) signed copies of the U.S. company's Federal income taxes for the years 2007 and 2008.

In a response dated December 28, 2009, the petitioner stated that the beneficiary is responsible for overseeing the "development and execution of the product strategy and roadmap and manages all product development and product management activities." The petitioner explained that the beneficiary managed a function in that "[r]evenues for this business unit solely managed by [the beneficiary] total approximately \$30 million in 2009. With the fittings product line sales accounting for nearly one-third of the Petitioner's total annual revenues, [the beneficiary] clearly manages an essential department of the company."

The petitioner stated that the beneficiary does not directly supervise any employees, but manages and coordinates the work of other employees, specifically 100-140 managers and professionals through all aspects of the product development life cycle. The employees include direct employees of the petitioner "such as its Director of Sales (Wholesale Division) and Regional Sales Managers, as well as employees of its affiliate, [REDACTED] who performs shared services for the Petitioner." Additionally, the beneficiary directs independent contractors procured by the petitioner.

The petitioner provided a detailed description of the beneficiary's responsibilities as [REDACTED] with respect to new product development and product launches. The petitioner then provided a specific breakdown of the beneficiary's duties as follows:

Responsibility for design and development of market-appropriate products. 60%

- Manage the sales management team (5-7 senior managers) and the field sales force (75-100 sales representatives) regarding the solicitation and collection of market information regarding specifications for proposed new products.
- Direct the engineering (16-20 professionals) and manufacturing departments (8-10 managers) to design, develop, test and manufacture products to their specifications.
- Manage the ongoing input from sales and marketing personnel regarding product forecasting.
- Coordinate with engineering to establish and monitor appropriate quality metrics.
- Continually direct the engineering department on product enhancements and improvements.

Develop a product line plan by working directly with senior management to develop a product strategy, roadmap, and timeline that support the company's strategic objectives 15%

Lead the launch/introduction of new products to the market. 15%

- Coordinate the development of collateral, sales tools and training programs with the company's internal marketing department personnel.
- Manage local external vendors (display manufacturer, printers, etc.) as necessary.

- Develop and conduct training and ongoing support for the internal customer service and technical service departments.
Manage Product Life Cycle 10%
- Direct finance and IT departments to generate the appropriate management reports for sales analysis.
- Recommend and ultimately implement appropriate product changes, improvements, enhancements, and deletions.

The petitioner provided a series of organizational charts depicting seven divisions of the petitioner. The beneficiary is located in the [REDACTED] division reporting to the Director of Marketing. The other divisions are listed as [REDACTED]

The director denied the petition on January 11, 2010, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive position under the extended petition. The director, applying the regulations for a new office extension, determined that the beneficiary would be "performing many aspects of the day-to-day operation of the business." Furthermore, the director found that the beneficiary's "marketing and production-oriented duties and vaguely defined responsibilities" preclude a classification of the beneficiary as a manager or executive. Finally, the director found that although the beneficiary's position was claimed to be a manager of a function, the record had not demonstrated that there are qualified employees to perform the function so that the beneficiary is relieved from performing non-qualifying duties.

On appeal, counsel asserts that the director misapplied the new office extension provisions as the petitioner has been in business since 1932. Furthermore, counsel states that the beneficiary will manage an essential function. Counsel stated that in response to the request for evidence a detailed description of the position consistent with a managerial position was provided, including the percentage of time spent on managerial duties. According to counsel, these duties demonstrate that the beneficiary will spend 100% of her time devoted to "managing, directing, and coordinating various teams and products in support of the Petitioner's Fittings Product Line." Finally, counsel contends that the marketing tasks performed by the beneficiary are in relation to key managerial duties and not the performance of tasks necessary to provide a service or produce a product.

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. Upon review, counsel's assertions are persuasive. The petitioner has submitted sufficient evidence to establish that the beneficiary will more likely than not be employed in a primarily managerial capacity.

As a preliminary matter, the AAO concurs with counsel that the director misapplied the new office extension regulations. The regulation at 8 C.F.R. § 214.2(l)(14)(ii) provides strict evidentiary requirements that the petitioner must satisfy prior to the approval of a petition to extend a new office. Here, the petitioner has provided sufficient evidence to demonstrate that it has been in business for more than a one-year period. Furthermore, the petitioner provided evidence to show that the previous petition for the beneficiary was not approved as a new office. Therefore, the new office extension regulations do not apply in this case. The director's decision to deny the petition on this basis is withdrawn.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). Contrary to the director's observations, the petitioner has provided a comprehensive description of the beneficiary's duties sufficient to establish that her duties are primarily related to the management of the petitioner's sales and marketing function, and not to producing a product, providing a service, or performing other non-managerial functions. The submitted evidence also establishes that the beneficiary controls the work of subordinate supervisory employees and exercises authority to hire and fire employees under her supervision. *See* sections 101(a)(44)(A)(ii) and (iii) of the Act.

The AAO agrees with the petitioner's assertion that the beneficiary's overall management of the fittings product development unit, within the context of the petitioner's business organization, can be equated to managing a subdivision, function, or component of the organization. *See* section 101(a)(44)(A)(i) of the Act. Further, the beneficiary does not directly perform the routine sales and marketing functions carried out by the petitioner. Finally, the AAO is satisfied that the beneficiary exercises discretion over the day-to-day operations of the fitting product development unit, as required by section 101(a)(44)(A)(iv) of the Act.

In finding that the proffered position is not managerial in nature, the director did not consider the petitioner's other professional staff. The petitioner submitted sufficient documentary evidence to establish the existence of other managers and professionals on the petitioner's staff. These employees, while not directly supervised by the beneficiary, are under the beneficiary's direction to execute job duties related to the fittings product development unit under the beneficiary's management. The personnel under the beneficiary's direction include the sales management team and field sales force, the engineering department, and the manufacturing department. Accordingly, the AAO concludes that the position offered to the beneficiary in relation to the fittings product development unit is in a qualifying managerial capacity.

The AAO disagrees with the director's conclusion that the beneficiary's job duties – specifically those related to marketing – are inherently operational and not managerial or executive in nature. Contrary to the director's conclusion, the beneficiary's marketing duties will not automatically disqualify her as a manager or executive under the statutory definitions. Rather, further analysis is required to determine if the specific marketing duties performed by the beneficiary qualify as executive or managerial under the Act.

The Department of Labor's Occupational Outlook Handbook (OOH), 2010-11 Edition, lists two positions related to marketing. The first is "marketing managers" and the second is "market and survey researchers." According to the OOH, a "market and survey researcher" gathers "information about what people think." They are responsible for "[g]athering statistical data on competitors and examining price, sales, and methods of marketing and distribution, they analyze data on past sales to predict future sales." They also "devise methods and procedures for obtaining the data they need by designing surveys to assess consumer preferences." The position usually requires a bachelor's degree, but a master's degree is usually required for "more technical positions."

By contrast, a marketing manager's duties are described as follows:

With the help of lower level managers, including *product development managers* and *market research managers*, marketing managers estimate the demand for products and services offered by the firm and its competitors and identify potential markets for the firm's products. Marketing managers also develop pricing strategies to help firms maximize profits and

market share while ensuring that the firm's customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and they oversee product development.

Marketing manager positions usually require either a bachelor's or master's degree in business administration with an emphasis on marketing. The positions are usually filled through promotions of experienced staff or related professional personnel.

Contrary to the director's assertions, the AAO finds that the marketing duties associated with the position of "marketing manager" may be considered managerial or executive in nature, if the claim is supported by the record of proceeding. The duties associated with a "market and survey researcher," however, are tasks necessary to produce a product or service and do not qualify as managerial or executive duties. *See Boyang Ltd. v. INS*, 67 F.3d 305 (9th Cir. 1995) (unpublished) (citing to *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988) and finding an employee who primarily performs operational tasks is not a managerial or executive employee).

The beneficiary's marketing duties primarily relate to those of a "marketing manager" with relation to her management of the petitioner's fittings product development unit. The petitioner states that the beneficiary will spend 60% of her time performing duties related to the responsibility "for design and development of market-appropriate products." This duty includes such tasks as "managing input from sales and marketing personnel regarding product forecasting," as well as managing the sales team regarding "the solicitation and collection of market information regarding specifications for proposed new products." The beneficiary will also spend 15% of her time leading the launch and introduction of new products to the market. This includes "coordinating the development of collateral, sales, tools, and training programs" with the company's marketing department as well as "managing local external vendors" as necessary.

While the beneficiary will undoubtedly be required to apply her product expertise and perform some higher-level sales, marketing, and administrative tasks, the AAO is persuaded that the majority of the day-to-day, non-managerial tasks required to operate the business are carried out by the employees under the beneficiary's direction. The branch office is of a sufficient size to have other professional and managerial staff under the beneficiary's direction.

The petitioner has established that the beneficiary primarily manages an essential function of the petitioning organization. Given the overall purpose and stage of development of the organization, the petitioner established a reasonable need for a Fittings Product Development Manager.

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 met that burden.

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