

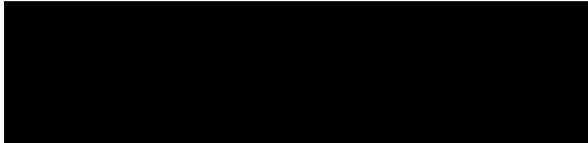
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
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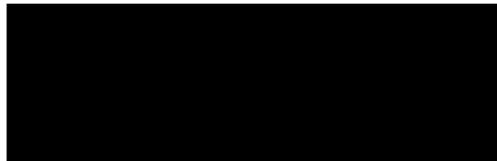
IN RE:

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 withdraw the director's decision and 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 Delaware limited liability company established in 2002, states that it provides services related to real estate development and achieved gross annual income of \$210 million. It claims to be a subsidiary of [REDACTED] located in Seoul, Korea. The petitioner seeks to employ the beneficiary in the position of General Manager for a period of three years.

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 emphasizes that the beneficiary is coming to the United States to fill a position currently held by an employee who holds L-1A status, and that USCIS has approved a total of five petitions involving the same position. Counsel contends that the director's decision contains multiple erroneous conclusions of fact and ignores critical evidence which demonstrates that the beneficiary will be relieved from performing non-managerial duties.

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 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.

II. The Issue on Appeal

The director addressed the issue of whether the beneficiary would be employed in the United States in a primarily managerial or executive capacity. The AAO notes that the petitioner has consistently indicated that the beneficiary will be employed in a managerial 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.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on December 17, 2009. In a letter dated November 24, 2009, the petitioner explained that the U.S. company "was established to provide continuous services to facilitate investment and real estate development projects in the U.S. by [the foreign entity]." The petitioner indicated that it has multiple ongoing projects in Chicago and Hawaii and plans to commence a new condominium construction project in Chicago in the next year. The petitioner stated that it enjoys gross annual income of \$210.4 million and net annual income of \$65.5 million.

The petitioner indicated that the beneficiary, as general manager, will be responsible for managing the financial, sales and marketing aspects of the company's Chicago-based real estate projects, as well as financial

matters for all group companies located in the United States. The petitioner went on to list 13 duties the beneficiary will perform within the scope of these responsibilities.

The director issued a request for additional evidence ("RFE") on February 10, 2010, and instructed the petitioner to provide additional evidence related to the beneficiary's duties, the number of employees working for the U.S. company, and the structure of the company.

In response, the petitioner provided an expanded description of the beneficiary's duties and indicated the amount of time he would allocate to each of the 19 listed duties. The petitioner also provided a detailed affidavit from the U.S. company's current general manager, [REDACTED] an L-1A visa holder who was scheduled to return to the Korean parent company upon the beneficiary's transfer to the United States. [REDACTED] indicated that the position of general manager for the petitioning company "bears the primary responsibility of coordinating our outside service providers" involved in its ongoing real estate construction projects, particularly a "large and complex" project in Chicago known as the [REDACTED]. He provided a list of the contractors, partners and outside service providers including providers of legal services, accounting services, professional appraisal and research services, architects, construction contractors, and the petitioner's investment partner. [REDACTED] noted that the petitioner's parent company has invested over \$43 million in its U.S. projects.

The petitioner indicated that, in addition to [REDACTED] whose position the beneficiary would fill, it employs an L-1A visa holder in a similar role to oversee its Hawaiian projects, as well as a project manager.

The director denied the petition on March 4, 2010, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The director's decision discussed at length the petitioner's failure to establish that the beneficiary will supervise professional employees, and whether the contractors and outside service providers work for the petitioning company on a full-time basis. The director concluded that the beneficiary "will be performing many aspects of the day-to-day operations of the business."

On appeal, counsel for the petitioner emphasizes that the petitioner's group invests in multimillion dollar real estate projects that create jobs for professionals such as accountants, real estate brokers, administrative service providers, attorneys, architects, appraisers and others involved in the projects, as well as construction workers. Counsel further explains the relationship between the general manager position and the outside service providers, noting that the manager provides the service providers with instructions, and there is no ongoing supervision of them on a day-to-day basis. Further, counsel emphasizes that the beneficiary will supervise the petitioner's project manager and another L-1A manager, neither of which could be considered "non-professional" personnel.

Counsel concludes by noting that the petitioner is "a sophisticated international real estate development firm" engaged in multimillion dollar architectural and infrastructure projects." As such, counsel contends that the director clearly erred in concluding that the beneficiary would be engaged in performing the services of the company. Counsel states that the beneficiary "manages all of the vendors and business aspects of the projects . . . so that design and construction can proceed."

Upon review, the AAO will withdraw the director's decision and sustain the appeal. 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). Here, the petitioner provided a lengthy breakdown of the beneficiary's duties and indicated the amount of time the beneficiary would allocate to each tasks. While the AAO does not agree with the petitioner's statement that 100 percent of the beneficiary's time would be devoted to qualifying tasks, the amount of time the beneficiary will spend on duties that may not be managerial, such as conducting research and analysis of financial, cost and marketing data accounts for significantly less than half of the beneficiary's time.

Beyond the required description of the job duties, 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 presence of other employees or contractors 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. Where few subordinates are directly supervised, these other factors may include the beneficiary's position within the organizational hierarchy, the scope of the beneficiary's authority and its impact on the petitioner's operations, the indirect supervision of employees or contractors within the scope of the function or component he manages, and the value of the budgets, products, or services that the beneficiary manages.

Although the director based her decision partially on the size of the enterprise and the number of staff, the director did not take into consideration the reasonable needs of the enterprise. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. The AAO concurs with counsel that real estate activities involving tens of millions of dollars in investments reasonably require the presence of local managerial staff in the United States to coordinate activities among the many local contractors, service providers and professionals who contribute to the project. The beneficiary's duties must be considered in this context. The beneficiary's oversight and overall management of real estate projects as one of the foreign entity's representatives in the United States, within the context of the facts presented in this matter, can be equated to managing a subdivision, function or component of the organization. *See* section 101(a)(44)(A)(i) of the Act.

While the beneficiary will undoubtedly be required to apply his expertise in the petitioner's field in carrying out his job duties and perform some administrative and analytical tasks, the AAO is persuaded that the vast majority of the day-to-day non-managerial tasks associated with the real estate development activities are performed by outside service providers. The petitioner need only establish that the beneficiary devotes more than half of his time to managerial duties. The petitioner has met that burden and the petition is approved.

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 March 4, 2010 is withdrawn.

ORDER: The appeal is sustained.