



U.S. Citizenship
and Immigration
Services

D7

[REDACTED]

DATE: NOV 06 2012

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

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:

[REDACTED]

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 petitioner has appealed the denial of a 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 Director, California Service Center, denied the visa petition on July 13, 2011, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial capacity. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal and approve the petition.

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 evidentiary requirements for this classification are set forth at 8 C.F.R. § 214.2(1)(3).

The petitioner, a Delaware corporation established in 1991, engages in the semiconductor business. It claims to be the parent company of [REDACTED] located in Japan. The petitioner seeks to extend the beneficiary's employment as its Senior Sales Manager for an additional two years.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has established that the beneficiary has been, and will continue to be, employed in a primarily managerial capacity as defined at section 101(a)(44)(A) of the Act.

The director denied the petition on July 13, 2011, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial capacity as a function manager under the extended petition. In denying the petition, the director determined that the beneficiary's duties are "more indicative of an employee who is performing the necessary tasks to provide a service or to produce a product." The director further determined that that the beneficiary "is involved in the performance of routine operational activities of the entity rather than in the management of a function of that business," and therefore the beneficiary cannot be deemed a functional manager. Finally, the director observed that the beneficiary does not directly supervise any employees.

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, in that he manages a subdivision, function or component of the organization; supervises and controls the work of supervisory personnel and manages an essential function within the organization; has the authority to hire and fire personnel; and exercises discretion over the day-to-day operations of the activity or function for which he has authority. Counsel asserts that the director made erroneous conclusions of law regarding what constitutes managerial duties. Counsel further asserts that the director made erroneous conclusions of fact by mischaracterizing the beneficiary's job duties as "routine operational activities."

Specifically, counsel emphasizes that the beneficiary manages the one of petitioner's major accounts, the [REDACTED] Global Account, valued at \$32.9 million in 2011 and representing one-third of the petitioner's annual revenue. Counsel asserts that the beneficiary is the critical link in managing the sales function between the petitioner and [REDACTED] of [REDACTED], which is one of the petitioner's key clients. Counsel asserts that the beneficiary manages team members assigned to the petitioner's entire [REDACTED] Account Team, which includes U.S. employees assigned to the account, Japanese employees of [REDACTED] assigned to complete the engineering duties, as well as an external vendor. Counsel asserts that the beneficiary manages the corporate relationship between the petitioner and [REDACTED] in Japan, including responsibility for channeling all communications between the companies, even at the top executive level.

Upon review, counsel's assertions are persuasive. The AAO finds sufficient evidence to establish that the beneficiary will be employed in a primarily managerial capacity. Contrary to the director's observations, the petitioner has provided sufficient evidence to establish that the beneficiary's duties are primarily related to the management of an essential function, i.e., the management of one of the petitioner's major accounts, in accordance with section 101(a)(44)(A)(ii) of the Act. The petitioner has established that the beneficiary is not primarily engaged in producing a product, providing a service, or performing other non-managerial duties.

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. In the case of a function manager, USCIS will consider 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 it has a sufficiently complex organizational structure to support the beneficiary in a primarily managerial position. The petitioner's [REDACTED], managed and coordinated by the beneficiary, includes a [REDACTED] Account Team, a [REDACTED] Account Team, and various divisions and/or employees within [REDACTED] responsible for field applications engineering, distribution, purchasing, and strategic sourcing. The petitioner provided a list of several employees, including their names, titles, educational degrees, and salaries, who either report to the beneficiary or whose work is subject to the beneficiary's discretion with respect to the [REDACTED] Account. The U.S. employees include the CEO, the Vice President of Mobile Wireless Solutions, the Vice President of Product Development (Research & Development); the Vice President of Quality, the Vice President of Operations, the Director of Quality, the Director of Sales Operations, the Chief Marketing Officer, and the Director of Product Engineering. The [REDACTED] employees include the Vice President of Global Business Development, the Field Application Engineer who provides local technical support to [REDACTED], and a Customer Service representative who is responsible for administrative tasks in Japan. The AAO is persuaded that the beneficiary does not directly perform the routine functions carried out by the petitioner.

Furthermore, the AAO concurs with the petitioner's assertion that the beneficiary's management of a major business account valued at \$32.9 million can be equated to managing a subdivision, function or component of

the organization. *See* section 101(a)(44)(A)(i) of the Act. The petitioner provided evidence that the beneficiary performs at a senior level within the organizational hierarchy with respect to the function managed. *See* section 101(a)(44)(A)(iii) of the Act. Finally, the record establishes that the beneficiary exercises discretion over the day-to-day operations of the function, as required by section 101(a)(44)(A)(iv) of the Act.

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 July 13, 2011 is withdrawn.

ORDER: The appeal is sustained.