

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

07

[REDACTED]

DATE: NOV 08 2012 Office: CALIFORNIA SERVICE CENTER FILE: WAC 11 200 51228

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:

[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 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, a California corporation established in July 2009, states that it operates as a distributor and wholesaler of monitors, televisions, and related products. The petitioner claims to be an affiliate of [REDACTED]. The petitioner seeks to employ the beneficiary as its operation manager for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has been or will be employed primarily in a qualifying 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 erred in evaluating the petitioner's description of the beneficiary's proposed job duties and supporting evidence as such evidence amply establishes that the beneficiary will be employed in a managerial capacity. Counsel submits a brief in support of the appeal.

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.

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.

II. THE ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed primarily in a qualifying managerial or executive capacity. The petitioner has consistently claimed that the beneficiary will be employed in a managerial capacity in her role as operation manager of the petitioning company.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on July 20, 2011. The petitioner indicated on the Form I-129 that it engages in the distribution and wholesale of monitors, televisions, etc. with 19 current employees and a gross annual income of \$101,246 (for 2009). In support of the petition, the

petitioner submitted a letter that included a lengthy description of the beneficiary's duties, and indicated that the beneficiary's duties would be primarily focused on oversight and management of the company's three operations divisions – logistics, sales support, and finance. The petitioner also provided a description of each of the division's responsibilities, clearly indicating that the subordinates in those divisions would carry out the actual tasks of producing a product or providing a service of the U.S. company.

The petitioner provided an organizational chart for the U.S. company illustrating that it employs the beneficiary as the operation manager supervising a logistics manager with six subordinates, a sales manager with four subordinates, and a finance manager with two subordinates. The petitioner also provided payroll records demonstrating that the employees listed on the organizational chart are in fact employed the petitioner.

The director issued a request for additional evidence ("RFE") on July 28, 2011, instructing the petitioner to submit, *inter alia*, the following: (1) a more detailed specific description of the beneficiary's duties in the United States, including the percentage of time required to perform the listed duties; (2) a copy of the U.S. company's organizational chart; and (3) a copy of the U.S. company's State Quarterly Wage Report, for the first quarter of 2011.

In response to the RFE, the petitioner provided an extensive breakdown of the beneficiary's duties associated with five specific areas of responsibility. The petitioner also provided detailed descriptions of the duties performed by the three operational departments managed by the beneficiary – Logistic Department, Supply Chain Department (previously referred to as Sales), and Finance Department. The petitioner submitted a new organizational chart illustrating the same hierarchy previously submitted. The petitioner also submitted copies of its California Form DE-6, Quarterly Wage and Withholding Report, for the first quarter of 2011 indicating that it had 21 employees and the second quarter of 2011 indicating that it had 23 employees.

The director denied the petition on August 30, 2011, concluding that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity. In denying the petition, the director found that petitioner provided a vague and non-specific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis. The director further found that based on the organizational structure provided, it appears that the beneficiary's position would be assisting with the day to day non-supervisory duties of the business. The director observed that the petitioner failed to submit a summary of duties for each of the beneficiary's subordinates as requested.

On appeal, counsel for the petitioner asserts that the beneficiary will be employed in a managerial capacity. Counsel contends that the director failed to properly review the documentation submitted in support of the petition. Counsel further contends that the petitioner submitted a comprehensive description of the beneficiary's duties that demonstrate its organizational hierarchy and the beneficiary's managerial role in the U.S. company. In addition, counsel asserts that the director relied on the petitioner's staffing levels as a factor in determining whether the beneficiary is acting in a managerial or executive capacity but failed to take into account the reasonable needs of the organization.

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.

The statutory definition of "managerial capacity" allows for both "personnel managers" and a "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). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

When examining the 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). The AAO finds sufficient evidence to establish that the beneficiary will be performing duties in the proposed position that are primarily managerial in nature. Contrary to the director's observations, the petitioner has provided a description of the beneficiary's proposed duties at the U.S. company sufficient to establish that her duties will be primarily related to the management of the petitioner's business, and not to production of a product, provision of a service, or performance other non-managerial functions. The evidence submitted establishes that the beneficiary will supervise and control the work of subordinate managerial or professional 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 director incorrectly stated that the petitioner failed to submit a summary of the beneficiary's subordinates' duties. In fact, the petitioner submitted multiple summaries of the duties for the beneficiary's subordinates at the time of filing the petition and in response to the RFE. The AAO is satisfied that the beneficiary manages a component of the organization, supervises and controls the work of other supervisory, professional, or managerial employees, has the authority to hire and fire said employees, and exercises discretion over the day-to-day operations of the "operations" component of the U.S. company as required by section 101(a)(44)(A)(iv) of the Act.

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. Here, the petitioner has established that, at a minimum, the beneficiary primarily manages a component of the corporation, in addition to directly overseeing managers/department heads and several employees in the United States. Given the overall purpose of the organization, the petitioner established a reasonable need for an operation manager at the U.S. company.

While the beneficiary will undoubtedly be required to apply her expertise to perform some higher-level business functions, the AAO is persuaded that the beneficiary's subordinates in the United States will carry out the majority of the day-to-day non-managerial tasks required to operate the business. The petitioner need only establish that the beneficiary devotes more than half of her time to managerial duties. The petitioner has met that burden.

III. CONCLUSION

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. Accordingly, the director's decision dated August 30, 2011 is withdrawn and the appeal will be sustained.

ORDER: The appeal is sustained.