

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

[REDACTED]

D7

DATE: NOV 16 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:
[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,


f Ron Rosenberg
Acting 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 The decision of the director will be withdrawn and the appeal will be sustained.

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's status 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 liability company under the laws of the State of Oregon in 2010, and operates a restaurant specializing in Japanese cuisine. It claims to be an affiliate of [REDACTED] located in Japan. The beneficiary was previously approved for one year in L-1A classification in order to open a new office in the United States and the petitioner now seeks to extend his status so that he may continue to serve in the position of Restaurant Manager.

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 director based his decision on erroneous conclusions of fact and law. Counsel submits a brief and additional evidence on 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 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.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

II. Discussion

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 filed the Form I-129, Petition for a Nonimmigrant Worker, on June 27, 2011. The petitioner established that it operates a Japanese cuisine restaurant with 28 employees and anticipated gross sales of \$1.165 million for 2011, its first full year in operation. The petitioner stated on the Form I-129 that the beneficiary will continue to be employed in the position of restaurant manager and be responsible for supervising and training chefs and departments managers to operate the restaurant according to the parent company's policies, procedures and recipes.

The petitioner provided an organizational chart for the restaurant. The organizational chart showed the beneficiary restaurant manager over three departments, including back office staff; hostess and cash intake; and food production and service staff. Reporting directly to the beneficiary was an Executive Chef/Assistant Manager who oversees two "special chef"/trainers. The chart indicates one of the special chefs supervises the sushi bar and liquor bar employees (nine in total), while the other special chef supervises three grill chefs, four kitchen chefs, and 10 additional staff responsible for food prep, clean up, and waiting tables.

The director issued a request for additional evidence ("RFE") on July 8, 2011. The director requested that the petitioner provide, *inter alia*: a comprehensive description of the beneficiary's duties and an organizational chart showing the staffing levels including title, duties, educational level, and salary for each of the beneficiary's subordinates.

The petitioner responded and provided a lengthy and detailed description of the beneficiary's duties including eight main categories each broken down into sub-duties. The petitioner indicated the percentage of the beneficiary's time to be allocated to each category of duties. The petitioner also provided the organizational chart submitted with the initial petition illustrating the three departments reporting to the beneficiary. The petitioner annotated the chart to include the names of each employee filling the listed positions. In addition to the chart, the petitioner attached a spreadsheet with the name, position, salary, and educational level for each of the beneficiary's subordinates. The petitioner also provided year-to-date payroll records confirming the names of all employees who were working for the company in 2011.

The director denied the petition on July 28, 2011, 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 managers under the beneficiary's supervision were not professionals, and therefore, the beneficiary was a first-line supervisor. Furthermore, the director found that the beneficiary's duties were non-qualifying and he would most likely be assisting with the day-to-day non-supervisory operations of the business.

On appeal, counsel states that the reasons underlying the director's determination were based on errors of law or fact. Specifically, counsel states that the record supports a finding that the beneficiary would be spending a majority of his time on managerial duties and that the beneficiary's subordinates would carry out the day-to-

day duties of the restaurant. Furthermore, counsel asserts that the director applied an improper standard by requiring a bachelor's degree or higher for supervisory employees. Counsel emphasizes that the petitioner does not need to establish that the beneficiary supervises professionals if the record shows that he oversees subordinate supervisors and performs primarily managerial duties.

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 under the extended petition. The director's determination appears to be based on erroneous conclusions of fact based on the record and misapplication of the law. In order to qualify as a manager, the beneficiary must oversee other supervisory employees, or, professional employees, or primarily manage an essential function of the organization. The beneficiary's subordinate supervisory employees need not hold professional-level positions in order for him to qualify as a manager. See section 101(a)(44)(A) of the Act.

The evidence of record establishes that the beneficiary supervises a multi-tiered management structure, exercises discretion over the day-to-day operations of the restaurant. Furthermore, the petitioner established that the petitioner's extended organization carries out the day-to-day restaurant operations, and that new office has grown to the point where the beneficiary is relieved from performing primarily non-qualifying duties. The evidence submitted establishes that the beneficiary supervises and controls the work of supervisory-level 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.

While the beneficiary will undoubtedly be required to 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 of the company are carried out by the beneficiary's subordinates. The petitioner need only establish that the beneficiary devotes more than half of his time to managerial duties.

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 28, 2011 is withdrawn.

ORDER: The appeal is sustained.