



U.S. Citizenship  
and Immigration  
Services



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Office: CALIFORNIA SERVICE CENTER

FILE: 

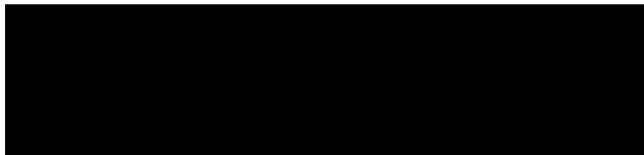
IN RE:

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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal.

The petitioner filed this nonimmigrant petition to extend the beneficiary's status as an L-1A 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, an information technology consulting firm, is a branch office of Tata Consultancy Services Limited, located in India. The petitioner currently employs the beneficiary in the position of project manager based at its client's site in Minneapolis, Minnesota and seeks to extend his L-1A status for three years.

The director denied the petition, concluding that the petitioner did not establish that the beneficiary would be employed by the U.S. entity 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 the statutory and regulatory provisions under which first-line supervisors may qualify for L-1A classification, mischaracterized the beneficiary's role as it relates to the production of the petitioner's product, and failed to consider the reasonable needs of the petitioner's organization by comparing the number of persons supervised by the beneficiary to the number of persons employed globally within the organization. Counsel submits a brief and additional evidence 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.

The sole issue in this matter is whether the petitioner established that the beneficiary will be employed by the U.S. entity in a primarily 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), 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. FACTS AND PROCEDURAL HISTORY

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on January 15, 2010. In a letter dated January 12, 2010, the petitioner explained that the company is currently responsible for executing an agreement with its client, [REDACTED], to provide application development and maintenance services using an onsite/offshore model, with onsite resources working under the direction and control of managers such as the beneficiary.

The petitioner further described the beneficiary's assignment as follows:

As Project Manager, [the beneficiary] will continue to supervise and ensure [the company's] efficient delivery of quality technical solutions and services as executed by the professionals

he will manage. Also, he will work closely with the IT executive staff and decision makers in other departments to identify, recommend, develop, implement and support cost-effective technology solutions.

The petitioner's initial letter included a list of 20 responsibilities and the percentage of time the beneficiary allocates to each area of responsibility on a daily basis. The petitioner further elaborated upon each responsibility in response to the director's request for evidence issued on February 1, 2010. Briefly, the petitioner indicated the beneficiary's duties would include assigning work to team members from a functional and technical perspective, preparing performance appraisals, determining resource requirements and hiring the required project resources, defining responsibilities and deliverables for team members, implementing cost and quality control measures, holding staff meetings, overseeing achievement of project milestones, reporting to the client, project planning, participating in business strategy meetings, training and mentoring subordinates, liaising with offshore management, and ensuring proper utilization of human resources.

The petitioner stated that the beneficiary's responsibilities are wholly managerial in nature, and that he will direct and supervise the day-to-day activities of six U.S.-based professionals, including four developers and two project leaders, all of whom possess at least a Bachelor's degree in a field relevant to their employment. The petitioner emphasized that the beneficiary's subordinates "will perform such tasks as document creation and design, coding and testing, assigning tasks to offshore teams, and reviewing deliverables."

The petitioner further explained that the beneficiary will actively manage his subordinates by conducting performance appraisals, recommending personnel decisions, establishing schedules, mentoring project team members, resolving problems and conflicts within project teams, developing skill levels among team members and ensuring that they maintain current industry knowledge, providing overall direction, guidance and methodology, and recruiting project teams.

The petitioner stated that the beneficiary's position satisfies the statutory definition of "managerial capacity" because he will be responsible for project teams and their deliverables, allocate project budgets and approve solutions to be recommended to customers, manage and direct professional team members, hold authority to make or recommend personnel decisions, and hold "discretionary authority over the day-to-day operations and activities of the essential project functions for which he is responsible."

The petitioner submitted an organizational chart which identifies the beneficiary's position as project manager, supervising two project leaders and four developers. The beneficiary reports to a delivery manager, who, in turn, reports to a business relationship manager.

In response to the request for evidence issued on February 1, 2010, the petitioner submitted a Statement of Work executed between the petitioner and [REDACTED] for the [REDACTED]. The petitioner's role is to address changes required to finance systems to support [REDACTED] pharmacy operations, including providing pharmacy systems that utilize workflow driven processes, and enabling pharmacy inventory management capabilities by integrating pharmacy services with proven enterprise solutions. The petitioner submitted evidence that the beneficiary conducted performance assessments for his subordinates as well as a copy of a promotion certificate he prepared for a subordinate employee. In addition, the petitioner

provided evidence of educational credentials for the beneficiary's subordinates, all of whom have Bachelor's degrees.

The director denied the petition, concluding that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity. In denying the petition the director noted that the petitioning company has over 140,000 employees worldwide and emphasized that the beneficiary, as a supervisor of only six employees, could not be considered to function at a high level within the organization. The director further determined that, based on the petitioner's description of the beneficiary's duties, he would spend a minority of his time supervising employees, and a majority of his time performing the day-to-day functions of the project for which he is responsible.

On appeal, counsel for the petitioner asserts that the director did not apply the statutory and regulatory provisions under which first-line supervisors clearly qualify for L-1A classification. Counsel further maintains that the director mischaracterized the petitioner's product and the beneficiary's role as it relates to the production of the product. Finally, counsel asserts that the director failed to consider the reasonable needs of the petitioner's organization by concluding that the number of persons supervised by the beneficiary relative to the number of persons employed by the petitioner globally prohibited a finding that the beneficiary would be employed in a primarily managerial capacity.

Counsel maintains that the tasks the beneficiary performs are not the tasks required to produce a product or to provide services, but rather are the tasks normally associated with project management, which counsel asserts is a distinct managerial role within the IT industry. With respect to the director's observations regarding the petitioner's employees worldwide, counsel notes that the company's employees are dispersed throughout 140 offices and 101 centers in 42 countries, providing services for hundreds of customers. Counsel explains that the petitioner "is engaged in an intentional and concerted lateral expansion which necessarily produces flatter organizational hierarchies both at the broader industry solution unit level and at the specific project team level." Counsel emphasizes that each of the petitioner's individual client projects are executed independently from all other projects and thus require their own managers. Further, counsel asserts that the petitioner distinguished the beneficiary's managerial responsibilities from the functional responsibilities of the professionals who comprise the project team.

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 director's determination appears to be based in part on the director's pre-conceived impression of what duties are typically performed by project managers for IT workers rather than on the evidence submitted by the petitioner. The director should not hold a petitioner to his undefined and unsupported view of the standard duties of an occupation in making a determination as to whether the beneficiary will be employed in a primarily managerial or executive capacity. The director should instead focus on applying the statute and regulations to the facts presented by the record of proceeding.

The evidence submitted establishes that the beneficiary supervises and controls the work of professional 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. The record further indicates that the beneficiary spends at least *half of his time on such supervisory responsibilities.*

In addition, based on the documentation submitted, it is evident that the client account for which the beneficiary is responsible *generates significant revenue, and the beneficiary has managed and will manage major projects undertaken for this client.* The petitioner has established a reasonable need for a managerial-level employee to supervise and coordinate the activities of the teams of professionals assigned to the project and to manage the delivery of projects to this client. *See section 101(a)(44)(C) of the Act.* Finally, the AAO is satisfied that the beneficiary exercises discretion over the day-to-day operations of the projects under his responsibility, as required by section 101(a)(44)(A)(iv) of the Act. The director's focus on the total number of employees in the petitioner's group relative to the number of employees supervised by the beneficiary was misplaced.

While the beneficiary will undoubtedly be required to apply his technical expertise in carrying out his job duties and perform some administrative tasks, the AAO is persuaded that the majority of the day-to-day non-managerial tasks required to produce the products and provide services for the client are carried out by the beneficiary's subordinate project leaders and technical staff, both on-site and offshore. The AAO does not agree with the petitioner's assertion that the beneficiary's duties are "wholly managerial"; however, 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 director's decision will be withdrawn.

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.

**ORDER:** The appeal is sustained.