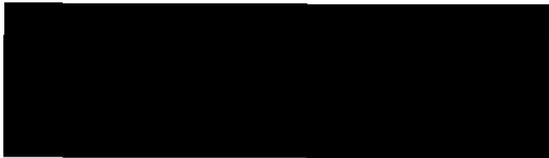


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D7

DATE: OCT 19 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:

SELF-REPRESENTED

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.

The petitioner filed this nonimmigrant petition to extend the beneficiary's employment 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, a business information technology consulting firm, claims to be the parent company of [REDACTED], located in India. The petitioner seeks to extend the beneficiary's L-1A status for two years so that he may continue to serve in the position of Senior Project 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 evidence of record is sufficient to satisfy the petitioner's burden of proof and establishes that the beneficiary is, and will be, employed in the United States in a managerial capacity.

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 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 25, 2010 and supplemented the record in response to a request for evidence issued on July 9, 2010. The petitioner established that it is a member of a group of affiliated companies that provides product development and consulting services in all aspects of systems and software engineering to companies throughout the world. The petitioner, [REDACTED] has offices in 10 countries, 4,000 employees worldwide, and 300 employees in the United States. Annual revenues for the petitioner in the fiscal year prior to filing exceeded \$138 million.

The petitioner stated the beneficiary will be working as a Senior Project Manager assigned to work on the petitioner's projects executed for its client, [REDACTED] a position he has held since March 2008. The petitioner indicated that the beneficiary will be responsible for managing the implementation of project deliverables by supervising a team of approximately 23 onshore and offshore employees engaged in providing project services to [REDACTED] located in [REDACTED] and to [REDACTED] located in [REDACTED]

The petitioner explained that the three projects the beneficiary has been assigned to supervise generate revenue of over \$3 million for the petitioner. The petitioner provided a detailed list of the beneficiary's duties in a letter dated June 23, 2010, and supplemented the position description in a letter dated August 16, 2010, which was submitted in response to a request for evidence. The beneficiary's managerial job duties as stated in the letter included supervision of network administrators and programmers, development and implementation of the project plan, resource assessment and allocation including budget management, and communicating with the client's management. The petitioner also stated that the scope of the beneficiary's managerial authority includes supervising and controlling the work of professionals who in turn supervise other employees, as well as the authority to recommend hiring and firing, and make other personnel decisions such as promotions and leave. The petitioner submitted letters from its clients' management confirming the beneficiary's role and responsibilities with respect to the three [REDACTED] projects under his supervision.

The petitioner submitted an organizational chart for the project in the United States, details on the beneficiary's subordinates, the statements of work for the projects to which the beneficiary is assigned as project manager, and an annual report. The organizational chart shows the beneficiary reporting to the Engagement Director. Reporting to the beneficiary were an off-shore project manager, four on-site functional leaders, and an onsite technical leader. In turn, the off-shore functional manager supervises a technical leader and a functional leader, and those employees oversee software engineers and software analysts. The petitioner also provided descriptions for the technical leader, functional leader, software analyst and software engineer positions. The technical leaders are responsible for technical and design evaluation of the project, preparing technical specifications and providing project status reports to the project manager, among other duties.

The director denied the petition on October 4, 2010, 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 beneficiary does not function at a high level within the organization as the beneficiary appears to be one level above the lowest level employee. The director found that the beneficiary's duties are primarily to perform the day-to-day work to "ensure that the projects for which the beneficiary is responsible are performing correctly." In reviewing the beneficiary's supervisory responsibilities, the director noted that the beneficiary supervises five employees in the United States, but did not take into consideration the team of 18 offshore employees assigned to the beneficiary's projects.

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 and that the denial is based on a misapplication of law and fact. Counsel contends that the beneficiary meets the four-part definition of managerial capacity under 8 U.S.C. § 1101(a)(44)(A).

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. 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 in 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.

Furthermore, the AAO does not agree with the director that "given the number of employees the petitioner employs, the beneficiary cannot possibly function at a high level within the organization when the beneficiary only supervises five employees and those five employees do not supervise any other employees." The record indicates that the client account for which the beneficiary is responsible generates significant revenue, and the beneficiary manages three projects undertaken for this client. In light of the petitioner's on-site/offshore business model, the fact that the majority of the beneficiary's subordinates are located in India does not preclude a finding that they nevertheless work under his supervision and relieve him from directly producing products and providing services for the petitioner's client. The petitioner has established a reasonable need for a managerial-level employee to supervise and coordinate the activities of the U.S. and offshore professional employees and to manage the delivery of projects to its 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.

While the beneficiary will undoubtedly be required to apply his technical expertise in carrying out his job duties and 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 for the client are carried out by the beneficiary's subordinate project manager, technical and functional leaders, and technical staff. The petitioner need only establish that the beneficiary devotes more than half of his time to managerial duties. The petitioner has met that burden.

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 October 4, 2010 is withdrawn.

ORDER: The appeal is sustained.