



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: APR 02 2013

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:

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 nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's employment as an 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 Illinois corporation, states that it operates a sales and distribution business for herbal beverages. It claims to be a subsidiary of [REDACTED] located in China. The beneficiary was previously granted one year in L-1A status in order to open a new office in the United States and the petitioner now seeks to extend her status for two additional years so that she can continue to serve in the position of general manager.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary will be employed in a 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 asserts that the director erred as a matter of fact and law in making her determination.

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 regulations at 8 C.F.R. § 214.2(l)(14)(ii) provide additional evidentiary requirements applicable to the extension of a petition involving a "new office."

II. The Issue on Appeal

The sole issue to be addressed is whether the petitioner established that it will employ the beneficiary in a qualifying managerial or 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
- (v) 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.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;

- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on June 30, 2011. The petitioner established that it operates a sales and distribution business for specialty beverages with three employees and gross sales of \$150,734 in 2010, which represented a partial year of operations. The petitioner stated that the beneficiary as its general manager/president. In a letter supporting the initial petition, the petitioner provided a four-page description of the beneficiary's duties as well as a description of the company's personnel structure and an explanation of the contractors utilized for the development, production, sale and distribution of the company's specialty beverage product. The petitioner also provided copies of contracts for services, e-mail correspondence between the beneficiary's subordinates and the contracted service providers, quarterly wage reports, and evidence of a patent approval for the company's herbal beverage product.

The director issued a request for additional evidence ("RFE") directing the petitioner to provide a detailed organizational chart for the U.S. entity and information regarding all U.S. employees, including their job duties, educational level and salaries. In response, the petitioner provided the requested detailed position descriptions, salaries and educational level for each of the beneficiary's direct subordinates.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity under the extended petition. In denying the petition, the director determined that the beneficiary's duties are those of an employee who is primarily performing the necessary tasks to provide a service or produce a product. Furthermore, the director concluded that none of the beneficiary's subordinate employees are professionals.

On appeal, counsel asserts that the evidence establishes that the beneficiary does not in fact perform the day-to-day functions of the petitioner and that she is relieved from performing non-qualifying duties based on her supervision of professional-level employees who in turn supervise a number of contractors.

III. Analysis

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.

Specifically, the evidence submitted establishes that the beneficiary supervises and controls the work of professional level employees and possesses authority to recommend personnel actions for employees under her supervision. See sections 101(a)(44)(A)(ii) and (iii) of the Act. The evidence establishes that the duties performed by the beneficiary's two direct subordinates would reasonably require attainment of a bachelor's degree or higher. Further, the petitioner has provided probative evidence establishing that the beneficiary's subordinates oversee and coordinate the activities of a number of contractors who perform the tasks necessary to actually produce and distribute the petitioner's product. As such, the beneficiary is free to allocate the

majority of her time to managing and exercising discretion over the day-to-day operations of the organization as a whole.

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

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 company's products are carried out by the beneficiary's subordinates and contractors.

Section 101(a)(44)(C) of the Act requires the AAO to "take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function." The AAO has long interpreted the statute to prohibit discrimination against small or medium-size businesses. However, the AAO has also consistently required the petitioner to establish that the beneficiary's position consists of "primarily" managerial and executive duties and that the petitioner has sufficient personnel to relieve the beneficiary from performing operational and administrative tasks.

Reading section 101(a)(44) of the Act in its entirety, the "reasonable needs" of the petitioner may justify a beneficiary who allocates 51 percent of duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties.

Therefore, the petitioner need only establish that the beneficiary devotes more than half of her time to managerial duties. The petitioner has met that burden. While the petitioner employs has a small staff, it has amply explained and documented its use of contractors, explained why the current staffing arrangement is sufficient to meet its reasonable needs, and documented its ability to support the beneficiary's managerial position as of the date of filing. Accordingly, the appeal will be sustained.

IV. 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 sustained that burden. Accordingly, the director's decision dated April 13, 2012 is withdrawn.

ORDER: The appeal is sustained.