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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

DATE: **APR 19 2013**

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 The decision of the director will be withdrawn and the appeal will be sustained.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 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 was formed as a corporation under the laws of the State of Maryland in 2003, and operates an end-to-end back office solutions firm. It claims to be an affiliate of [REDACTED] located in Maharashtra, India. The petitioner seeks to employ the beneficiary as its President for a period of three years.

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. The petitioner submits a brief and additional evidence.

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.

II. The Issue on Appeal

The sole issue to be addressed is whether the petitioner established that the beneficiary will be employed in the United States in a managerial or 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.

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 operates an end-to-end back office solutions business with two current employees and gross sales of \$1.12 million. The petitioner explained that the company, through its offshore affiliates in India, China and the Philippines, processes 24,000 mortgage transactions, 20,000 logistics transactions, and 10,000 insurance and other miscellaneous transactions each month, with 700 professionals employed directly or indirectly overseas. The petitioner stated the beneficiary will be working as its President. The petitioner provided a detailed description of the beneficiary's proposed duties in a letter submitted in support of the petition. It also provided the beneficiary's employment agreement with a list of twelve duties the beneficiary is to perform.

The petitioner stated that the beneficiary will directly supervise a valuation manager, who in turn, supervises a valuation associate. The petitioner provided position descriptions for both subordinate employees, and included their educational credentials, along with the beneficiary's. The petitioner's organizational chart indicates that the valuation associate supervises "valuation vendors" and indicates that future positions to be filled include a marketing coordinator and a customer service position. The petitioner's initial evidence included company brochures and marketing materials describing the group's services to the mortgage, title and logistics industries.

The director issued a request for additional evidence ("RFE"). The director requested that the petitioner provide, *inter alia*: (1) a comprehensive description of the beneficiary's duties; (2) a position description including breakdown of the number of hours devoted to each of the employees duties on a weekly basis; (3) educational requirements for each of the petitioner's positions including the beneficiary, (4) IRS Form 941 Quarterly Returns for 2010, W-2s and 1099s for 2010; and (5) photographs of the interior and exterior of the petitioner's premises.

In response to the RFE, the petitioner provided a lengthy description of the beneficiary's duties included detailed examples of the specific managerial duties performed by the beneficiary. The petitioner also provided a list of all employees' duties, including the beneficiary's, broken down by percentage of time spent on each duty, and educational requirements for the positions. The petitioner provided the requested photographs and all available tax documents requested.

The director denied the petition, 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: (1) the job titles and position descriptions of the petitioner's employees are called into question because photographs showed a female employee not listed on the organizational chart and therefore, it is not clear how many persons the petitioner employs; (2) a review of the petitioner's 2010 IRS Forms 1099-Misc shows that no employees were compensated in 2010 nor were salaries paid in 2009; (3) the petitioner failed to submit evidence of the beneficiary's educational credentials and his apparent lack of a degree is telling of his lack of managerial authority; (4) the petitioner failed to submit a breakdown of the number of hours devoted to each of the employee's duties on a weekly basis, instead offering a breakdown of time in percentages; (5) the petitioner's gross sales appear to be over \$1 million yet it does not appear that the petitioner employs any sales staff; and (6) the staff members duties do not show that their positions are managerial or executive in nature as they are employed by a back-office solutions business.

On appeal, counsel states that the reasons underlying the director's determination were based on errors of law or fact, and emphasizes that "there exist no rational connections between the evidence discussed by the Service and the conclusion it has reached."

Specifically, counsel states the female employee in the petitioner's photograph was an employee of the landlord's company and the photograph was submitted to show the signage on the outside of the petitioner's door. Counsel submits an affidavit in support of this assertion. Furthermore, the petitioner explained that there were no salaried company employees as of 2010 and consequently, no employees were reported on Form W-2. However, the petitioner's current employees were hired in 2011 as of the filing date of the petition, and the paystubs submitted with the initial filing support this conclusion. Counsel further asserts that the petitioner's percentage breakdown of the time the beneficiary will allocate to his duties is sufficient to respond to the director's inquiry and does not preclude a material line of inquiry sufficient to result in a denial. Counsel also asserts that the director never inquired as to the petitioner's sales staff and submits on appeal evidence of the sales force used to sell the petitioner's products and services in the United States. Finally, counsel contends that the position of valuation manager is both professional and managerial in nature, and emphasizes that the mere fact that the petitioner is a back office solutions business does not preclude a finding that its employees hold professional or managerial level positions.

II. Discussion

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 employees in the petitioner's industry. 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 relevant facts presented by the record of proceeding.

Additionally, the AAO finds that the evidence establishes that the beneficiary directly supervises a professional level employee, and furthermore, the petitioner's extended organization carries out the sales function of the business. The evidence submitted further establishes that the beneficiary possesses authority to recommend personnel actions for employees under his supervision. *See* sections 101(a)(44)(A)(ii) and (iii) of the Act.

Further, the petitioner has provided detailed explanations and flowcharts describing how the company is able to operate with few employees through an integrated offshore organization. Specifically, the petitioner has demonstrated that the majority of the sales, marketing, client development, order fulfillment and production activities are supervised by managers of the foreign entity who report to the beneficiary or to the valuation manager. The petitioner has demonstrated a reasonable need for an employee in a managerial capacity to oversee the delivery of these services by the offshore personnel.

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 direct and indirect subordinates in the United States and India. Further, the petitioner has submitted a

business plan for expansion of its valuation-related services which supports it claims that the beneficiary's primary duties in the United States will be to oversee the growth and development of this area of the business in the United States with the support of the company's extended organization. The petitioner need only establish that the beneficiary will devote more than half of his time to managerial or executive duties. The petitioner has established that the beneficiary will be employed in a qualifying managerial capacity. Accordingly, 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.