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

(b)(6)

DATE: JUN 20 2013 Office: CALIFORNIA SERVICE CENTER

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 nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal and approve the petition.

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's employment 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 California in 1997, and is engaged in research and analysis of advanced information technologies. It claims to be an affiliate of . The petitioner has employed the beneficiary as its President and CEO since December of 2006 and now seeks to extend his L-1A status for two additional 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 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. Counsel asserts that in denying the petition, the director made a number of both factual and legal errors. Counsel submits a brief 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 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.

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.

II. Evidence and Procedural History

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed by the United States entity in a managerial capacity.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, with a letter explaining the nature of the company's business and operations. Specifically, the petitioner explained that the parent corporation, is listed on the first section of the Tokyo Stock exchange and engaged in the research and analysis of advanced information technologies. The group of companies employs approximately 4,636 employees worldwide and recorded new sales of approximately $1.8 billion (USD).

The petitioner stated that the corporation works closely with "professionals in the sales, marketing, and engineering departments of to provide customized products and services to the Japanese market form the U.S." The petitioner stated that as President and CEO of , the beneficiary will "utilize his in-depth knowledge of IT products, services, technology and business operations as well as his thorough knowledge of the Company's strategies, policies, and procedures to direct the entire management of and to oversee business operations." The petitioner provided a list of 14 duties performed by the beneficiary in this position, including the following: (1) oversee the business operations of the U.S. subsidiary involving market research activities for new business models/solutions/products/technology in the U.S., and the introduction of new business products and procedures to Japan; (2) make critical decisions on key corporate issues such as annual budgets ($1 million to $1.5 million), investment plans, and business alliances/partnerships; and (3) ensure that business development activities with the U.S. IT manufacturers, application service providers, consultants, and venture capitalists are carried out effectively and efficiently as planned.

The petitioner indicated that the beneficiary's immediate subordinate is a senior researcher. The petitioner noted that administrative functions are outsourced to subcontractors including accounting/tax, legal, payroll, system maintenance, office maintenance, office equipment, and design services. The petitioner stated that the beneficiary has the authority for hiring and firing all staff in the branch, and exercises discretion over the day-to-day sales operations of the branch. In addition, the beneficiary is responsible for indirectly supervising NS Japan's marketing and engineering professionals on development and implementation of U.S. projects.

The director subsequently issued a request for additional evidence ("RFE"). The director requested that the petitioner provide, *inter alia*: (1) the total number of employees at the U.S. location where the beneficiary will work, (2) a more detailed description of the beneficiary's duties in the U.S. and percentage of time spent in each of the listed duties, and (3) examples of managerial or executive level decisions made over the past six months by the beneficiary.

In a letter, counsel for the petitioner responded to the request for evidence and stated that is "responsible for the management of the business development function for and ." In a second letter, the petitioner further clarified that the beneficiary spends "approximately 75% of his time in managing the business development function and 25% on executive matters."

The petitioner submitted a list of 16 duties the beneficiary performs relating to the management of the business development function. Those duties include:

- Establish, implement, and modify operational objectives, policies, and strategies for business development function, and direction of projects;
- Initiate business development studies and analyze findings;
- Identify, confer, and negotiate with potential U.S. entities of strategic joint ventures/partnerships/alliances on functionality and applicability of product and/or service;
- Ensure that business development and activities with the U.S. IT manufacturers, application service providers, consultants, and venture capitalists are carried out effectively and efficiently as planned;
- Consult with high level executives in on feasibility and practicality of pursuing relationship with potential U.S. strategic joint venture/partnerships/alliances;

- Develop business plans for each potential party, addressing issues on feasibility, budget, manpower, etc.;
- Exercise decision making authority to take necessary action in order to achieve the set development goals in establishing U.S. business;
- Supervise, manage, and evaluate the work of Senior Researcher and Business Development Analyst for
- Directly consult and coordinate with Directors in R&D Center and indirectly oversee team of one hundred (100) Engineers (possessing either a university degree or numerous years of work experience in the engineering or related industry) on the evaluation, modification, and implementation of U.S. technology and/or product;
- Directly oversee the U.S business incubation activities of four (4) degreed Solution & Business Innovation Group Leaders in NS Japan's Financial System Solutions Division and IT Infrastructure Solutions & Business Service United;

The petitioner further provided a list of nine "General Executive Duties" performed by the beneficiary including the following tasks:

- Make critical decisions on key corporate issues such as annual budgets ($0.7 million to $1.0 million), investment plans, and business alliances/partnerships;
- Exercise authority to amend policies within the general guidelines set by Executives;
- Plan, review and executive business strategies and short-and long-term budgets;
- Exercise authority to order corrective action when necessary;

As requested by the director, the petitioner provided a list of managerial business development activities and eight decisions made by the beneficiary including the following:

- Identify and establish the field of industry (green IT, wireless sensor network, data center management), the solution category, and the potential company to focus Company's business development and research activities
- Direct business development and research activities of [the] Senior Researcher and Business Development Analyst
- Present business development findings, recommendations and plan implementation to higher level executives at [petitioner lists six technologies and their stages of development]
- Negotiate and execute confidential agreement with a data center management provider
- Confer and negotiate product purchase with high level executives at a wireless sensor network technology provider

The petitioner provided evidence supporting the duties of the beneficiary, including a confidential agreement between the petitioner and the named data center, e-mails between the beneficiary and other managers and executives at U.S. technology companies discussing potential sales and partnerships, and e-mails between the petitioner and the parent company in Japan discussing potential mergers and acquisitions. The petitioner provided quarterly wage and withholding reports as well as summary payroll information demonstrating that the beneficiary and one other employee work full-time for the U.S. company.

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 under the extended petition. In denying the petition, the director determined that the beneficiary's claimed duties are too general and nonspecific to convey any understanding of the beneficiary's day-to-day responsibilities. The director further determined that employees claimed to be managed by the beneficiary for the foreign employer cannot be considered for qualifying L-1 purposes. Additionally, the director found that the beneficiary will only be supervising one employee at the petitioner's U.S. location and this does not support a finding that the beneficiary is serving in an executive or managerial capacity.

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, in that he manages a subdivision, function or component of the organization; supervises and controls the work of supervisory personnel and manages an essential function within the organization; has the authority to hire and fire personnel; and exercises discretion over the day-to-day operations of the activity or function for which he has authority. Counsel asserts that the decision improperly requires the beneficiary to supervise employees, fails to analyze whether the beneficiary is managing the claimed function of the petitioner, and erroneously concludes that the beneficiary is performing the hands-on work of the company.

III. Analysis

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.

Contrary to the director's observations, the petitioner has provided a comprehensive description of the beneficiary's duties sufficient to establish that his duties are primarily related to the management of the petitioner's business development function and not to producing a product, providing a service, or performing other non-managerial functions. The evidence submitted establishes that the beneficiary supervises and controls the work of one subordinate professional employee and exercises authority to hire and fire employees under his supervision. *See* sections 101(a)(44)(A)(ii) and (iii) of the Act.

Furthermore, the AAO agrees with the petitioner's assertion that the beneficiary's overall management of the business development function, within the context of the petitioner's business organization, can be equated to managing a subdivision, function or component of the organization. *See* section 101(a)(44)(A)(i) of the Act. The record establishes that the beneficiary does not directly perform the routine administrative functions carried out by the petitioner as these are carried out through contracted services. Finally, the AAO is satisfied that the beneficiary exercises discretion over the day-to-day operations of the branch office, as required by section 101(a)(44)(A)(iv) of the Act.

In finding that the proffered position is not managerial in nature, the director refused to consider the beneficiary's subordinate staff located at the office in Japan. The AAO notes that the statutory definition of managerial capacity refers to an assignment within an "organization" in which the employee manages the organization or an essential function. *See* section 101(a)(44)(A) of the Act ("The term "managerial capacity" means an assignment within an organization . . . ."). The term "organization" is defined at section 101(a)(28) of the Act, 8 U.S.C. § 1101(a)(28), as follows:

> The term 'organization' means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subject or subjects.

The statutory definition of an organization would not reasonably include a foreign corporation that is an entity separate and distinct from the petitioning organization. Here, however, the foreign corporation, , is not separate and distinct from the petitioner. The record contains documentary evidence that the petitioner and have a parent-subsidiary relationship. Both the petitioner and are jointly engaged in the provision of advanced information technologies in Japan. Accordingly, the United States entity and the facility in Japan are permanently associated through ownership.

A petitioner must also submitted evidence to document the existence of the claimed subordinate employees. Simply claiming the existence of subordinate employees in an overseas organization will not suffice. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). In the present case, the petitioner submitted sufficient evidence.

Therefore, the beneficiary's management of the marketing and engineering professionals on behalf of the parent company may be considered when determining if the proffered position is in a managerial capacity.

While the beneficiary will undoubtedly be required to apply his product expertise and perform some higher-level sales, marketing, and administrative tasks, the AAO is persuaded that the majority of the day-to-day non-managerial tasks required to operate the business are carried out by the beneficiary's subordinates. While the branch office is not large, the record shows that the petitioner's network of offices is expansive, and the petitioner has established that it has a reasonable need for a U.S. manager to oversee business development regarding potential partnerships and technologies with U.S. companies. The petitioner need only establish that the beneficiary devotes more than half of his time to managerial duties. The petitioner has met that burden.

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 November 30, 2009 is withdrawn and the petition is approved.

ORDER: The appeal is sustained.