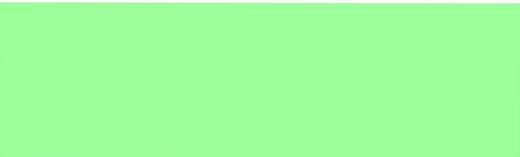


(b)(6)

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

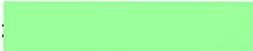


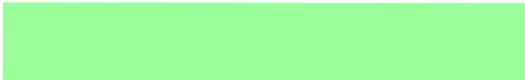
U.S. Citizenship
and Immigration
Services



DATE: **MAY 14 2013**

Office: VERMONT 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)

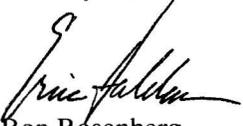
ON BEHALF OF PETITIONER:

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,


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 The decision of the director will be withdrawn and the appeal will be sustained.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 to extend the beneficiary's status 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, a Florida limited liability company established in 2010, operates an import/export business. It claims to be a subsidiary of [REDACTED] in Venezuela. The beneficiary was previously granted one year in L-1A status in order to open the petitioner's new office in the United States. The petitioner is requesting to extend the beneficiary's status for an additional year so that he may continue to serve as its Executive Director.

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 establish that the beneficiary will be functioning in a managerial or executive position.

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.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) sets forth additional evidentiary requirements for petitions that involve 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 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.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker on July 16, 2012. The petitioner established that it operates an export business with six employees and gross profit of \$106,740 during a partial year of operations in 2011 and over \$500,000 during the first five months of 2012. The petitioner stated the beneficiary will be working as its Executive Director.

The record of proceeding includes the Form I-129 petition and supporting evidence, the director's Request for Evidence (RFE) and the petitioner's response, the director's Notice of Denial, and the petitioner's appeal. The petitioner has submitted more than 70 exhibits in support of the petition, including all evidence required by the regulation at 8 C.F.R. § 214.2(l)(14)(ii) and a complete response to the director's RFE. This evidence includes a detailed, multi-page description of the beneficiary's duties, evidence of the number and types of employees hired during the first year of operations, the duties they perform, and evidence of wages paid to

these employees, and voluminous documentation establishing the nature and scope of the petitioner's import-export business at the end of its first year in operations.

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 subordinates are not professional level employees. Furthermore, the director noted a discrepancy in the number of employees claimed by the petitioner. Finally, the director stated that the beneficiary's job duties are general in nature.

On appeal, the petitioner asserts that the evidence establishes that the beneficiary's job duties support a finding that the position is within a qualifying managerial capacity. The petitioner explains that the additional employee was terminated prior to the filing of the petition and replaced by another employee. Finally, the petitioner states that the beneficiary supervises a subordinate managerial employee and thus the subordinate employees do not need to be professional level positions.

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.

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.

The petitioner has submitted sufficient relevant, probative and credible evidence to establish that the beneficiary manages the petitioning organization, that he supervises and controls the work of a subordinate managerial level employee and possesses authority to recommend personnel actions for employees under his supervision. *See* sections 101(a)(44)(A)(i),(ii) and (iii) of the Act. Thus, the petitioner is not required to show that the subordinate employees hold professional level positions.

Further, the record shows that the petitioner employs sufficient subordinate personnel to relieve the beneficiary from being primarily involved in the day-to-day operations of the business, thus freeing him to perform primarily managerial duties. Overall, the record reflects that the petitioner has carried out its original business plan, has met or exceeded the objectives set forth for the first year of operations, and has grown to the point where it can support a qualifying managerial position.

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 provide the company's services are carried out by the beneficiary's subordinates or contracted service providers. 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 appeal will be sustained, the director's decision dated August 23, 2012 will be withdrawn, and the petition will be approved.

ORDER: The appeal is sustained.