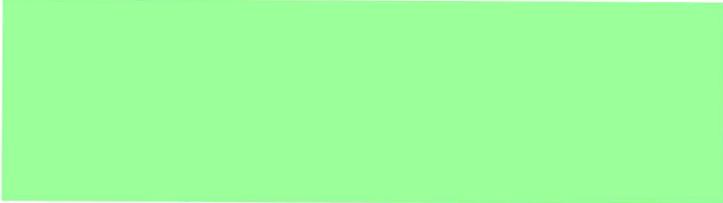


(b)(6)

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 29 2013**

Office: VERMONT SERVICE CENTER

FILE:



IN RE:

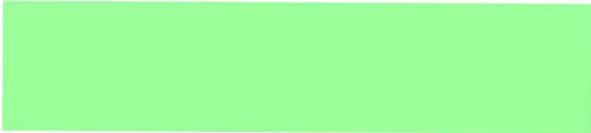
Petitioner:

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:



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, California 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 The decision of the director will be withdrawn and the appeal will be sustained.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 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 limited liability company under the laws of the State of Arizona in 1996, and operates yoga medication, healing, and Brain Respiration centers. It claims to be a subsidiary of [REDACTED] in Seoul, Korea. The petitioner currently employs the beneficiary in L-1B status and requests a change and extension of her status so that she may continue to serve as Training and Development 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 establish that the beneficiary will be employed in a managerial capacity.

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 Issues 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 established that it operates yoga medication, healing, and Brain Respiration centers with 190 employees and gross sales of \$25,032,545.

The petitioner stated the beneficiary will be working as a Training Development Manager. In a letter accompanying the petition, counsel for the petitioner provided a lengthy explanation of the beneficiary's proposed position, as well as a list of specific duties she performs. The petitioner also provided a chart with a list of five major duties and percentage of time spent performing each, as well as sub-duties for each of the major categories. The petitioner submitted an organizational chart showing two Club Managers, an Instructor Trainer, and a Recreational Therapist reporting to the beneficiary. Reporting to the Club Managers, Recreational Therapist, and Instructor Trainer were a Senior Instructor, eight Instructors, and three Assistant

Instructors. The petitioner provided the job duties and percentage breakdown of time for the duties for each of the beneficiary's subordinates.

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 including percentage of time spent on each of the listed duties; (2) a copy of the petitioner's organizational chart including position descriptions, wages, educational requirements, and immigration status for all employees; and (3) copies of IRS Form 941, Employer's Quarterly Tax Return, and state quarterly wage reports for the four quarters preceding the filing of the petition.

In a letter dated May 23, 2010 the petitioner submitted an additional lengthy explanation of the beneficiary's proffered position, including how the position differs from the company's Regional Manager position. Counsel for the petitioner explained the petitioner's need for the proffered position as the company expands into a new region. Counsel provided an explanation regarding the beneficiary's proposed subordinate employees including: one recreational therapist, one instructor trainer, one senior instructor, eight instructors, and three assistant instructors in coordination with the club managers.

The petitioner submitted the requested detailed position descriptions for the employees whose work the beneficiary will direct and control. The petitioner provided the IRS Form 941, Employer's Quarterly Tax Return and Quarterly Wage Reports filed with each state for the last four quarters as well as the company's payroll summary.

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 the duties of the beneficiary are those of an employee who is performing the necessary task to provide a service or to produce a product. Specifically, the director found that the beneficiary would be directly involved in the day-to-day activities of the business such as scheduling classes and training the instructors. Furthermore, the director concluded that none of the positions subordinate to the beneficiary requires a bachelor's degree or higher.

On appeal, counsel asserts that the evidence establishes that the evidence of record establishes that the beneficiary will be relieved from performing the non-qualifying functions by her subordinate staff. Furthermore, counsel states that the record demonstrates that the Recreational Therapist, Instructor Trainer, and Club Managers are responsible for performing the actual training of the company's instructors and therefore relieve the beneficiary of the non-qualifying duties associated with the managerial position of Training Development Manager.

II. 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.

The evidence submitted establishes that the beneficiary supervises and controls the work of supervisory and managerial 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 petitioner

supervises a three-tiered structure composed of the beneficiary, middle-level management, and full-time employees who carry out the day-to-day duties of the organization. Additionally, the record establishes that the beneficiary's subordinates, including the Club Managers, Instructor Trainers, and Recreational Therapist are responsible for carrying out the non-qualifying duties of the position. As such, the petitioner is not required to show that the beneficiary manages professional level positions, as she supervises and controls the work of other supervisory or managerial employees.

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 carry out the training activities managed by the beneficiary are carried out by her subordinates. The petitioner need only establish that the beneficiary devotes more than half of her 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 June 6, 2011 is withdrawn.

ORDER: The appeal is sustained.