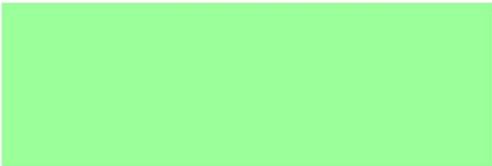




**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: **MAY 31 2013**

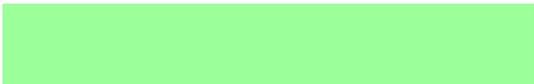
Office: VERMONT SERVICE CENTER

FILE: 

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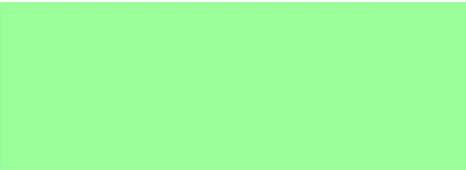
Petitioner:

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, Vermont 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, a Florida limited liability company established in February 2011, states that it operates casual dessert retail outlets. The petitioner claims to be an affiliate of [REDACTED] located in St. Petersburg, Russia. The petitioner seeks to extend the beneficiary's employment as president and managing director for two years.

The director denied the petition, concluding that the petitioner failed to establish that it will employ the beneficiary in a qualifying 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 for the petitioner asserts that the director's decision contains a flawed analysis of the facts. Counsel submits a brief and additional evidence 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 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.

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
- (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.

II. THE ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that it will employ the beneficiary in a qualifying managerial or executive capacity.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on June 29, 2012. The petitioner indicated on the Form I-129 that it operates fast and casual dessert retail outlets with eight current employees and a projected gross annual income of \$1,150,456. In support of the petition, the petitioner submitted a letter that included a lengthy description of the beneficiary's duties, and indicated that the beneficiary's duties would be primarily focused on oversight and management of the company's operations through his subordinates – the operations director/manager, the finance director, the [REDACTED] locations manager, and the marketing director. The petitioner also provided a description of each of the beneficiary's subordinates' job duties and responsibilities, clearly indicating that the subordinates would carry out the actual tasks of producing a product or providing a service of the U.S. company.

The petitioner provided an organizational chart for the U.S. company illustrating that it employs the beneficiary as the president and managing director and one operations director/manager who supervises a finance director, an [REDACTED] locations manager, a marketing director, and outsourced legal services. The [REDACTED] locations manager supervises five employees at the two current retail locations. The petitioner also provided payroll records and Forms UCT-6, Florida Department of Revenue Employer's Quarterly Report, for the four quarters of 2011 and the first two quarters of 2012 demonstrating that each of the employees listed on the organizational chart were in fact employed by the petitioner.

The director issued a request for additional evidence ("RFE") on July 13, 2012, instructing the petitioner to submit, *inter alia*, the following: (1) a comprehensive description of the beneficiary's duties; (2) a list of U.S. employees, including complete positions descriptions for all employees with a breakdown of the number of hours devoted to each job duty; and (3) all of the petitioner's Forms W-2 for 2011.

In response to the RFE, the petitioner provided the same list of job duties and breakdown for the beneficiary along with the list of job duties and breakdown for the beneficiary's subordinates. The petitioner submitted payroll records indicating that it had nine employees, including the beneficiary.

The director denied the petition on August 6, 2012, concluding that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity in the United States. In denying the petition, the director found that petitioner's organizational chart only listed five positions, including the beneficiary, rather than the eight positions claimed by the petitioner. The director further found that the petitioner's Forms 941 listed eight employees but did not include the names of the employees or a breakdown of their purported compensation. The director observed that the finance manager is the only subordinate that holds an advanced degree but the petitioner had not established that he was actually working at the U.S. company. The director also observed that the beneficiary's duties listed are general and do not specify exactly

what the beneficiary has done and will be doing to qualify as a manager or executive in the context of the current staffing arrangement.

On appeal, counsel for the petitioner asserts that the beneficiary will be employed in a managerial and an executive capacity. Counsel contends that the director failed to properly review the corporate structure of the petitioner as the beneficiary does not engage in the day-to-day operation of the petitioner's subsidiaries, which operate the retail outlets. Counsel asserts that the beneficiary supervises the operation of the subsidiaries through the operations director/manager and the Aventura mall locations manger.

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 in the United States.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). 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 and direction of the company and not to producing a product, providing a service, or performing other non-managerial functions. The evidence submitted also establishes that the beneficiary supervises and controls the work of subordinate professional and managerial employees and exercises authority to hire and fire employees under his supervision. *See* sections 101(a)(44)(A)(ii) and (iii) of the Act.

The director incorrectly stated that the petitioner failed to submit evidence of its employees and compensation to those employees. In fact, not only did the petitioner submit payroll records, it also submitted its Forms UCT-6 detailing employee names and compensation for the last two quarters of 2011 and the first two quarters of 2012. The petitioner also submitted detailed job duties for the beneficiary and his subordinates, including a breakdown of the percentage of time (and number of hours) each of them dedicates to each specific duty. The petitioner's descriptions are sufficient to establish that the beneficiary does not directly perform the services carried out by the petitioner's multiple businesses. The AAO is satisfied that the beneficiary exercises discretion over the day-to-day operations of the petitioner's business, as required by section 101(a)(44)(A)(iv) of the Act.

As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his 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. Here, the petitioner has established that, at a minimum, the beneficiary primarily manages and directs the corporation in addition to several managerial or supervisory employees. Given the overall purpose of the organization, the petitioner established a reasonable need for a senior manager to oversee the well-documented expansion plans for the U.S. business.

While the beneficiary will undoubtedly be required to apply his expertise to perform some higher-level negotiations and administrative tasks, the AAO is persuaded that the beneficiary's subordinates in the United States will carry out the majority of the day-to-day non-managerial tasks required to operate the business, including its subsidiaries. The petitioner need only establish that the beneficiary devotes more than half of his time to executive or managerial duties. The petitioner has met that burden.

III. 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 met that burden. Accordingly, the director's decision dated August 6, 2012 is withdrawn and the petition is approved.

ORDER: The appeal is sustained.