



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: APR 23 2014

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

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
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 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 nonprofit organization and is engaged in the business of publishing music and literature. The record shows that the petitioner is the parent company of [REDACTED] Ltd., the beneficiary's current employer located in the United Kingdom. The petitioner seeks to employ the beneficiary in the position of vice president of its artists and repertoire division (A&R) for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary was employed abroad and that he would be employed in the United States 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. On appeal, counsel asserts that the evidence of record is sufficient to satisfy the petitioner's burden of proof and establishes that the beneficiary has been employed abroad, and will be employed in the United States in a managerial capacity assuming the role of a function manager. 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. Facts and Procedural History

The two issues to be addressed in this proceeding are whether the petitioner established that the beneficiary has been employed abroad and that he will be employed in the United States in a managerial capacity.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, with a letter explaining the nature of its business and operations. Specifically, the petitioner explained that it and the foreign subsidiary where the beneficiary is currently employed are both engaged in the business of producing and publishing Christian music. The petitioner was established in 1944 and currently claims over 200 employees and a gross annual income of \$58 million. The petitioner explained that it acquired the assets of a previously existing music publishing company in an effort to expand its own current Christian music operation and seeks to have the beneficiary "coordinate the activities of the organization's Artist and Repertoire (A&R) Department" as a function manager.

The petitioner stated that the beneficiary's current position as "A&R Director" at the U.K. subsidiary is similar to the beneficiary's proposed position as "Vice President, A&R." The petitioner indicated that, in his proposed position, as in his position abroad, the beneficiary "will establish, develop, oversee, and maximize [the] organization's artist and worship leader talent, and will supervise [the] entire A&R Department," which will not require the beneficiary to assume any publishing, sales, or production responsibilities. Rather, the beneficiary has and will continue to coordinate, direct, and manage artist development by delegating, supporting, and monitoring operations of the A&R department "to ensure effective management of the artists under contract, and overseeing specific projects and marketing plans for the company's artists." The petitioner indicated that the beneficiary will report directly to the company president.

The petitioner's initial evidence included a list of 11 duties that the beneficiary performs in his position abroad and would perform in his proposed position with the U.S. entity. Briefly, the petitioner explained that the beneficiary's current and proposed role as the senior A&R employee in the organization requires him to: work closely with the company president/vice president to identify artists; oversee staff in the A&R department; work closely with music operations, publicity, radio, marketing, sales and distribution departments to meet A&R goals; plan and oversee A&R budgets; and develop strategies and goals for the A&R department.

The director subsequently issued a request for additional evidence ("RFE"). In response to the RFE, the petitioner provided an affidavit from its human resources manager, who supplied a supplemental job description for the beneficiary, complete with percentage breakdowns, and provided job descriptions of the staff members within the petitioner's A&R Department. The affidavit subdivided the beneficiary's position into five categories: (1) A&R oversight to which the beneficiary would allocate 50% of his time; (2) marketing oversight to which the beneficiary would allocate 30% of his time; (3) human resources/employment matters to which the beneficiary would allocate 10% of his time; (4) budgeting and finances to which the beneficiary would allocate 5% of his time; and (5) community outreach and development to which the beneficiary would allocate the remaining 5% of his time.

The petitioner also provided a sworn statement from the beneficiary's immediate supervisor, the foreign entity's managing director/vice president, who stated that the beneficiary "provides creative direction and control for the development of music products and relationships [and he] has no direct publishing, sales, or production responsibility; instead, his decisions are carried out by other professional employees within the organization." The managing director subdivided the beneficiary's foreign position into the following three categories: (1) direction of A&R to which the beneficiary allocates 50% of his time; (2) direction of marketing to which the beneficiary allocates 30% of his time; and (3) community outreach and development to which the beneficiary allocates the remaining 20% of his time.

As requested by the director, the petitioner discussed the respective roles of the beneficiary's support staff in his foreign and U.S. positions, and established who actually carries out the operational tasks of the A&R Departments at each entity. The petitioner has consistently maintained that the beneficiary has and would continue to assume the role of managing an "essential function" within the organization, rather than managing the organization's personnel. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii).

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary was employed abroad and that he would be employed in the United States in a primarily managerial or executive capacity. In denying the petition, the director focused on the petitioner's failure to establish that the beneficiary currently supervises or will supervise professional staff, and therefore concluded that the beneficiary has been and would be employed as a first-line supervisor of non-professional employees.

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; manages an essential function; operates and will operate at a senior level with respect to the A&R Department; and exercises discretion over the day-to-day operations of the activity or function for which he has authority. Counsel asserts that the director considered only a few components of the job description rather than considering all of the listed job duties. Counsel further states that the director erroneously determined that the function the beneficiary manages is not essential and asks the AAO to consider the hierarchy of the A&R Department within the petitioning entity, which shows the availability of a staff to perform daily operational tasks. Counsel provides examples of the types of actions the beneficiary takes and the types of decisions he makes, which affect "critical teams and employees" within the foreign and U.S. organizations.

III. Analysis

Upon review, counsel's assertions are persuasive. The petitioner submitted sufficient evidence to establish that the beneficiary has been and 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 abroad and in the United States are primarily related to the management of the A&R function and not to producing a product, providing a service, or performing other non-managerial functions.

Furthermore, the petitioner has established that the beneficiary's overall management of the A&R department, 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. While the record indicates that the beneficiary performs certain job duties that are not within a managerial capacity, no beneficiary is required to allocate 100% of his or her time exclusively to managerial- or executive-level tasks, so long as the petitioner is able to establish that the non-qualifying tasks the beneficiary performs and would perform are only incidental to the position(s) in question. To that end, while the record shows that the beneficiary oversees and will oversee subordinate A&R staff in each of his respective positions, the director placed undue emphasis on whether or not those individuals are professional employees given that oversight of employees is not and would not be the primary focus of the beneficiary's responsibilities.

Rather, the record indicates that the beneficiary oversees a subordinate staff to the extent that he has discretion over the functions that these subordinate staff members carry out. Given that the subordinate employees carry out functions that are critical to the A&R Department that the beneficiary manages, the beneficiary has a vested interest in ensuring that the tasks that comprise the A&R Department are properly

executed. As indicated previously, the petitioner provided descriptions of the job duties performed by the staff that support the A&R function in both the U.S. and foreign entities, and explained how other departments within the companies work closely with the A&R department and support its goals. This information clarifies who has and would perform the daily operational tasks and establishes that the beneficiary would be relieved from having to allocate any significant portion of his time to the performance of non-qualifying tasks. The evidence establishes that the beneficiary is and will be primarily performing managerial duties.

Moreover, in reviewing the percentage breakdowns of the beneficiary's positions with the foreign and U.S. entities, there is no evidence to conclude that the beneficiary's main focus has been or would be the management and supervision of subordinates, which would be the focus in the case of a personnel manager. The petitioner has repeatedly stated and provided job descriptions to support the assertion that the beneficiary's foreign and proposed positions revolve around the management of an essential function rather than the day-to-day supervision of the individuals who carry out the underlying duties of that function.

The petitioner also explains the critical nature of the A&R Department, pointing to the adverse ripple effect of having the organization operate without the A&R Department. The record contains sufficient evidence to illustrate the beneficiary's senior-most position within the A&R Departments of each entity where the beneficiary exercises a high degree of discretion and where his decisions are subject to limited review from a higher authority.

In general, when examining the executive or managerial capacity of the beneficiary, we review the totality of the record and do not limit our review to any individual component pertaining to the beneficiary's respective positions. Here, while the beneficiary will be required to apply his expertise in the music business and perform some higher-level negotiations and administrative tasks, the petitioner has established that the beneficiary's staff in the foreign and United States entities carry out the day-to-day non-qualifying tasks required to operate the respective A&R departments, thus allowing the beneficiary to perform primarily qualifying managerial duties. As the petitioner has established that the beneficiary has been and will be employed in a managerial capacity, the director's decision will be withdrawn and the appeal will be sustained.

IV. Conclusion

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has sustained that burden. Accordingly, the director's decision dated June 18, 2013 is withdrawn and the petition is approved.

ORDER: The appeal is sustained.