



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: APR 25 2014

Office: VERMONT 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.

Thank you,

  
Ron Rosenberg

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 withdraw the director's decision and remand the petition for further action and entry of a new decision.

The petitioner filed this nonimmigrant petition seeking 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 Texas corporation established in 2002, is engaged in the sale and service of oilfield equipment. It claims to have an affiliate relationship with [REDACTED] located in Algeria. The petitioner seeks to employ the beneficiary as its vice president – quality control for three years.

The director denied the petition concluding that the petitioner failed to establish: (1) that the beneficiary was employed by the foreign entity for at least one continuous year within the three years preceding the filing of the petition; and (2) that the foreign entity is a qualifying organization doing business as defined in the regulations.

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 petitioner submitted extensive documentation which establishes by a preponderance of the evidence that the foreign entity is doing business in Algeria and that it has employed the beneficiary for at least one year within the three years preceding the filing of the petition.

### 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, Petition for a Nonimmigrant Worker, 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 pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
  - (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
  - (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee . . . [.]
- (H) *Doing business* means the regular, systematic and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of any agent or office of the qualifying organization in the United States or abroad.

### I. One Year of Employment Abroad

The first issue to be addressed is whether the petitioner established that the beneficiary 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. 8 C.F.R. § 214.2(l)(3)(iii).

The petitioner indicates that the beneficiary has been continuously employed by its Algerian affiliate, [REDACTED] for more than five years.

The petitioner has submitted: (1) a copy of the beneficiary's employment contract with [REDACTED] signed on June 24, 2008 and submitted to the Algerian Ministry of Labor; (2) copies of Algerian

work permits indicating that the beneficiary's employer is [REDACTED] and that he is permitted to "exercise a paid professional job in Algeria as a manager"; (3) a 2008 letter from the Algerian Ministry of Labor authorizing the beneficiary to work for [REDACTED] in Algeria; (4) an Algerian Social Security Administration declaration with translation which bears the seal of the government office and [REDACTED] (5) the beneficiary's Algerian Residency Card; (6) the beneficiary's Syrian passport with Algerian Temporary Work Visas; (7) bank statements showing the beneficiary's use of a [REDACTED] company credit card for work-related expenses between March 2010 and December 2012; and (8) letters and e-mails from customers, suppliers, employees and business associates.

The petition was denied, in large part, because the petitioner did not submit payroll records from the foreign entity listing the beneficiary as an employee. The petitioner has explained that the beneficiary chose to have his salary wired to an account owned by his mother in Lebanon and provided evidence of regular wire transfers to this account with annotations indicating that the payments were "payroll and bonus for [the beneficiary]," along with evidence of the familial relationship. The beneficiary indicates that he is unable to have the money transferred to his own bank account in Syria because of U.S. economic sanctions.

The petitioner also provided evidence that it is responsible for paying wages to [REDACTED] employees and reports substantial foreign office expenses for its Algerian affiliate on its tax returns and financial statements.

Upon review of the totality of the evidence submitted, including additional information and explanatory statements provided on appeal, the petitioner has established by a preponderance of the evidence that the beneficiary has more than one continuous year of full-time employment abroad with its affiliate in Algeria. While the procedure set up for the payment of the beneficiary's salary is non-traditional, the petitioner has provided a credible explanation as to the nonexistence of foreign entity payroll records and provided substantial secondary evidence of the beneficiary's employment. All other evidence in the record supports the beneficiary's continuous employment relationship with the foreign company, which, although separately incorporated in Algeria, has close ties to the U.S. headquarters.

Accordingly, the director's finding that the beneficiary does not have the requisite one-year of full-time continuous employment abroad will be withdrawn.

### **III. Doing Business Abroad**

The second issue addressed by the director is whether the petitioner established the foreign entity is doing business as a qualifying organization abroad. *See* 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (H).

The petitioner established that it has an affiliate relationship with the Algerian entity based on common majority ownership and control by the same individual. The director denied the petition

based on a finding that the petitioner failed to submit sufficient evidence that the foreign entity is doing business through the provision of goods and/or services on a regular, systematic and continuous basis.

In denying the petition, the director observed that the petitioner failed to submit foreign tax documents, purchase orders, invoices, bills of lading, customer or vendor contracts, or similar evidence of business transactions in Algeria.

On appeal, the petitioner submits: (1) a letter from the U.S.-Algeria Business Counsel acknowledging the foreign entity's commercial operations since 2007; (2) bills of lading for the transport of goods to Algeria; (3) a certificate of insurance listing the petitioner and the foreign entity with a final destination of Algeria; (4) letters of credit for shipments to the Algerian office; (5) additional foreign entity bank statements for 2012; (5) consolidated financial statements; (6) the foreign entity's 2011 balance sheet; (6) letters from clients and suppliers in Algeria; and, (7) photographs of the foreign entity.

Upon review, the petitioner has submitted sufficient evidence to establish that the foreign entity is engaged in the regular, systematic and continuous provision of services. The record shows that the foreign entity serves as a sales and liaison office that receives, sells and services the petitioner's equipment in Algeria. While the actual sales contracts may be between the petitioner and its Algerian customers, the record establishes that the foreign entity provides services to both its U.S. affiliate and to the customer who receive the goods.

According, the record establishes that the foreign entity is doing business as a qualifying organization abroad and the director's determination will be withdrawn.

#### IV. Additional Issues

Although the AAO will withdraw both of the director's grounds for denial, the record as presently constituted contains insufficient evidence to establish that the beneficiary has been employed abroad, or would be employed in the United States, in a qualifying managerial or executive capacity, as those terms are defined at sections 101(a)(44)(A) and (B) of the Act. The AAO reviews each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

In examining the executive or managerial capacity of the beneficiary, USCIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(1)(ii). Published case law clearly supports the pivotal role of a clearly defined job description, as the actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner's description of the beneficiary's duties included broad areas of responsibility such as managing and overseeing the quality control department and sales department; managing and training the quality control and shipping & receiving managers; and overseeing the interaction with

banks for international sales and shipments. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Other duties the petitioner intends to assign to the beneficiary appear to be operational and non-qualifying such as reviewing all major technical and sales proposals, interfacing with overseas clients, and wholly managing new deals in Algeria for the company. The petitioner did not state how much time the beneficiary would spend engaged in these activities. Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary would primarily perform non-managerial administrative or operational duties. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

Finally, the petitioner asserted that the quality control and shipping & receiving managers that would report to the beneficiary "are professional level employees with more than fifteen years of work experience in international commercial transactions." However, the petitioner provided no names, no qualifications, and no job requirements for these employees. Further, the petitioner's own undated organizational chart identified four unfilled manager positions but the record contains no additional information or discussion regarding the nine employees the petitioner claimed on the petition. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

Overall, the evidence of record is insufficient to establish that the petitioner would employ the beneficiary in a qualifying managerial or executive capacity.

Similarly, the record contains insufficient evidence to establish that the beneficiary has at least one year of qualifying employment in a managerial or executive capacity with the foreign entity.

Although the petitioner refers to the beneficiary's current position as vice president of quality control beginning in March 2010, the documentation provided suggests that the beneficiary's position title was client services manager as recently as 2011. Furthermore, although the beneficiary's duties allegedly included the supervision and oversight of "six professional employees, including three account managers and two engineers" the undated organizational chart indicated that the beneficiary's direct reporting employees were three account managers, a technical service manager, one unfilled human resource position and one unfilled financial accounting position. The petitioner provided no duty descriptions for these positions, and no credentials for the employees identified as holding four of the positions.

It is not clear from the duty description how much time the beneficiary spends engaged in managerial or executive functions but the AAO does note that the beneficiary's own resume includes his experience as vice president of Algerian operations but fails to mention any supervision or management of any personnel. The inconsistencies noted raise doubts regarding the claim that the foreign company employed the beneficiary in a qualifying capacity. See 8 C.F.R. § 214.2(l)(3)(iv). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In sum, the evidence of record does not establish that the beneficiary has been employed abroad or would be employed in the United States in a qualifying managerial or executive capacity.

In view of the foregoing, the previous decision of the director is withdrawn. The petition is remanded to the director for further consideration, and if appropriate, the issuance of a new request for evidence. The director may request any additional evidence considered pertinent. Upon review of all the evidence, the director will enter a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.

**ORDER:** The decision of the director dated April 2, 2013 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse, shall be certified to the AAO for review.