



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: AUG 04 2014

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 (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 Vermont Service Center's director 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, an IT consulting and development services company, is an affiliate of the beneficiary's foreign employer, [REDACTED] located in India. The petitioner seeks to employ the beneficiary as a Development Manager for a period of three years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary has been employed abroad, or would be employed in the United States, in a qualifying managerial or executive capacity. The director further found that the petitioner's placement of the beneficiary at the worksite of an unaffiliated employer "is essentially an arrangement to provide labor for hire for the unaffiliated employer."

On appeal, counsel for the petitioner contends that the director mischaracterized the nature of the beneficiary's position and disregarded portions of the statutory definition of "managerial capacity" in evaluating the beneficiary's qualification for the requested classification. Counsel asserts that the beneficiary has managed and will manage a distinct component or subdivision of the organization and supervises a staff of professional employees. 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, 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.

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.

II. The Issue on Appeal

The sole issue to be addressed is whether the petitioner has established that the beneficiary has been employed abroad and will be employed in the United States in a primarily managerial capacity.

A. Facts

On the Form I-129, the petitioner stated that the beneficiary would work off-site in Windsor, Connecticut, as a development manager "responsible for managing and directing the allocation of materials and resources to Petitioner's large on-site/off-site software development projects in the United States." The petitioner indicated that the beneficiary has been employed by its foreign affiliate since 2005 and currently performs the same duties as a development manager based in India.

In a letter in support of the petition, the petitioner included a detailed description of the beneficiary's current and proposed responsibilities, which include: managing, directing, and planning of projects; approving financial matters relating to the projects; overseeing project documentation; and managing and directing all project resources including materials and personnel.

The petitioner stated that the beneficiary would directly supervise one subordinate supervisor and four professionals in the United States. The petitioner also stated that he would continue to supervise his current team of eight professionals based in India pursuant to the company's "Global Delivery Model" whereby software is developed at its center in India and remotely managed and coordinated by on-site project management staff in the United States. In support of these assertions, the petitioner submitted its organizational charts for both entities which identified the beneficiary's subordinates by name and job title.

The director subsequently issued a Request for Evidence (RFE) instructing the petitioner to provide additional evidence relating to the beneficiary's U.S. and foreign employment.

In response, the petitioner provided more detailed descriptions of the beneficiary's current and proposed duties along with information regarding the amount of time the beneficiary allocates and would allocate to specific duties in his role as development manager. The petitioner included documentary evidence demonstrating the educational qualifications of the beneficiary's subordinates, and provided brief descriptions of their job duties and evidence of their employment. The petitioner also provided evidence that the beneficiary conducts performance appraisals for all employees identified as his subordinates on the foreign entity's organizational chart.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has been or would be employed in a qualifying managerial capacity. The director observed that the evidence submitted indicated that the beneficiary will manage a team that works on a specific project and engages in activities directly associated with producing a product or providing a service to the client. The director concluded that "[m]anaging a small team on a specific client project is not evidence that the beneficiary is managing an 'essential function' or component of your organization," and added that "it appears . . . your business would continue to conduct business if this individual client project ceased."

The director ultimately concluded that the beneficiary has not been employed abroad and will not be employed in the United States in a managerial or executive capacity because his role does not involve managing the organization or a "department, subdivision, function, or component of the organization." Finally, the director observed that the beneficiary's physical placement working at an unaffiliated employer's location is essentially an arrangement to provide labor for hire for that unaffiliated employer.

On appeal, counsel asserts that the beneficiary's role involves managing a distinct component of the organization and supervising a staff of professional and supervisory employees, consistent with the definition of "managerial capacity" at section 101(a)(44)(A) of the Act. Counsel objects to the director's determination that the beneficiary's management of client projects is not of sufficient

consequence to qualify as a component or function of the organization, and provides an additional explanation from the petitioner as follows:

[E]ach "project" is the most distinct, independent and readily identifiable component of our organization. In addition to the engineering expertise, it requires direct management of professional teams, budgets, client liaison, supply, transportation, training, H.R. etc. . . . Each project has its own management team, its own budget, client liaison and offshore development teams. . . . Each Project Manager functions as a Chief Operations Officer within the matrix of the project. . . . While a single project may only be valued at 2 to 3 million dollars, it is the failure of the project that could easily lead to loss of a valuable client with severe financial consequences for the company [The petitioner] is the sum of its projects."

Counsel emphasizes that the director did not contest that the beneficiary's subordinates are professionals or that his current and proposed duties are otherwise not in compliance with the applicable regulations.

B. Analysis

Upon review, the petitioner has established that the beneficiary has been employed abroad and would be employed in the United States in a managerial capacity. Accordingly, the director's decision will be withdrawn and the appeal will be sustained.

As a preliminary matter, the director erred by denying the petition, in part, based on a finding that the beneficiary's placement at the worksite of an unaffiliated employer is essentially an arrangement to provide "labor for hire." The director inappropriately applied Section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F) (the "L-1 Visa Reform Act") to this petition to classify the beneficiary as an L-1A nonimmigrant. The restrictions on off-site employment imposed by section of the Act are applicable only to L-1 petitions filed on behalf of L-1B specialized knowledge personnel.

The director's finding that the beneficiary's role is not in a managerial capacity was based on a finding that his management of a "client project" cannot qualify as management of "a department, subdivision, function, or component of the organization," pursuant to section 101(a)(44)(A)(i) of the Act.

The petitioner has provided sufficient support for a conclusion that, within the context of its business, its client projects are in fact distinct components of the company that require independent management and a significant level of responsibility on the part of managers assigned to lead them. The record establishes that the beneficiary has been and would be providing such management for client projects, and that he exercises discretion over the day-to-day operations of the activities for which he has authority as required by 101(a)(44)(A)(iv) of the Act.

Further, the petitioner established that the beneficiary has supervised and will supervise a subordinate team of software professionals employed by the petitioner and its foreign affiliate, and

that he has the authority to hire and fire or recommend those as well as other personnel actions. See sections 101(a)(44)(A)(ii) and (iii).

Finally, the petitioner has described the beneficiary's current and proposed duties in sufficient detail to establish that he has been and will be primarily performing managerial duties, and will not allocate a significant portion of his time to duties that do not fall within the statutory definition of managerial capacity.

Based on the foregoing the petitioner has established that the beneficiary has been and will be employed in a managerial capacity. The appeal will be sustained.

III. 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 July 18, 2013 is withdrawn and the petition will be approved.

ORDER: The appeal is sustained.