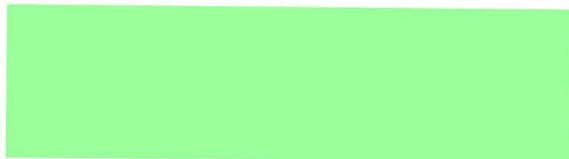


(b)(6)

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

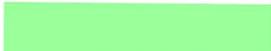


U.S. Citizenship  
and Immigration  
Services



DATE: **JAN 09 2014**

Office: CALIFORNIA 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.

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 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 Washington corporation established in March 2010, states that it operates an aquatic food wholesale business. The petitioner claims to be a subsidiary of [REDACTED], located in China. The petitioner seeks to employ the beneficiary in the position of president for a period of two years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed 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 for the petitioner asserts that "the Beneficiary squarely meets all four prongs of the definition of 'executive' under the applicable statute and regulations." 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)(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 primarily in a qualifying managerial or executive capacity.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on August 13, 2012. The petitioner indicated on the Form I-129 that it operates an aquatic food wholesale business with four current employees and a gross annual income of \$292,030. The petitioner achieved gross sales of \$3.8 million in 2011. In support of the petition, the petitioner submitted a letter that included a lengthy description of the beneficiary's duties, and indicated that he would primarily focus on oversight and management of the company's operations through his subordinates, which include a business manager, a sales manager, a sales specialist, and a staff accountant. The petitioner also provided a description of each of the beneficiary's subordinates' job duties and responsibilities, explaining how the subordinates would carry out the actual tasks of procuring U.S. seafood for export to its parent company's processing plants in China and handling the administrative and financial affairs of the company.

The petitioner provided an organizational chart for the U.S. company depicting the beneficiary as the president at the top of the corporate hierarchy, supervising the business manager and sales manager, who, in turn, supervise the staff accountant and sales specialist. The petitioner also provided IRS Forms 941, Employer's Quarterly Federal Tax Returns, and payroll records demonstrating that each of the employees listed on the organizational chart were in fact employed by the petitioner on a full-time basis at the time of filing.

The director issued a request for additional evidence ("RFE") on August 24, 2012, instructing the petitioner to submit, *inter alia*, the following: (1) a more detailed description of the beneficiary's proposed duties; and (2) a more detailed organizational chart.

In response to the RFE, the petitioner provided the same detailed list of job duties, along with its updated organizational chart, which included two new positions "to be hired" for its expansion to Chicago.

The director denied the petition on November 26, 2012, concluding that the petitioner failed to establish that the beneficiary will be employed primarily in a qualifying managerial or executive capacity. In denying the petition, the director found that description of the beneficiary's position was insufficient to demonstrate what he would do a day-to-day basis.

On appeal, counsel for the petitioner asserts that the beneficiary will be employed in an executive capacity. Counsel contends that the director failed to properly review the submitted information and ignored the specifics of the listed duties for the beneficiary. Counsel asserts that the petitioner's evidence clearly shows what the beneficiary does on a daily basis and that those duties are primarily executive in nature.

Upon review, the AAO finds sufficient evidence to establish that the beneficiary will be employed in a primarily executive 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-qualifying functions. The evidence submitted also establishes that the beneficiary establishes the goals and policies of the organization and exercises a wide latitude in discretionary decision-making. *See* sections 101(a)(44)(B)(ii) and (iii) of the Act. The director incorrectly stated that the petitioner failed to submit comprehensive job duties and position descriptions for the beneficiary and his subordinates. In fact, not only did the petitioner submit detailed job duties for the beneficiary and his subordinates, it also submitted an extensive breakdown of the percentage of time each employee allocates 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 business.

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 professional employees. Given the overall purpose of the organization and its current stage of development, the petitioner established a reasonable need for an executive to oversee the business and execute current expansion plans.

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-qualifying tasks required to operate the business, thus allowing the beneficiary to perform primarily qualifying duties. As the petitioner has established that the beneficiary will be employed in an executive capacity, the director's decision will be withdrawn and 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, that burden has been met.

**ORDER:** The appeal is sustained.