



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[REDACTED]

Date: **JAN 16 2014**

Office: CALIFORNIA SERVICE CENTER [REDACTED]

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)

IN BEHALF OF PETITIONER:

[REDACTED]

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 petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the record remanded for the entry of a new decision based upon all the evidence in the record.

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, a corporation organized in the State of Delaware, claims to be the subsidiary of [REDACTED] headquartered in the United Kingdom. It further claims to be a leading provider of multifunction connectivity and location platforms, and seeks to employ the beneficiary as a sales director. The petitioner currently employs the beneficiary in Canada and seeks to relocate his position to the United States.

The director denied the petition, concluding that the petitioner did not establish that it has a qualifying relationship with the beneficiary's foreign employer. Specifically, the director determined that the petitioner has no branch office, parent, affiliate or subsidiary in Canada.

Counsel for the petitioner filed an appeal in response to the denial. On appeal, counsel contends that the petitioner supplied sufficient evidence establishing that it currently employs the beneficiary as a direct employee in Canada and that he will continue to be employed by the same employer upon his transfer to the United States.

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.

The petitioner claims to be part of the [REDACTED] of companies headquartered in England and Wales, which has offices throughout the world. Specifically, the petitioner claims that it was initially founded as [REDACTED] in June 2009. According to a Certificate of Amendment, the legal name of the company was changed to [REDACTED] on November 19, 2010.

With regard to the beneficiary, the petitioner submitted a copy of an offer of employment letter dated December 23, 2009 on [REDACTED] letterhead, which offered the beneficiary the position of Regional Sales Manager. The offer letter indicated that the position would be based in Canada, but did not provide a specific address or location. The petitioner also submits evidence demonstrating that it has been paying the beneficiary's salary in accordance with Canadian payroll tax requirements, noting that it utilized the services of [REDACTED] Canada to facilitate these payments.

Regarding the claimed qualifying relationship, the petitioner explained that the beneficiary currently works for the petitioner remotely from his home located in [REDACTED]. According to a memo from counsel dated October 29, 2012, the beneficiary was allowed to perform his duties for the petitioner from his home office in Canada, and indicated that the scope of his employment was as follows:

[The beneficiary] travelled as appropriate for meetings with [the petitioner's] employees and customers of [the petitioner] as business needs dictated. [The beneficiary] reported to more senior level management at [the petitioner] in the US and he managed more junior managerial, supervisory, professional and other employees of [the petitioner] in the US.

After determining that the initial evidence accompanying the petition was insufficient to establish eligibility, the director issued a request for evidence on November 16, 2012. In the request, the director specifically required the petitioner to submit evidence that established that it was doing business as a branch office in Canada. The director requested: (1) copies of the foreign office's most recent filing of tax documents, or evidence that such documents are not required; (2) a copy of the foreign office's telephone directory listing with translation if applicable; (3) a list of the foreign office's major clients, including names, addresses, and phone/fax numbers related to the sales reported; and (4) legible copies of the foreign office's sales invoices and/or sales contracts to identify the gross sales amounts as reported on the income and expenses statement.

On November 23, 2012, counsel for the petitioner submitted a response to the director's request which was accompanied by numerous documents in support of the contention that beneficiary's home office could be considered a branch office of the U.S. petitioner. Such documentation included a list of the petitioner's major customer accounts, including actual and forecasted sales figures; sample copies of the beneficiary's weekly sales reports (previously submitted); and copies of email correspondence between the beneficiary and various customers (also previously submitted). In addition, counsel stated that the beneficiary was primarily responsible for one of the company's largest customer accounts with [REDACTED] and indicated that in 2011, this account brought in revenues of \$66.75 million. Counsel also stated that the principal location of this account is in the branch office in Canada.

The director concluded that the record was insufficient to establish that the beneficiary works for a branch of the U.S. entity. Specifically, the director noted that despite the large amount of documentary evidence submitted, there was nothing in the record to establish that the foreign office was a branch office of the U.S. petitioner as defined by the regulations.

On appeal, counsel asserts that because the petitioner is the proposed U.S. employer and the beneficiary's employer abroad, such relationship is a qualifying intracompany relationship for L-1A purposes. Counsel additionally emphasizes on appeal that the employment relationship between the beneficiary and the petitioner is provided through control and by virtue of the fact that the U.S. petitioner paid the beneficiary's salary through Canadian payroll resources.

Upon review of the record of proceeding, the petitioner has established that the beneficiary is employed by a qualifying organization.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) requires 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. The issue before the AAO is whether the petitioner has established that the beneficiary has been employed by a qualifying organization for at least one year in the three years preceding the filing of the petition.

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer, or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G) defines the term "qualifying organization" as 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; and
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

In this matter, the petitioner has submitted sufficient evidence to establish the employment relationship between the beneficiary and the petitioner. The record contains documentation that the U.S. petitioner controls the beneficiary's work abroad and pays the beneficiary's salary through Canadian payroll resources. Based on the documentation contained in the record, the beneficiary has been employed abroad by the "same employer" that now seeks his services in the United States.

Moreover, the U.S. Department of State's Foreign Affairs Manual provides the following guidance on this issue:

A U.S. company, which is doing business as an employer in the United States and in at least one foreign country, can utilize the L classification to transfer to the United States employees abroad who are unattached to a foreign entity. The reverse of this situation, however, is not appropriate. A foreign organization must have, or be in the process of establishing, a legal entity in the United States which is, or will be, doing business as an employer in order to transfer an employee under section 101(a)(15)(L).

9 FAM 41.54 N9.3.

The record contains evidence that the petitioner is part of the [REDACTED] group of companies headquartered in England and Wales, which has offices in the United States and throughout the world. The petitioning U.S. entity, therefore, has established that it is doing business in the United States and in at least one foreign country, based on the evidence of its corporate offices located in Europe and Asia. Moreover, although the beneficiary's foreign employment may not be through an officially-registered branch office of the U.S. petitioner, the record demonstrates that the beneficiary is employed and controlled by the U.S. petitioner, and thus was performing services abroad for the same employer. Consequently, the AAO finds that the beneficiary has been and will be employed by the same qualifying organization, and the petitioner, as a multinational organization, is eligible to utilize the L classification for the beneficiary in this matter. The director's findings to the contrary are hereby withdrawn.

Although the director's sole ground for denial will be withdrawn, the petitioner has submitted insufficient evidence to establish that the beneficiary was employed abroad in a primarily managerial capacity. 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.

The beneficiary's current position is titled "Regional Sales Manager," and the record contains minimal information regarding the nature of the beneficiary's duties abroad. In a letter dated October 22, 2012, the petitioner stated that "from Canada, [the beneficiary] has primarily managed sales activities for [the petitioner's] major accounts in Canada and North American region." In addition, counsel stated in his memorandum dated October 29, 2012:

[The beneficiary] travelled as appropriate for meetings with [the petitioner's] employees and customers of [the petitioner] as business needs dictated. [The beneficiary] reported to more senior level management at [the petitioner] in the US and he managed more junior managerial, supervisory, professional and other employees of [the petitioner] in the US.

Although the petitioner submitted payroll records demonstrating payment of the beneficiary's wages through a Canadian payroll services, there are no records of wages paid to any additional employees or subordinate staff members of the beneficiary.

Whether the beneficiary is a manager or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. In this case, the petitioner asserts that the beneficiary has been employed in a qualifying managerial capacity by virtue of his position title and associated duties abroad. However, the description of duties provided is insufficient to establish that the beneficiary performs primarily managerial duties and the evidence of record is insufficient to support the petitioner's claim that the beneficiary supervises the claimed managerial, supervisory or professional staff.

Accordingly, the director is requested on remand to issue a request for evidence to the petitioner, asking for additional evidence that the beneficiary was employed abroad in a qualifying managerial or executive capacity. The director may also request any other evidence deemed necessary to make an eligibility determination in this matter. *See* 8 C.F.R. § 214.2(l)(3)(viii).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden in part. Accordingly, the decision of the director will be withdrawn and the matter remanded for entry of a new decision.

**ORDER:** The director's decision is withdrawn. The matter is remanded to the director for the purposes of issuing a request for evidence and the entry of a new decision, which, if adverse, shall be certified to the AAO.