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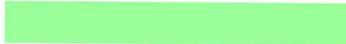


U.S. Citizenship  
and Immigration  
Services



DATE: MAR 05 2014

Office: CALIFORNIA SERVICE CENTER

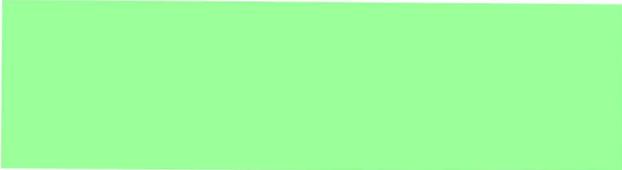


IN RE: Petitioner:  
Beneficiary:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".  
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 is a California corporation incorporated in November 2010 that is engaged in the manufacture and sale of natural food additives, mainly sugar substitutes. It claims to be a subsidiary of [REDACTED]. The petitioner currently employs the beneficiary as its director of business development and seeks to extend her L-1A status for two additional years.

The director denied the petition, concluding that the petitioner failed to establish that it will employ the beneficiary in a qualifying managerial or executive capacity.

On appeal, counsel asserts that the beneficiary has been, and will continue to be, employed in a qualifying managerial capacity as a function manager and that United States Citizenship and Immigration Services (USCIS) abused its discretion in denying 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 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.

Finally, 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. Section 101(a)(44)(C) of the Act.

## II. The Issue on Appeal

The sole issue to be addressed on appeal is whether the petitioner has established that it will employ the beneficiary in a qualifying managerial capacity. The petitioner does not claim that the beneficiary will be employed in an executive capacity.

Specifically, the petitioner contends that the beneficiary qualifies as a function manager, as defined by the regulations, through her management of two of the petitioner's major products lines in the United States, including the management of critical strategic relationships with the foreign employer's U.S. customers, [REDACTED]. The petitioner asserts that the beneficiary supervises a team of marketing and commercial operations managers

located in China and that she delegates non-qualifying tasks to these employees, and thereby devotes a majority of her time to qualifying managerial duties. The petitioner has submitted a lengthy explanation of the company's business activities within the sugar substitutes market and the beneficiary's role within the organization. Further, counsel submits a detailed description of the petitioner's organizational structure and the duties and credentials of the beneficiary's subordinates in the United States, as well as for the employees in China who support the operational needs of the petitioning company.

Upon review of the petition and the evidence, the petitioner has established that the beneficiary will be employed in a qualifying managerial capacity.

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must clearly describe the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Intn'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other staff to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. In the case of a function manager, where no subordinates are directly supervised, these other factors may include the beneficiary's position within the organizational hierarchy, the depth of the petitioner's organizational structure, the scope of the beneficiary's authority and its impact on the petitioner's operations, the indirect supervision of employees within the scope of the function managed, and the value of the budgets, products, or services that the beneficiary manages.

In this matter, the petitioner has provided sufficient evidence to establish that the beneficiary manages an essential function. The petitioner has provided a sufficiently detailed duty description for the beneficiary, including substantial background as to the petitioner and foreign employer's operations and the beneficiary's actual daily duties therein. For instance, the petitioner described, in detail, the beneficiary's close involvement in establishing a multi-year agreement with its key

United States customer [REDACTED] in early 2011 to sell the company substantial amounts of stevia leaf extract and submitted a supply agreement, technology licensing agreement, and confidentiality agreement to support this assertion. Further, the petitioner has provided purchase orders from Cargill from 2011 and 2012 that total over \$25 million, supporting the substantial nature of this business relationship. In addition, the petitioner has submitted detailed letters from executives of the client company which corroborate the beneficiary's submitted duty description and her asserted management of an essential function.

Contrary to the director's finding, the AAO finds that the totality of the evidence does not demonstrate that the beneficiary's time will be primarily devoted to non-qualifying duties. Although some of the beneficiary's time will be allocated to non-managerial duties, the petitioner established by a preponderance of the evidence that these duties are only incidental to the beneficiary's overall managerial role. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial. *See* section 101(a)(44)(A) of the Act; *see also See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). Here, the petitioner met this burden.

Further, the petitioner has demonstrated that the nature of the function the beneficiary manages is such that the petitioner's small U.S. staff and documented employees within the overseas entity are able to fulfill the petitioner's day-to-day operational needs while the beneficiary primarily focuses on higher-level managerial functions associated with the oversight of the development of the company's major product lines in the United States. The record reflects that the beneficiary functions at a senior level within the organization's hierarchy and exercises discretion over the day-to-day operations of the function for which she has authority, consistent with section 101(a)(44)(A) of the Act.

Accordingly, the petitioner has established that the beneficiary will be employed in a managerial capacity.

### III. Conclusion

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has sustained that burden. The director's decision dated May 6, 2013 will be withdrawn and the appeal will be sustained.

**ORDER:** The appeal is sustained.