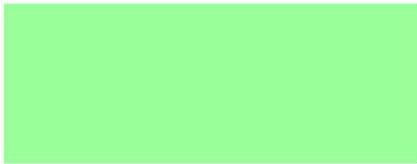
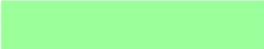


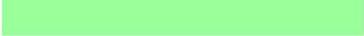


U.S. Citizenship
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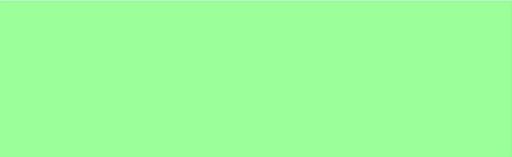
(b)(6)



DATE: NOV 10 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 in your case. 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 Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal.

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 Delaware corporation established in November 1999, states that it operates a high speed fiber optics design, development, manufacture, and distribution business. The petitioner claims to be the parent company of [REDACTED] located in Singapore. The petitioner seeks to employ the beneficiary as a senior technical manager in transceiver engineering for a period of three years.

The director denied the petition on two alternate grounds, concluding that the petitioner failed to establish that 1) it will employ the beneficiary in a qualifying managerial or executive capacity in the United States, and 2) the beneficiary was employed in a qualifying managerial or executive capacity at the foreign entity.

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, the petitioner contends that the director's decision is erroneous in that she misinterpreted the facts and misapplied the law. The petitioner 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 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.

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 ISSUES ON APPEAL

A. U.S. Employment in a Managerial Capacity

The first issue addressed by the director is whether the petitioner established that the beneficiary will be employed primarily in a qualifying managerial or executive capacity in the United States. The petitioner has

consistently claimed that the beneficiary will be employed in a managerial capacity in his role as senior technical manager in transceiver engineering of the petitioning company.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on January 6, 2014. The petitioner indicated on the Form I-129 that it operates a high speed fiber optics design, development, manufacture, and distribution business with 700 current U.S. employees and a gross annual income of \$987 million. In support of the petition, the petitioner submitted a letter that included a lengthy description of the beneficiary's duties, along with a percentage breakdown of the amount of time he will devote to each, and indicated that the beneficiary's duties would be primarily focused on oversight and management of its test software and firmware team- 3 senior software engineers in the U.S. and an existing team in Singapore. The petitioner also provided a position description for the senior engineers in transceiver engineering, clearly indicating that they would carry out the actual tasks of producing a product or providing a service of the U.S. company.

The petitioner provided its organizational chart illustrating that it will employ the beneficiary as the senior technical manager of test software and firmware within transceiver engineering, with three U.S. subordinate senior software engineers and an existing team in Singapore.

The director issued a request for additional evidence ("RFE") on January 8, 2014, instructing the petitioner to submit evidence that the beneficiary's position in the United States will be in a qualifying managerial or executive capacity.

In response to the RFE, the petitioner provided an extensive breakdown of the beneficiary's duties and submitted examples of the beneficiary's current work to demonstrate how he will perform said duties. The petitioner also provided an extensive description of managerial decisions that the beneficiary will make on behalf of the U.S. company as the senior technical manager in transceiver engineering. The petitioner submitted a new organizational chart illustrating the same hierarchy previously submitted, but including the names and titles of the beneficiary's subordinates abroad, whom he will continue to supervise while in the United States. The petitioner also submitted resumes and appointment letters for seven of the 16 listed subordinates to the beneficiary at the foreign entity.

The director denied the petition on February 3, 2014 concluding, in part, that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity in the United States. In denying the petition, the director found that the duties described are more indicative of an employee who will be performing the necessary tasks to provide a service or produce a product and not someone employed in a managerial or executive capacity. The director observed that "none of the U.S. employee resumes submitted appear to be listed on the organizational chart for the U.S. position" and the organizational chart submitted for the U.S. company is identical to the one submitted for the foreign entity. The director further found that, based on the organizational structure provided, it appears the beneficiary's U.S. position is primarily assisting with the day to day non-supervisory duties of the business, which preclude the beneficiary from being considered a manager or executive.

On appeal, the petitioner asserts that the beneficiary will be employed in a managerial capacity as senior technical manager, the same position currently held at the foreign entity. The petitioner contends that the director failed to properly review the documentation submitted in support of the petition. The petitioner further contends that it submitted a comprehensive description of the beneficiary's duties that demonstrate its

organizational hierarchy and the beneficiary's managerial role in the U.S. company. In addition, the petitioner asserts that the director incorrectly stated that U.S. employees whose resumes were submitted are not listed on the organizational chart; each of the resumes submitted are actual subordinates to the beneficiary at the foreign entity whom the beneficiary will continue to manage while in the United States.

Upon review, the evidence in the record is persuasive. The AAO finds sufficient evidence to establish that the beneficiary will be employed in a primarily managerial capacity.

The statutory definition of "managerial capacity" allows for both "personnel managers" and a "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

When examining the 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). The AAO finds sufficient evidence to establish that the beneficiary will be performing duties in the proposed position that are primarily managerial in nature. Contrary to the director's observations, the petitioner has provided a description of the beneficiary's proposed duties at the U.S. company sufficient to establish that his duties will be primarily related to the management and supervision of the test software and firmware team within the petitioner's business, and not to the production of a product, provision of a service, or performance other non-managerial functions. The evidence submitted establishes that the beneficiary will supervise and control the work of subordinate professional employees and exercises authority to hire and fire employees under his supervision. See sections 101(a)(44)(A)(ii) and (iii) of the Act.

The director incorrectly stated that "none of the U.S. employee resumes submitted appear to be listed on the organizational chart for the U.S. position" and the organizational chart submitted for the U.S. company is identical to the one submitted for the foreign entity. In fact, the petitioner submitted the resumes and appointment letters for seven of the 16 listed subordinates on the organizational chart in response to the RFE and clearly indicated that the beneficiary will continue to manage the team at the foreign entity's facility. The AAO is satisfied that the beneficiary manages a component of the organization, supervises and controls the work of other professional employees, has the authority to hire and fire said employees, and exercises discretion over the day-to-day operations of the test software and firmware component of the U.S. company as required by section 101(a)(44)(A)(iv) of the Act.

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. Here, the petitioner has established that, at a minimum, the beneficiary primarily manages a component of the corporation, in addition to directly overseeing professional employees in the United States and abroad. Given

the overall purpose of the organization, the petitioner established a reasonable need for a senior technical manager in transceiver engineering at the U.S. company.

While the beneficiary will undoubtedly be required to apply his expertise to perform some higher-level business functions, the AAO is persuaded that the beneficiary's subordinates in the United States and abroad will carry out the majority of the day-to-day non-managerial tasks required to operate the business. The petitioner need only establish that the beneficiary will devote more than half of his time to managerial duties. The petitioner has met that burden.

B. Employment Abroad in a Managerial Capacity

The second issue addressed by the director is whether the petitioner has established that the beneficiary was employed by the foreign entity in a qualifying managerial or executive capacity, or in a position involving specialized knowledge, as required by 8 C.F.R. § 214.2(l)(3)(v)(B).

On the Form I-129, the petitioner stated that the beneficiary is coming to the United States to assume the position of senior technical manager, the same position he currently holds at the foreign entity. Where asked to describe the beneficiary's duties abroad for the three years preceding the filing of the petition, the petitioner briefly stated that the beneficiary oversees firmware, test software, and hardware development to support research and development as well as manufacturing requirements. The petitioner also stated that the beneficiary manages 15 professional staff, including a technical manager, lead engineer, five senior engineers, eight engineers and a team at the company's Sydney, Australia facility.

In support of the petition, the petitioner submitted an organizational chart for the foreign entity illustrating that it employs the beneficiary as the senior technical manager within transceiver engineering, overseeing one technical manager, two senior engineers, five engineers, and a team of nine employees in Sydney, Australia. The petitioner also provided a position description for the embedded software developer, senior engineer in transceiver engineering, and lead engineer in embedded systems, clearly indicating that they carry out the actual tasks of producing a product or providing a service of the foreign entity. The petitioner provided thorough evidence demonstrating that the foreign entity employed the beneficiary throughout the year of 2013.

In the RFE, the director instructed the petitioner to submit evidence that the beneficiary's position abroad was in a managerial or executive capacity or involved specialized knowledge.

In response to the RFE, the petitioner provided an extensive breakdown of the beneficiary's duties and submitted examples of the beneficiary's current work to demonstrate how he currently performs said duties. The petitioner also provided a description of managerial decisions that the beneficiary makes as the senior technical manager. The petitioner also submitted resumes and appointment letters for seven of the 16 listed subordinates to the beneficiary at the foreign entity.

The director denied the petition concluding, in part, that the petitioner failed to establish that the beneficiary was employed by the foreign entity in a qualifying managerial or executive capacity, or in a position involving specialized knowledge. In denying the petition, the director found that the petitioner failed to submit the requested detailed description of the beneficiary's position abroad. As such, the director found that

the description provided at the time of filing was insufficient to establish that the position abroad was in a managerial or executive capacity.

On appeal, the petitioner asserts that the beneficiary has been employed in a managerial capacity as senior technical manager, the same position he will assume in the United States. The petitioner contends that the director failed to properly review the documentation submitted in support of the petition. The petitioner further contends that it submitted a comprehensive description of the beneficiary's duties that demonstrate its organizational hierarchy and the beneficiary's managerial role at the foreign entity. In addition, the petitioner asserts that the director incorrectly stated that U.S. employees whose resumes were submitted are not listed on the organizational chart; each of the resumes submitted are actual subordinates to the beneficiary at the foreign entity.

Upon review, the evidence in the record is persuasive. The AAO finds sufficient evidence to establish that the beneficiary has been employed in a primarily managerial capacity at the foreign entity.

Again, the statutory definition of "managerial capacity" allows for both "personnel managers" and a "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

When examining the 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 with the foreign entity, which are the same as his proposed duties at the U.S. company, sufficient to establish that his current duties are primarily related to the management and supervision of the test software and firmware team within the petitioner's business abroad, and not to the production of a product, provision of a service, or performance other non-managerial functions. The evidence submitted establishes that the beneficiary currently supervises and controls the work of subordinate professional employees and exercises authority to hire and fire employees under his supervision. See sections 101(a)(44)(A)(ii) and (iii) of the Act.

The director incorrectly stated that the petitioner failed to submit the requested detailed description of the beneficiary's position abroad. It appears that the director overlooked the fact that the beneficiary will assume the same position in the United States that he currently holds abroad, and as such, the position description and breakdown of duties provided by the petitioner applies to both of the beneficiary's positions. The petitioner also submitted the resumes and appointment letters for seven of the 16 subordinates to the beneficiary abroad listed on the organizational chart and examples of the beneficiary's work in his current position. The AAO is satisfied that the beneficiary manages a component of the organization, supervises and controls the work of other professional employees, has the authority to hire and fire said employees, and exercises discretion over the day-to-day operations of the test software and firmware component of the U.S. company as required by section 101(a)(44)(A)(iv) of the Act.

While the beneficiary is undoubtedly required to apply his expertise to perform some higher-level business functions, the AAO is persuaded that the beneficiary's subordinates abroad carry out the majority of the day-to-day non-managerial tasks required to operate the business. The petitioner need only establish that the beneficiary devotes more than half of his time to managerial duties. The petitioner has met that burden.

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 met that burden. Accordingly, the director's decision dated February 3, 2014 is withdrawn and the appeal will be sustained.

ORDER: The appeal is sustained.