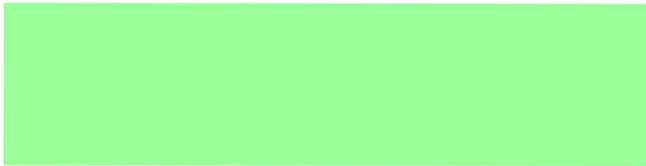


(b)(6)

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



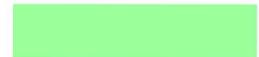
U.S. Citizenship
and Immigration
Services



DATE: OCT 22 2014

Office: VERMONT SERVICE CENTER

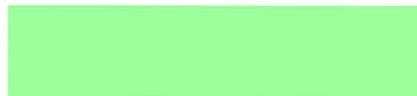
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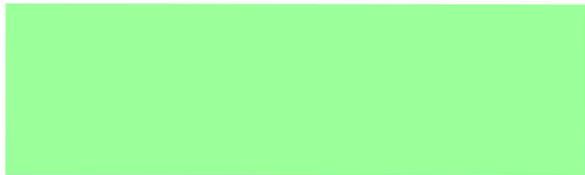
Petitioner:

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.

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 petition will be approved.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, seeking to employ 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, states that its type of business is "Consulting/Software/Engineering." The petitioner is the parent company of [REDACTED] the beneficiary's prior foreign employer. The petitioner seeks to employ the beneficiary as its "Senior Consultant/QA Manager – Enterprise Solutions" for a period of three years.

On December 11, 2013, the director denied the petition on two alternative grounds, concluding that the petitioner failed to establish that: (1) the beneficiary had at least one year of full-time employment in a primarily managerial capacity with a qualifying foreign entity; and (2) the beneficiary will be employed in a primarily managerial or executive capacity in the United States.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to this office.¹ On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the evidence of record is sufficient to satisfy the petitioner's burden of proof in that the evidence establishes the beneficiary's eligibility for the requested classification.

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.

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;

¹ We maintain discretionary authority to review each appeal on a *de novo* basis. See, e.g. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- (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
- (ii) 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.

As set out above, the statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." 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." 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.

II. THE ISSUE ON APPEAL

At issue in this matter is whether the petitioner established that the beneficiary has been employed abroad, and would be employed in the United States, in a qualifying managerial capacity.

The record reflects that the beneficiary was employed by the beneficiary's Indian subsidiary as a Principal Consultant/Quality Assurance (QA) Manager from September 2010 until May 2012 where he was responsible for management of QA projects, hiring and supervision of a team of 15 information technology (IT) consultants, and overseeing day-to-day project and team activities. The petitioner seeks to employ the beneficiary in the position of Senior Consultant/QA Manager – Enterprise solutions with responsibility for supervising a team of 18 IT consultants and managing the daily project activities of this team.

In the denial decision, the director reviewed the petitioner's descriptions of duties for both the U.S. position and the position the beneficiary held at the petitioner's Indian subsidiary. The director determined that the petitioner had not established that either of these positions constituted function manager positions as set out in the statute and regulations. We agree with this determination. However, the director, despite finding that the beneficiary has been and would be engaged in supervisory duties, did not consider whether the beneficiary qualifies as a personnel manager based on his supervision and control of professional employees.

Upon review of the totality of the record including counsel's brief on appeal, we find that the petitioner submitted sufficient evidence to establish that the beneficiary's former position abroad and the proffered U.S. positions are both managerial positions. As noted, a first-line supervisor may be considered to be acting in a managerial capacity by virtue of his personnel responsibilities if the employees supervised are professional. The petitioner established that the beneficiary's subordinates both at the foreign entity and in the United States are professional employees. See section 101(a)(44)(A)(i) of the Act. The petitioner has described the

beneficiary's subordinates' duties sufficiently to ascertain that the positions are professional positions and established that these positions are staffed by employees who hold at least a bachelor's degree.²

The record also adequately demonstrates that the beneficiary has managed and will manage a component of the organization. The petitioner explained that, based on its project-based, onsite/offshore business model, it has a reasonable need for independent management of each client engagement. See section 101(a)(44)(A)(i) of the Act. In addition, the record includes sufficient evidence to establish that the beneficiary had and will have authority to hire, fire, and recommend personnel actions, and that the beneficiary exercised and will exercise discretion over the day-to-day operations over the activities for which he has authority. See sections 101(a)(44)(A)(iii) and (iv) of the Act.

Finally, the record includes sufficient evidence demonstrating that the beneficiary has allocated and will allocate his time primarily to managerial tasks. Consideration of the entire record indicates that both the petitioner and the foreign entity are adequately staffed to relieve the beneficiary from primarily performing the daily operational tasks associated with the projects and activities he manages.

Upon review, we find that the record establishes that the beneficiary more likely than not was employed by the foreign entity in a managerial capacity and will be employed by the petitioner in a managerial capacity as defined in section 101(a)(44)(A) of the Act. Accordingly, 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, the petitioner has sustained that burden. Accordingly, the director's decision is withdrawn. The appeal will be sustained and the petition approved.

ORDER: The appeal is sustained.

² In evaluating whether the beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).