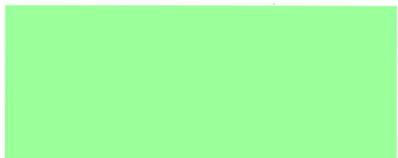


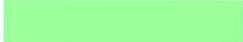
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave. N.W., MS 2090  
Washington, DC 20529-2090

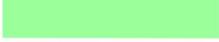


U.S. Citizenship  
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Services

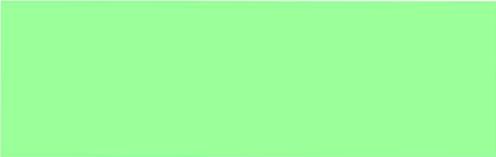
(b)(6)



DATE: **OCT 28 2014** Office: VERMONT 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.

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, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the petition will be remanded to the director for further review and entry of a new decision.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, 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 Pennsylvania corporation established in [REDACTED] provides database development and high value added software. The petitioner is an affiliate of the beneficiary's foreign employer, [REDACTED]. The petitioner seeks to employ the beneficiary as a software development manager in the United States for a period of three years.

The director denied the petition, concluding that the petitioner did not establish that it will employ the beneficiary 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 contends that the beneficiary qualifies as a manager based upon her supervision of professional subordinates.

#### 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, Petition for a Nonimmigrant Worker (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.

## II. ISSUES ON APPEAL

### A. MANAGERIAL CAPACITY (UNITED STATES)

The sole issue addressed by the director is whether the petitioner has established that the beneficiary will be employed in a managerial capacity in the United States.

#### 1. Facts and Procedural History

The petitioner filed the petition on November 14, 2013. The petitioner states that it is a major U.S. subsidiary of the [REDACTED] "a global technology services company specializing in the healthcare field." The petitioner provided a detailed duty description for the beneficiary's proposed position as software development manager. The petitioner specified that the beneficiary would be responsible for working with the client implementation team, training the implementation team, monitoring individual employee performance, providing leadership and guidance to her team members, and managing developers in the United States, amongst other duties. The petitioner indicated that the beneficiary will have full personnel authority over three developers/programmers who have degrees in the fields of computer applications, computer science and digital media engineering and technology.

The petitioner explained that the beneficiary will be responsible for managing the training of her team and for designing training for new hires. Further, the petitioner provided an organizational chart relevant to the beneficiary's team showing the beneficiary overseeing the three software developers mentioned above along with two software developers located in India.

The director later issued a request for evidence (RFE) stating that the evidence submitted by the petitioner was insufficient to establish that the beneficiary will act in a qualifying managerial or executive capacity.

In response to the RFE, the petitioner submitted a letter from its vice president of human resources stating that the beneficiary "will be managing an important company function." The petitioner submitted a duty description for the beneficiary that provided sufficient detail regarding her day-to-day activities. For instance, the duties indicated that the beneficiary would spend 20% of her time managing subordinate developers; 15% of her time ensuring that her team has appropriate product and technical specifications, direction and resources to deliver products; 10% of her time monitoring individual employee performance; 10% providing leadership and guidance to coach, motivate and lead her team members; and 5% of her time training implementation teams across the world on framework implementation, amongst other duties. The petitioner also provided additional details regarding the nature of the project and software development activities the beneficiary would manage.

The petitioner reiterated that the beneficiary will supervise three professional subordinates all of whom hold at least a Bachelor's degree in a relevant field, and provided evidence of their completion of these degrees and evidence of their full-time employment. In addition, the petitioner stated that the beneficiary will supervise two software developers located in India who hold bachelor of engineering degrees. The petitioner explained that the beneficiary "will have significant personnel authority over the three individuals reporting to [her] directly," including responsibility for "their training, professional development as well as having significant input on retention and compensation." The petitioner indicated that the beneficiary will make significant decisions regarding the project, including staffing and timelines, that she will be responsible for managing the annual budget of her team and take necessary action to increase or decrease staffing.

In denying the petition, the director noted that the petitioner has over 850 employees, suggesting that the company has many other project teams performing duties similar to the beneficiary and her team. As such, the director concluded that the petitioner has not demonstrated that the beneficiary will act at a senior level within the petitioner's organizational hierarchy. The director pointed to the petitioner's failure to indicate where the beneficiary and her team fit within the company's overall hierarchy. The director found that the evidence indicated that the beneficiary was primarily engaged in the performance of non-qualifying duties relevant to the provision of good and services.

On appeal, counsel acknowledges that the beneficiary is a first-line supervisor, but asserts that the beneficiary will act in a qualifying managerial capacity based upon her supervision of professional subordinates. Counsel states that the director mistakenly required that the petitioner establish that the beneficiary is working at a senior level within the petitioner's organizational hierarchy. Counsel contends that the petitioner has submitted sufficient evidence to establish that the beneficiary will supervise and control professional subordinates and adequate evidence to demonstrate that the beneficiary will primarily perform qualifying managerial duties.

## 2. Analysis

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has established that it will employ the beneficiary in a qualifying managerial capacity.

On appeal, counsel contends that the petitioner qualifies based upon her supervision of professional subordinates. 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).

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).

Here, the petitioner has submitted sufficient evidence to demonstrate that the beneficiary will supervise professional employees who will relieve her from primarily performing non-qualifying operational tasks. The petitioner has submitted evidence confirming that her direct subordinates have attained at least a bachelor's degree in relevant fields. Further, the nature of their positions suggests that the beneficiary's subordinates perform duties that require an advanced level of knowledge requiring at least the completion of a baccalaureate level degree. Therefore, the petitioner has submitted sufficient evidence to establish that it is more likely than not that she will oversee and control professional subordinates and that such duties will require a substantial portion of her time. Further, the petitioner has submitted a detailed duty description for the beneficiary indicating that she is primarily engaged in qualifying managerial duties and principally delegating non-qualifying operational tasks to her professional subordinates.

As correctly noted by counsel on appeal, a petitioner must only establish that the beneficiary is "primarily" devoting her time to managerial tasks. In the present matter, the petitioner has demonstrated that the beneficiary has, at least, three professional subordinates. As such, although it is likely that the beneficiary will perform some operational tasks pursuant to her role, as confirmed by the petitioner, the evidence submitted indicates that she has sufficient professional subordinates to relieve her from primarily performing non-qualifying tasks. Further, the petitioner has sufficiently articulated the beneficiary's qualifying tasks and provided a credible breakdown of how much time she will allocate to those tasks.

In sum, the petitioner has demonstrated by a preponderance of the evidence that the beneficiary supervises and controls professional subordinates and that she will be primarily engaged in performing qualifying managerial tasks. Therefore, the record establishes that the beneficiary will be employed in a managerial capacity. The director's decision will be withdrawn.

#### B. FOREIGN EMPLOYMENT

Beyond the decision of the director, the record as presently constituted does not establish that the beneficiary has been employed abroad in a qualifying managerial, executive or specialized knowledge capacity.<sup>1</sup> Accordingly, the matter will be remanded to the director for further action and entry of a new decision.

In the Form I-129, the petitioner states the beneficiary has been employed as a "senior technical leader" with the foreign entity for the previous three years. The petitioner indicated that the beneficiary is responsible for "the development of [REDACTED] which is [the foreign entity's] flagship product," and further tasked with maintaining "the underlying Framework including the technical architecture of the features to be incorporated into the product." The petitioner explained that the beneficiary leads a team working on the development of this product and that she is responsible for managing enhancements to the product, serving as a point of contact, leading her implementation team to assure compliance with client requirements, providing technical and functional guidance to a product development support team, and conducting training for the implementation team, amongst other duties.

The petitioner noted that the beneficiary "has had personnel authority with regard to the hiring and firing as well as promotion" of her team. The petitioner stated that the beneficiary supervises [REDACTED] and indicated that each of these employees has a bachelor's degree in engineering.

The petitioner submitted an organizational chart relevant to her department reflecting that she reports to [REDACTED] Application Engineer.<sup>2</sup> The chart reflects that the beneficiary is employed as a "software developer" along with seven other colleagues all reporting to Mr. [REDACTED] including her claimed subordinates Mr. [REDACTED] Mr. [REDACTED] and Ms [REDACTED]. The chart did not indicate that the beneficiary supervises any subordinate staff.

In the RFE, the director stated that the petitioner had not submitted evidence to establish that the beneficiary worked in an executive, managerial or specialized knowledge capacity for one of the three years preceding the filing of the petition.

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<sup>1</sup> The AAO reviews each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

<sup>2</sup> The beneficiary is listed as [REDACTED] in the submitted organizational chart, which is confirmed elsewhere on the record as the beneficiary's maiden name.

In response to the RFE, the petitioner asserted that the beneficiary acts in both a qualifying managerial and specialized knowledge capacity based upon her supervision of professional subordinates and her work with proprietary technology. The petitioner described the beneficiary's duties as follows:

- Contact point for all [foreign entity] .NET Framework and Configuration Tools (20%).
- Provide technical and functional guidance to product development support team, Mobile Intelligence development and other product development teams (15%).
- Point of contact for all Framework and Configuration Tools related queries from clients as escalated by product support team to review at a managerial level.
- Managing enhancements to [the foreign entity] Framework to provide greater flexibility to clients and accommodate various project requirements (10%).
- Lead implementation teams with respect to usage of [the foreign entity] Advanced Configuration Tools and various [foreign entity] .NET Framework features so as to meet client requirements (10%).
- Conduct code and design reviews for deliverables from our MI development team at [the foreign entity] (10%).
- Conduct training in product and Framework for implementation teams and new hires (10%).

The petitioner reiterated that the beneficiary reports to a manager, application engineering, and that she supervises the aforementioned Mr. [REDACTED] Mr. [REDACTED] and Ms. [REDACTED]. The petitioner indicated that the beneficiary "manages important framework projects," including supervising "individuals over whom she has personnel authority." The petitioner explained that the beneficiary "has the authority to directly manage [the individuals listed above] and to make significant recommendations regarding their compensation and retention." The petitioner further stated that the beneficiary "is responsible for the technical architecture of the features incorporated and has led these development activities in India," and that "she conducts training for implementation teams."

In addition, the petitioner asserted that the beneficiary is employed in a specialized knowledge capacity. The petitioner explained the beneficiary specialized knowledge as follows:

[The beneficiary] has extensive knowledge of our proprietary systems. Please note that [the foreign entity] is not a job shop or simply redeploys other company's technologies. We develop our own proprietary systems. As described, [the beneficiary] has played a key role in the development and enhancement of our proprietary products. We attach for you materials regarding these products. They are all developed by [the foreign entity] and only an individual with extensive knowledge of these products would have been able to perform in her position in India. Her involvement includes Framework enhancements in Advanced Configuration Tools for our Mobile Intelligence product as well as other MI products.

1. Managerial Capacity Abroad

Upon review of the petition and the evidence, the record as presently constituted does not establish that the petitioner employed the beneficiary in a qualifying managerial capacity.

The petitioner has submitted an incomplete description of the beneficiary's duties. In fact, the percentages assigned to the beneficiary's various tasks only add up to 75%, leaving question as to how she spends the remaining 25% of her time. Further, the beneficiary's duty description does not include the beneficiary's asserted managerial duties with respect to her claimed professional subordinates, such as decided on their hiring, retention, salaries or other such personnel matters. Indeed, the beneficiary's duties as described indicate that she is more likely acting as a lead technical resource assisting implementation teams working with the foreign entity's .Net Framework technology.

Further, the only organizational chart provided for the foreign entity indicates that the beneficiary is a "software developer" who is employed in the same position as her claimed subordinates, and in fact has no subordinates of her own.

Finally, even if the petitioner had provided evidence supporting its claim that the beneficiary occupies a supervisory or managerial position, it did not submit evidence to establish that the claimed subordinates are professionals. Based on these inconsistencies and deficiencies, the record does not establish that the foreign entity employed the beneficiary in a qualifying managerial capacity.

2. Specialized Knowledge Capacity Abroad

The record as presently constituted also contains insufficient evidence to establish that the beneficiary has been employed abroad in a specialized knowledge capacity.

In order to establish eligibility, the petitioner must show that the individual's prior year of employment abroad was in a position involving specialized knowledge. 8 C.F.R. § 214.2(l)(3)(iii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." *See also* 8 C.F.R. § 214.2(l)(1)(ii)(D).

Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge.

Although the petitioner stated that the beneficiary's current position involves specialized knowledge, the petitioner has provided insufficient explanation and supporting evidence relevant to its processes and technologies to establish that the knowledge held by the beneficiary is specialized or advanced. The petitioner states that the beneficiary "has played a key role in the development and enhancement of our products." However, the petitioner provided only cursory discussion of its products and provided no supporting documentation, other than its own statements, to support these assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Again, USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge.

Further, the petitioner has not provided evidence that compares the beneficiary with similarly employed workers within or outside the company as necessary to demonstrate that her knowledge is special or advanced. Finally, the petitioner has submitted insufficient specifics and documentary evidence relevant to the beneficiary's training and experience to establish that she holds specialized knowledge.

As such, the record as presently constituted does not contain sufficient evidence to establish that the foreign entity employed the beneficiary in a capacity requiring specialized knowledge.

At this time, we take no position on whether the beneficiary qualifies for the classification sought. We will remand this matter to the director for a new decision. The director should request any additional evidence deemed warranted to address the deficiencies noted and allow the petitioner to submit such evidence within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

### III. CONCLUSION

Based on the foregoing discussion, although the director's decision will be withdrawn, the evidence of record as presently constituted does not establish the beneficiary's eligibility for the benefit sought. Accordingly, we will remand this matter to the director for further action and entry of a new decision.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing discussion and entry of a new decision which, if adverse, shall be certified to the Administrative Appeals Office for review.