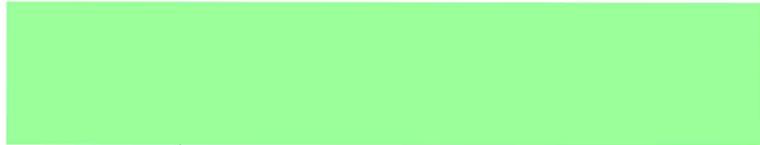




U.S. Citizenship
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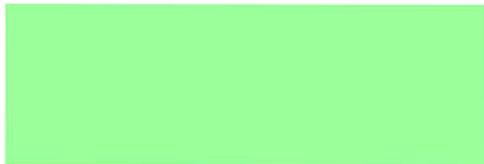


DATE: **SEP 18 2014** Office: VERMONT SERVICE CENTER FILE:

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. *See also* 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.

Thank you,

4 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 dismissed.

The petitioner filed this 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 is a branch office of [REDACTED] located in the United Arab Emirates, which is authorized to operate in New York. The petitioner operates as a financial institution. It seeks to employ the beneficiary in the position of assistant compliance manager for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary will be employed in a qualifying managerial capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director erred in evaluating the petitioner's description of the beneficiary's proposed job duties and supporting evidence and contends that such evidence amply establishes that the beneficiary will be employed in a managerial capacity. Counsel 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.

II. THE ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed in a qualifying managerial capacity. The petitioner has consistently stated that the beneficiary will manage an essential function of the company and does not claim that the beneficiary will be employed in an executive capacity.

A. Facts

The petitioner filed the Form I-129 on June 13, 2013. The petitioner indicated on the Form I-129 that it operates as a financial institution with 21 current employees in the United States and a gross annual income of \$24.676 million in the U.S. and \$1.1 billion worldwide. In support of the petition, the petitioner submitted a letter that included a lengthy description of the beneficiary's proposed duties as an assistant compliance manager, and indicated that the beneficiary's duties would be primarily focused on oversight and management of the branch's overall regulatory compliance function.

Specifically, the petitioner stated that the beneficiary will: ensure implementation/compliance to various regulations and guidelines; implement HQ guidelines/procedures at the branch level; support branch operations by providing compliant solutions to regulatory requirements and intervening where necessary;

escalate critical issues to branch management; ensure monitoring of transactions; conduct risk based review of customer account activity; conduct risk based review of trade transactions to monitor compliance; perform the function of Compliance Manager and Money Laundering Reporting Officer in his absence; oversee the initiation of money laundering related investigations and initiating Suspicious Activity Report to regulatory authorities; maintain branch Anti Money Laundering Handbook for staff; update/maintain policies that ensure compliance to various other local regulations; ensure that all internal audit reports relating to regulatory compliance are retained, reviewed, and action is properly executed; ensure all regulatory recommendations/observations are regularized in a timely manner; ensure that all statutory reports and requests for information received from regulators are handled in a timely manner; and assist in matters related to fraud investigation.

The director issued a request for additional evidence ("RFE") on August 29, 2013, instructing the petitioner to submit evidence that the beneficiary's proposed position in the United States will be managerial in nature. The director advised the petitioner that its initial evidence did not demonstrate who the beneficiary would supervise in the proposed managerial role and did not include an organizational chart identifying the job titles and responsibilities of his subordinates.

In response to the RFE, the petitioner provided clarification on the nature of the essential function of regulatory compliance and explained that the beneficiary will "oversee the activities of the branch Compliance Officers, and will hold responsibility for coordinating and monitoring day-day-day compliance." The petitioner also submitted a document titled "Job Description" for the Assistant Compliance Manager at the New York branch office. The job description lists the same job duties previously provided by the petitioner and includes additional details about the position's key results, operating environment, problem solving, decision making authority and responsibilities, and knowledge, skill and experience requirements.

The petitioner also submitted its organizational chart depicting the beneficiary as one of three assistant compliance managers, reporting to the Compliance Manager & Money Laundering Reporting Officer (MLRO). The organizational chart also shows three compliance officers within the petitioner's New York branch, but fails to delineate the chain of command for those officers.

The director denied the petition on December 6, 2013, concluding that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial capacity. In denying the petition, the director noted that the beneficiary's duties must be described with specificity, articulate in detail the essential function he manages, and establish the proportion of the beneficiary's daily duties attributed to managing a function of the organization. The director found that the petitioner failed to establish that the beneficiary's duties, as a whole, will be primarily managerial and not those typically associated with the day-to-day operations of the function to which the beneficiary is assigned.

The director further observed that the organizational chart includes two other assistant compliance managers and three compliance officers, but does not clearly indicate which of any, of the compliance officers would report to the beneficiary versus the other two assistant compliance managers. The director noted that the petitioner failed to indicate what duties the other two assistant compliance managers perform and how they relate to the beneficiary's position. The director also acknowledged that the petitioner indicated that the beneficiary will supervise subordinate compliance officers, but noted that the petitioner failed to submit

supporting evidence beyond a statement which details the beneficiary's discretionary and supervisory authority.

On appeal, counsel for the petitioner asserts that the beneficiary will be employed in a managerial capacity and manages the essential function of regulatory compliance. Counsel contends that the director failed to properly review the documentation submitted in support of the petition, specifically the internal job description of the assistant compliance manager submitted in response to the RFE. Counsel states that said job description contains a detailed description of the primary functions of the position, including managerial duties and decision making authority. Counsel further contends that the director failed to address the documentary evidence submitted to establish that a bank's compliance operation is an essential function within the organization.

B. Analysis

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary will be employed in a qualifying managerial capacity.

When examining the executive or managerial capacity of the beneficiary, U.S. Citizenship and Immigration Services (USCIS) looks first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in either an executive or a managerial capacity. *Id.* 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 employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day operational functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

The statutory definition of "managerial capacity" allows for both "personnel managers" and "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). 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 furnish a position description that describes the duties to be performed in managing the essential function, i.e. identifies the function with specificity, articulates the essential nature of the function, and establishes 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.

Here, the petitioner claims that the beneficiary is a function manager in that he will manage and oversee the overall regulatory compliance function within the New York branch office. However, the evidence of record does not support a finding that the beneficiary truly manages this function or that he operates at a senior level in the organization with respect to the function managed. The petitioner submitted an organizational chart which shows the location of the beneficiary's position within the company. The beneficiary would be one of three assistant compliance managers who report to the same Compliance Manager & MLRO. The petitioner has provided no explanation as to why the beneficiary would be considered the manager of the New York branch's compliance function as opposed to the more senior Compliance Manager or either of the other two assistant compliance managers based at the same office.

While the beneficiary would likely perform higher-level tasks than those attributed to a compliance officer, the record does not demonstrate that the beneficiary would primarily allocate his time to managing and overseeing the regulatory compliance function within the U.S. branch office, rather than performing the tasks required to carry-out the tasks associated with the function. The petitioner failed to submit a job description for the compliance officers to demonstrate that the petitioner has other employees to carry out the actual tasks associated with the regulatory compliance function so that the beneficiary may focus his time on the management and oversight of said function. Further, it has not explained how work is divided among the three assistant compliance officers and, without this information, the record does not support a finding that the beneficiary manages the compliance function while his colleagues working in the same position do not.

In the instant matter, because the petitioner has failed to submit crucial evidence of sufficient employees that will carry out the tasks associated with the function, it appears that the beneficiary will be directly involved in the day-to-day tasks associated with the essential function of regulatory compliance within the U.S. branch, rather than its management and oversight. In this instance, the petitioner has not provided any position descriptions or job duties for the other members of the beneficiary's department, and therefore has not demonstrated that they will relieve him from performing the actual tasks associated with the function.

The petitioner has not established, in the alternative, that the beneficiary would be employed primarily as a "personnel manager." 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. *See* 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

Here, the petitioner's organizational chart shows that there are three assistant compliance managers and three compliance officers, but fails to delineate the actual supervisor/subordinate relationships among them. The petitioner did not specifically indicate that the beneficiary would supervise subordinate compliance officers who would carry out the day-to-day tasks associated with the function of regulatory compliance, other than a brief statement indicating that one of his many duties is "overseeing activities of compliance officers." Further, the petitioner has not differentiated the duties performed by the three compliance officers from those performed by the three assistant compliance managers. Based on the chart submitted, it appears that all six of these employees report to the Compliance Manager. The petitioner does not indicate that the beneficiary has the authority to hire and fire these employees or recommend personnel actions. Further, the petitioner did not indicate what proportion of his time would be allocated to oversight of compliance officers. The record does not support a finding that the beneficiary qualifies for the benefit sought as a personnel manager.

While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary will "primarily" perform managerial or executive duties. See Section 101(a)(44) of the Act. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that the beneficiary's duties are "primarily" managerial. As discussed herein, the petitioner's description of the beneficiary's proposed day-to-day duties fails to establish that such duties would be primarily managerial in nature.

Based on the deficiencies discussed above, the petitioner has not established that the beneficiary will be employed in managerial capacity in the United States. Accordingly, the appeal will be dismissed.

III. EMPLOYMENT ABROAD IN A MANAGERIAL OR EXECUTIVE CAPACITY

Beyond the decision of the director, the petitioner also has not established that the beneficiary was employed by the foreign entity in a qualifying managerial or executive capacity, as required by 8 C.F.R. § 214.2(1)(3)(v)(B).

On the Form I-129, the petitioner stated that the beneficiary commenced employment with the foreign entity in May 2006. In support of the petition, the petitioner submitted a letter describing the beneficiary's position abroad as follows:

He has been employed by [the foreign entity] in Dubai since May 2006. He has served as Assistant Compliance Manager since March 2011, where he has been responsible for overseeing the activities of Compliance Officers within the Bank and reviewing applicable sanctions imposed by governmental and international authorities, including the OFAC, UN, and EU, and providing guidance to business on handling of restrictions on transactions and business relationships. He reviews various reports on countries [redacted] regulations, [redacted] guidelines, and risk rate; reviews and updates risk matrix in line with applicable sanctions, regulatory guidelines and bank's policies; and reviews High Risk FR/Corporate/Retail accounts and provide clearances after overseeing banking professionals in enhanced due diligence[.] He conducts Compliance Monitoring periodically to ensure adherence to bank's policies and regulatory requirements, and issues recommendations for

corrective action and report findings to senior management. He assists the Compliance Manager in the execution of the Compliance Training Programs, and coordinates various bank-wide compliance projects. He oversees the preparation of monthly Compliance MIS for Senior Management review, conducts special investigations on the request of Head Office Compliance / Manager Compliance, and provides back-up for overseas Compliance Managers. From May 2008 to May 2011, he served as Compliance Officer, where he reviewed account opening documents pertaining to FI/Corporate/Retail accounts and provide clearance in line with regulatory guidelines and bank's policy after assigning risk rating, as well as investigating alerts generated by automated [REDACTED] monitoring system (SAS). From May 2006 to May 2008 he served as Correspondence Banking Officer where he scrutinized account opening documents as per policies of [the foreign entity] and local regulatory authorities.

The petitioner did not submit any additional details about the beneficiary's duties abroad.

In the RFE, the director advised the petitioner that the evidence submitted was insufficient to establish that the beneficiary's position abroad was in managerial or executive in nature. The director instructed the petitioner to submit evidence to establish that the beneficiary's overseas position was managerial or executive in nature.

In response to the RFE, the petitioner submitted a letter from the foreign entity describing the beneficiary's position abroad as described above. The petitioner also submitted a document titled "Job Description" for the Assistant Compliance Manager at the foreign entity. The job description lists the same job duties previously provided by the petitioner and includes additional details about the position's key results, operating environment, problem solving, decision making authority and responsibilities, and knowledge, skills and experience requirements.

The petitioner submitted an organizational chart, titled "Compliance Division 2013 Plan," depicting the beneficiary as the only assistant compliance manager for [REDACTED] reporting to the Senior Manager Compliance & Money Laundering Reporting Officer - [REDACTED]. The organizational chart does not list any other position in [REDACTED]."

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity.

Here, the petitioner provided a vague description of the beneficiary's job duties abroad. Absent a detailed description of the beneficiary's actual duties and a consistent account of how the beneficiary allocates his time to specific duties, the AAO cannot conclude that the beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity. Furthermore, the petitioner indicates that the beneficiary's duties abroad are identical to his proposed duties in the United States, which, for the reasons discussed above, do not establish his employment in a qualifying managerial or executive capacity. Again, the evidence of record does not support a finding that the beneficiary actually manages the compliance function or that he operates at a senior level in the organization with respect to the function managed.

The petitioner submitted an organizational chart which shows the beneficiary's functional department. However, the chart does not clearly indicate that the beneficiary manages or supervises other individuals, or that there are compliance officers in his department who perform the actual tasks associated with carrying out the compliance function in order for him to focus on the management of said function. The petitioner has provided no explanation as to why the beneficiary would be considered the manager of the foreign entity's compliance function as opposed to his supervisor, the Senior Manager Compliance & MLRO.

Again, will it appears that the beneficiary likely performs higher-level tasks that those attributed to a compliance officer, the record does not demonstrated that the beneficiary primarily devotes his time to managing and overseeing the regulatory compliance within the foreign entity, rather than performing the tasks required to carry-out the tasks associated with the function. The petitioner failed to submit job descriptions for the foreign entity's other employees within the compliance division to demonstrate that the foreign entity has other employees to carry out the actual tasks associated with the regulatory compliance function. Based on the limited evidence submitted, it appears that the beneficiary and his supervisor are the only staff responsible for compliance at his current work location.

Overall, the evidence is insufficient to establish that the foreign entity has employed the beneficiary in a qualifying managerial or executive capacity. For this additional reason, the petition cannot be approved.

The AAO maintains discretionary authority to review each appeal on a *de novo* basis. The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd* 345 F. 3d 683 (9th Cir. 2003).

IV. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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 not met that burden.

ORDER: The appeal is dismissed.