



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: APR 27 2015

PETITION RECEIPT #: 

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

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 appeal will be dismissed.

The petitioner filed this Form I-129, Petition for a Nonimmigrant Worker, seeking to change the beneficiary's status from an L-1B nonimmigrant transferee to 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 New Jersey corporation, is a comprehensive software consulting business. The petitioner is a subsidiary of [REDACTED] the beneficiary's former employer located in India. The petitioner seeks to employ the beneficiary in the position of project manager for an additional three years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary will be employed in the United States 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. On appeal, the petitioner contends that it has demonstrated with sufficient evidence that the beneficiary qualifies for the benefit sought. The petitioner submits a letter 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, 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. THE ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed in a managerial capacity in the United States. The petitioner has consistently claimed that the beneficiary will be employed in a managerial capacity in his role as project manager of the petitioning U.S. company and does not claim that he will be employed as an executive.

A. Facts

The petitioner filed the Form I-129 on March 21, 2014. In its letter of support, the petitioner stated that it is a comprehensive software consulting company. The petitioner indicated that it has 8800 employees worldwide and earned an estimated \$400+ million in revenue worldwide during its last fiscal year.

In its letter of support, the petitioner explained that the beneficiary has been and will continue to be a project manager at the petitioning U.S. company. The petitioner explained that the beneficiary was transferred to the United States in L-1B status in June 2011 based on his specialized and advanced knowledge to serve as a project manager, but that he will now be taking on additional managerial responsibilities. The petitioner described the beneficiary's proposed position as follows:

We now wish to employ [the beneficiary] in the Managerial capacity of Project Manager. In the capacity of Project Manager, [the beneficiary] will have greater responsibility for project delivery for 1 or more accounts. In order to meet his responsibility, he will coordinate the analysis, design, development and planning of projects, estimation of the requirements; managing the process and effectuating delivery. The execution will be under the supervision of [the beneficiary]. These teams are off-shore, on-shore, off-site and on-site, i.e. US and overseas based. His duties will include technical leadership to and supervision of US and overseas based computer software development professionals.

He will be responsible for managing and coordinating projects being executed for Automotive and/or other vehicle manufacturing clients, i.e. projects that he is responsible for. He will be working on a project for our client [REDACTED]. [REDACTED] is a Fortune 500 company and a world leading manufacturer of medium- and heavy-duty trucks under their [REDACTED] brands. [The petitioner] is working with various [REDACTED] units on IT and Engineering services and S/W development and maintenance projects.

[REDACTED] division is responsible for IT projects to be delivered for [REDACTED], and [the petitioner] works with this division to execute various projects in Microsoft and IBM Mainframe technologies. Major programs and projects that [REDACTED] has been involved in include [REDACTED] amongst other projects. [The petitioner] has a dedicated team of Technical Architects, Project Managers, Business Analysts and Development resources working on various initiatives at any given time.

The petitioner submitted its organizational chart showing that the beneficiary, "Project Manager – TTS" reports to a "Program Manager – TTS," who reports to an "AVP – TTS." The "AVP – TTS" reports to a "VP – BTU," who reports to a "Board Member and President – BT & SR." The chart does not list any employees subordinate to the beneficiary.

The petitioner also submitted a copy of the beneficiary's resume dated January 2014. The resume indicates that, since April 2012, he has worked in the role of Business Analyst/Project Manager for the Greenhouse Gas Program project for client [REDACTED]. He indicates that his responsibilities include requirements gathering and analysis, system design and analysis, project management, estimation, client coordination and interfacing, and invoicing. The beneficiary also states in his resume that he is currently managing a project worth \$1 million with a team of 20 people working offshore. The resume indicates that this role involves resource planning, new requirements gathering, customer expectation management, high-level solution design, new initiatives at customer site, impact analysis, project status monitoring/tracking, risk management, budget and purchase order tracking, invoice verification, relationship management and testing and deployment support.

The petitioner submitted a Master Agreement dated October 10, 2011 with [REDACTED]. The Master Agreement references personnel and state the following:

Each party will designate for each SOW a qualified member of its staff who will operate as the main interface between [redacted] and [petitioner] for that SOW. Each party's designee shall have authority to act in that party's behalf in respect of such SOW and will provide information and answer any questions concerning the SOW.

The petitioner did not submit any additional information regarding the beneficiary's proposed position and job duties or the organizational structure within his project team, or the SOW for the project to which he is assigned.

The director issued a request for evidence (RFE), on April 3, 2014, advising the petitioner that the evidence submitted was insufficient to establish that the beneficiary will be employed in a qualifying managerial capacity. The director emphasized that the petitioner was required to show that the beneficiary manages an organization, department, subdivision, function or component of the organization and noted that the petitioner failed to provide detailed position descriptions of the beneficiary's asserted subordinates and information relating to its organizational structure that would support its assertions of the beneficiary's managerial position. The director requested that the petitioner submit a letter describing the beneficiary's expected managerial decisions, articulating his typical managerial duties and the percentage of time he will spend on each. The director also advised that if the beneficiary was to be a first line supervisor, the petitioner must also provide evidence to demonstrate that his subordinates are professionals as defined by law. The RFE also included requests for a more detailed organizational chart, and evidence of wages paid to the beneficiary's subordinates, as well as the names, job titles, job duties and educational levels for the beneficiary's subordinates.

In response to the RFE, the petitioner submitted a letter, dated May 13, 2014 and signed by Ms. [redacted] HR - Immigration Specialist. The letter describes the beneficiary's role as follows:

Since he understands [redacted] business processes, technical landscape and project management processes, he will now be working as a Project Manager.

Over the next 5 years, [redacted] intends to have [the petitioner] execute multiple projects in partnership. [The beneficiary] will handle the Microsoft Technologies projects in this relationship. He will be playing the role of Project Management and Co-ordination. . . .

The team composition across multiple projects is described below:

In USA:	In India:
Technical Lead,	3 to 6 Developers
Business Analyst,	Technical Lead(s)
Quality Assurance	Project Lead(s)
Architect	Quality Assurance team

The technical team ranges in experience from 8 to 20 years and all of them have at least a Bachelor's Degree or its equivalent in Computer Science, Engineering, or a related field and relevant experience. Analysts and Quality Assurance members also have certificates from IIBA or equivalent.

He will be responsible for the following:

Planning: Define a project plan taking into account the team structure/skills, business expectations and the available budget. This includes assigning tasks to team members, after selecting them, setting deadlines and managing expectations. [15% of time]

Budget Management: Work with the Accounts and HR department to ensure the project team is recording the efforts correctly and on correct tasks. Work the Project Sponsors to get approval to changes in funding requests and required. [15% of time]

Schedule Management: Schedule tasks assigned to team members and manage their work load to ensure they finish their work along planned timelines and remove any roadblocks. [15% of time]

Quality Management: Make sure that the team performs testing as planned and the product is of acceptable quality to the Business users. Review & provide technical leadership as necessary. [10% of time]

Reporting: Submit regular updates of the financial, schedule and quality status of the project to [petitioner] Director, [redacted] Project Governance Committee and Business users. Also, send staff performance information to [petitioner]. [10% of time]

Co-ordinate with the various departments in [redacted] like Infrastructure, Data Services, Financial Accounting, Training, Global Support etc. to ensure the smooth running and completion of the project. [10% of time]

Highlight issues and risks in the project and work with the [petitioner's] project team and Project Governance Committee to design mitigation and contingency plans. [10% of time]

Monitoring: Conduct regular status meetings with team members to monitor progress, performance and provide guidance and technical leadership, as required. [10% of time]¹

The petitioner submitted an organizational chart reflecting the "team structure for [redacted]" dated May 13, 2014, depicting the beneficiary reporting to an IT Account Director, who reports to a Global Account Director (US). The chart depicts four U.S.-based positions reporting to the beneficiary (an architect, a tech lead, a business analyst, and a quality assurance position), as well as an off-shore project lead and offshore developers based in India. The beneficiary is the only person identified by name on the chart.

The director denied the petition on May 28, 2014, concluding that the petitioner failed to establish that the beneficiary will be employed in a qualifying managerial capacity in the United States. In denying the petition, the director noted that having a managerial title such as project manager and discretionary

¹ We note that the provided percentages account for 95% of the beneficiary's time.

authority, does not, in and of itself, mean that the beneficiary is employed in a qualifying managerial capacity. The director found that the petitioner did not provide any further evidence to support its statements. The director further found that listing the team composition by job titles alone, and lack of detailed position descriptions of the beneficiary's asserted subordinates, or information on how the beneficiary will supervise and control their work, does not demonstrate how the beneficiary will manage the organization, department, subdivision, function, or component of the organization.

On appeal, the petitioner contends that it has demonstrated with sufficient evidence that the beneficiary qualifies for the benefit sought and that it has answered all of the questions presented by the director in the RFE.

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 in the United States.

The petitioner initially described the beneficiary's duties as project manager in very broad terms, noting that he will coordinate the analysis, design, development and planning of projects; coordinate the estimation of the requirements; manage the process and effectuate delivery; and manage and coordinate projects. While this description indicated the beneficiary's general authority over client projects, it did not delineate the specific duties he would perform related to project requirements gathering, design, planning and delivery, and as such was insufficient to show that the beneficiary primarily performs qualifying managerial duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Moreover, the information provided in the beneficiary's resume indicates that his role as project manager involves a number of technical and administrative tasks that, without further explanation, cannot be classified as managerial. For example, the beneficiary indicates that his current activities include new requirements gathering, solution design, and testing and deployment support, duties that are engineering-oriented rather than managerial in nature. In addition, the beneficiary's responsibilities for tasks such as project tracking, impact analysis, invoice verification, and budget and purchase order tracking, while necessary for project delivery, are not clearly managerial.

Therefore, the initial record indicated that the beneficiary performs both qualifying and non-qualifying duties and failed to fully explain his role or to quantify the time the beneficiary would spend on qualifying versus non-qualifying tasks.

In response to the RFE, the petitioner provided a brief and equally vague list of job duties for the beneficiary's position, including an allocation of percentages of time the beneficiary would spend on specified duties. As noted, the petitioner indicated that the beneficiary's main areas of responsibility include planning, budget management, schedule management, quality management, reporting, client coordination, risk management and project monitoring. However, the petitioner did not include any additional details or specific tasks related to area of responsibility in support of its claim that the duties are

primarily managerial. Further, the expanded job description, like the job description submitted at the time of filing, did not clearly include the non-qualifying duties mentioned in the beneficiary's current resume.

Overall, the position descriptions provided were insufficient to establish that the beneficiary's duties would be primarily in a managerial capacity. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner's description of duties fails to provide any detail or explanation of the beneficiary's claimed managerial activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

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). 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).

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 indicated that the beneficiary will devote a significant portion of his time to supervising and monitoring the work of a project team. However, the petitioner has neither clearly nor consistently identified the composition of the team working on [REDACTED] projects with the beneficiary or the structure of this component of the organization, such that we can determine who the beneficiary will supervise or his level of authority. At the time of filing, the petitioner stated that the beneficiary's duties will include "technical leadership to and supervision of US and overseas based computer software development professionals." However, it submitted an organizational chart which depicted the beneficiary as "Project Manager – TTS" reporting to a "Program Manager – TTS," with no subordinates identified. Accordingly, the director reasonably requested that the petitioner provided additional evidence relating to the beneficiary's claimed subordinates, including a more detailed organizational chart showing all employees in his immediate division, their names, job titles, duties, education level and salaries, as well as evidence of wages paid to the beneficiary's subordinates.

While the petitioner included an organizational chart in its response to the RFE, it did not include the information requested. The new chart indicated that the beneficiary reports to an IT Account Director, with

dotted-line reporting to a Delivery Manager based in India, and indicated that he supervises an architect, a business lead, a tech lead a business analyst and a quality assurance employees in the United States as well as an off-shore project lead and developers. As noted above, the petitioner did not include the names of any employees on the chart and did not explain why the chart showed the beneficiary reporting to a different supervisor in comparison to the chart submitted at the time of filing. Further, the petitioner did not provide evidence of wage paid to the beneficiary's unidentified subordinates. Finally, while the petitioner indicated that all employees working under the beneficiary have at least a Bachelor's degree or its equivalent, it did not provide position descriptions for any of these staff in support of its assertion that all of the subordinate positions are professional. 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)).

In addition, the petitioner has not provided sufficient evidence that the beneficiary has the authority to hire and fire or recommend those as well as other personnel actions, as required by section 101(a)(44)(A)(iii) of the Act. The only reference to the beneficiary having any authority over the hiring of subordinate team members was in response to the RFE, where the petitioner stated that the beneficiary will assign tasks to team members "after selecting them."

Based on the petitioner's failure to establish the composition and structure of the beneficiary's claimed project teams, and its failure to clearly define the beneficiary's authority to make or recommend personnel decision, the petitioner has not provided sufficient evidence to support a finding that the beneficiary qualifies as a personnel manager.

The petitioner has not established, in the alternative, that the beneficiary is employed primarily as a "function manager." 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 did not indicate that the beneficiary qualifies as a function manager. The petitioner did not articulate the beneficiary's proposed duties as a function manager and did not provide a breakdown indicating the amount of time the beneficiary will devote to duties that would clearly demonstrate that he manages an essential function of the petitioning U.S. company. Further, as discussed, the petitioner's description of the beneficiary's duties does not clearly demonstrate his level of authority or the proportion of his time allocated to managerial as opposed to technical and administrative tasks.

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. Here, 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 evidentiary deficiencies discussed above, the petitioner has not established that the beneficiary will be employed in a primarily managerial capacity or as a function manager. Accordingly, the appeal will be dismissed.

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 not met that burden.

ORDER: The appeal is dismissed.