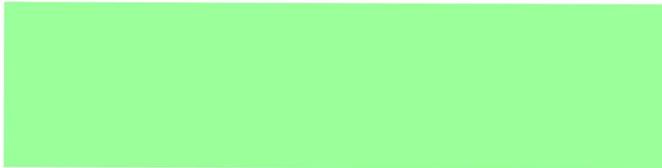




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: FEB 27 2015 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,


f 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. We will sustain the appeal.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, an Illinois corporation, is engaged in information technology consulting in the financial sector. The petitioner states that it is an affiliate of the beneficiary's foreign employer located in India. The petitioner currently employs the beneficiary in the position of lead consultant pursuant to an approved L-1B classification petition. It now seeks to amend his nonimmigrant status from L-1B to L-1A and extend his stay for two additional years.

The director denied the petition, concluding that the petitioner did not establish that it will employ the beneficiary 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 the director failed to consider probative evidence demonstrating that the beneficiary will act in a qualifying managerial capacity. The petitioner submits a brief and additional evidence on 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.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

II. ISSUE ON APPEAL

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. The petitioner does not claim the beneficiary will be employed in an executive capacity.

A. Facts

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on February 28, 2013. The petitioner is a subsidiary of "one of the largest management and IT consulting firms in the world," which has a global workforce of 112,000 employees. The petitioner indicated that it operates within the global company's financial services unit, which delivers business and IT solutions to leading banks, insurers and

capital market companies. The petitioner employs over 1,500 people and achieved gross revenues of \$458 million in 2011.

The petitioner stated that the beneficiary currently works as a lead consultant based at the worksite of a banking client in North Carolina. The petitioner explained that the beneficiary is responsible for overall project management and delivery of multiple projects at the client site, and provided an organizational chart and a general overview of his job duties.

The director later issued a request for evidence (RFE) stating that the initial evidence indicated that the beneficiary was responsible for managing projects and primarily responsible for providing services and products directly to clients, rather than primarily "managing a department, subdivision, function or component of the organization." As such, the director requested that the petitioner submit a letter describing the beneficiary's expected managerial decisions, his typical managerial duties, and the percentage of time that he would spend on his tasks. Further, the director indicated that the petitioner should clarify whether the beneficiary would supervise and control the work of other supervisory, professional, or managerial employees.

In response, the petitioner stated that the beneficiary "has overall responsibility for managing a team that produces and delivers high quality software applications." The petitioner indicated that he oversees senior consultants, consultants, and associate consultants and manages "the day-to-day operations of [the company's] [REDACTED] at [the client bank] where he has complete discretion to hire and fire new resources and is responsible for providing annual rating and promotion recommendations and salary increases." The petitioner explained that the beneficiary spends approximately 75% of his time on "managerial and supervision work" and 25% of his time on "business development and consulting activities." The petitioner provided a detailed description of the beneficiary's day-to-day tasks, with the corresponding percentage of time that he allocates to specific tasks. The job description indicates that the beneficiary's responsibilities are divided among "business unit leadership," "[REDACTED] practice – people management responsibilities," and "other activities."

The petitioner provided an organizational chart as well as a table setting forth the job titles, functional role/duties and education levels for each of his direct subordinates and two indirect reports within the Business Information Accounts team. The chart indicated that each of the beneficiary's subordinates has at least a bachelor's degree. The petitioner also provided evidence of wages paid to these employees.

In denying the petition, the director found that the evidence suggested that the beneficiary primarily performs non-qualifying duties including project management tasks and acting as a first-line supervisor to non-professional employees. The director also noted that some of the beneficiary's subordinates are located out-of-state or overseas, and questioned how the beneficiary could supervise such employees. Finally, the director determined that the beneficiary does not appear to manage a department, subdivision, function or component of the organization because the parameters of the activities he manages are determined by the client's needs.

On appeal, the petitioner contends that the director misapplied statutory and regulatory provisions stating that a first-line supervisor may qualify as an L-1A intracompany transferee based upon the supervision of

professional employees. The petitioner notes that the beneficiary spends 75% of his time on managerial decisions, overseeing professional subordinates for whom it has provided duty summaries, education levels, titles, work locations, and wage and earning statements, as requested by the director. The petitioner states that the director misinterpreted its business model and erroneously concluded that the beneficiary's position is "determined by the client's needs," and further asserts that the director unnecessarily focused on the work locations of the beneficiary's subordinates, contrary to modern day business realities. The petitioner contends that it has submitted sufficient evidence to establish by a preponderance of the evidence that the beneficiary's subordinates have bachelor's degrees and that these degrees are required for their positions.

The petitioner further submits additional evidence to support the assertions on appeal, including copies of annual performance reviews conducted by the beneficiary and additional documentation of his subordinates' educational background and work experience.

B. Analysis

Upon review of the totality of the evidence submitted, we find sufficient evidence to establish that the beneficiary is employed in a qualifying managerial capacity.

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

First, the petitioner submitted evidence to establish that the beneficiary manages [REDACTED] projects for a major client account. The record establishes that, within the context of the petitioner's client-focused business model, managing a component of a major client account is sufficient to meet the first prong of the statutory definition of managerial capacity at section 101(a)(44)(A)(i) of the Act. The petitioner has demonstrated that it has a reasonable need for a manager to oversee ongoing projects for this client, and has established that the beneficiary exercises discretion over the day-to-day operations of the [REDACTED] account activities for which he has authority, consistent with section 101(a)(44)(A)(iv) of the Act. The director's finding that "the parameters of the activities [the beneficiary] manages are determined by the client's needs" is not supported by the record, which reflects that the beneficiary has the authority to plan project activities, propose additional services to increase the value of the customer account, hire additional resources, and assign activities to his professional subordinates.

The petitioner further contends that the beneficiary qualifies for the classification sought based upon his 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."¹ 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. Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Here, the petitioner has submitted sufficient evidence to demonstrate, by a preponderance of the evidence, that the beneficiary supervises professional employees who relieve him from performing most of the operational tasks associated with the delivery of client projects. On appeal, the petitioner provides detailed duty descriptions, resumes, and documentation of education credentials for the beneficiary's subordinates, which corroborate the claims the petitioner made in response to the director's RFE. Therefore, the petitioner has submitted sufficient evidence to establish that it is more likely than not that the beneficiary oversees and controls professional subordinates, as defined by the regulations. Further, the petitioner submitted evidence that the beneficiary has the authority to hire and fire employees and to make and recommend other personnel actions. See sections 101(a)(44)(A)(ii) and (iii) of the Act.

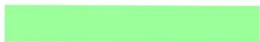
Furthermore, the petitioner has submitted a detailed position description and list of duties for the beneficiary sufficient to establish that he is primarily engaged in qualifying managerial duties and principally delegates non-qualifying operational tasks to his professional subordinates.

As correctly noted by the petitioner on appeal, a petitioner must only establish that the beneficiary is "primarily" allocating his time to managerial tasks. In the present matter, the petitioner has demonstrated that the beneficiary directly oversees a team of professional subordinates, and that he oversees other employees abroad who provide support to these professional subordinates. As such, although the petitioner concedes that the beneficiary performs some non-managerial tasks, the evidence submitted indicates that he has sufficient professional subordinates to relieve him from primarily performing these non-qualifying tasks. Further, the petitioner has sufficiently articulated the beneficiary's qualifying tasks, such as meeting with client senior management, managing the projects' budget and resources, providing overall advice and direction to his team, and generally managing and providing direction to his professional subordinates.

For the reasons discussed above, the evidence submitted establishes that the beneficiary is employed in a qualifying managerial capacity as defined at section 101(a)(44)(A) of the Act. The appeal will be sustained.

¹ In evaluating whether the beneficiary manages professional employees, the AAO 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).

(b)(6)



NON-PRECEDENT DECISION

Page 7

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 met that burden. Accordingly, the director's decision dated November 12, 2013 is withdrawn and the appeal will be sustained.

ORDER: The appeal is sustained.