



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUL 20 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:

NO REPRESENTATIVE OF RECORD

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](http://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,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Florida limited liability company that seeks to employ the beneficiary as its president. Therefore, the petitioner filed this nonimmigrant petition seeking to open a new office in the United States and to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L).

On August 28, 2014, the director denied the petition, finding that the evidence of record did not establish that (1) the beneficiary was employed abroad in a qualifying managerial or executive capacity; and (2) that the new office will support the beneficiary in a qualifying managerial or executive capacity within one year of the approval of the petition. The petitioner filed a timely appeal contesting the director's findings.

### 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(1)(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 (1)(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.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) also provides that that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
  - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
  - (3) The organizational structure of the foreign entity.

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.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

## II. Facts and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on July 2, 2014. The petitioner provided a brief supporting statement, dated June 23, 2014, describing the nature of the foreign business and the proposed U.S. enterprise as well as the beneficiary's respective roles within each entity. The petitioner also provided supporting evidence in the form of a business plan, job descriptions, and an organizational chart pertaining to the foreign entity, as well as various bank and business documents pertaining to the U.S. and foreign employers.

On July 15, 2014, the Vermont Service Center issued a request for evidence (RFE), informing the petitioner of various evidentiary deficiencies that were discovered upon initial review of the record. The petitioner was instructed to provide, in part, evidence to show that the beneficiary was employed abroad in a qualifying managerial or executive capacity, that the foreign entity has the ability to fund the U.S. entity as it commences doing business, and that the petitioner will have the ability to employ the beneficiary in a qualifying managerial or executive capacity within one year of the petition's approval.

The petitioner's response to the RFE included a statement, dated August 14, 2014, containing a list of the accompanying documents that were intended to address the deficiencies discussed in the RFE. The

petitioner resubmitted the foreign entity's organizational chart<sup>1</sup> and corresponding employee job descriptions, and also provided bank documents pertaining to the foreign and U.S. entities. In addition, the petitioner submitted two letters from the foreign entity's sales manager: one undated letter, discussing the beneficiary's employment history and breakdown of the petitioner's start-up expenses and hiring plan; and an August 12, 2014 statement, discussing the beneficiary's employment abroad.

On August 28, 2014, the director issued a decision denying the petition. The director concluded that the petitioner submit sufficient evidence to overcome the findings that were previously cited in the RFE with regard to the beneficiary's former employment abroad and his proposed employment with the petitioning U.S. entity.

On September 29, 2014, the petitioner filed an appeal, which was accompanied by a statement and supporting documents. The director declined to treat the appeal as a motion and forwarded the matter to this office for review.

### III. The Issues on Appeal

As indicated above, the findings issued in the director's decision require the contemplation of issues concerning the beneficiary's former employment abroad as well as his proposed position with the petitioning entity.

#### A. Beneficiary's Employment Abroad

When examining the executive or managerial capacity of the beneficiary, we will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). Published case law has determined that the duties themselves will reveal the true nature of the beneficiary's employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Beyond the required description of the job duties, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record, including the foreign entity's organizational structure, the duties of the beneficiary's subordinates and/or the presence of other employees to relieve the beneficiary from having to primarily perform operational duties, and any other factors that may contribute to a comprehensive understanding of the beneficiary's actual duties and role during his employment abroad.

In the present matter, while the petitioner repeatedly stated in prior submissions that the beneficiary was employed in an executive capacity, the job descriptions provided to support this claim were overly vague and focused on broad job responsibilities rather than the beneficiary's actual daily tasks. For instance, the list of responsibilities included in the foreign entity's organizational chart indicates that the beneficiary was responsible for the following: the foreign entity's "[r]elationship with the franchise" and "with the shopping mall"; controlling the company's bank account and marketing strategies; coaching the team

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<sup>1</sup> Despite the RFE statement, indicating that the petitioner did not provide the foreign entity's organizational chart, the evidence of record (Exhibit G) shows that, in fact, an organizational chart was provided as one of several supporting documents.

manager; and managing the company. These non-specific "responsibilities" fail to disclose the actual job duties the beneficiary performed or his specific role with respect to those responsibilities. The petitioner did not specify the actual steps the beneficiary took with regard to the foreign entity's franchise relationship, nor did the petitioner discuss the nature of the foreign entity's franchise relationship or identify with whom the foreign entity had/has that relationship. The petitioner was equally vague in identifying the specific tasks the beneficiary performed regarding the foreign entity's retail relationship with an unidentified shopping mall. The petitioner also did not explain whether the beneficiary assumed an active role where he carried out operational-level marketing tasks or whether his role was limited to setting strategies to be executed by others. While the chart depicts the beneficiary at the top of the foreign entity's organizational hierarchy, thus indicating that the beneficiary occupies the top-most position and presumably has the highest level of discretionary authority with respect to the company's personnel and business matters, we cannot conclude that the beneficiary was employed in a qualifying managerial or executive capacity unless the petitioner is able to demonstrate that, during his employment with the foreign entity, the beneficiary allocated the primary portion of his time to the performance of tasks within a qualifying managerial or executive capacity. To this end, a detailed description of the beneficiary's job duties is essential. 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. *Id.* at 1108.

In a separate statement, dated August 12, 2014, the foreign entity's sales manager provided further information about the beneficiary's position abroad, listing "the company's contracts" as one of the beneficiary's responsibilities. The statement does not, however, clarify how being responsible for the company's contracts translates to daily job duties, nor does it state what managerial or executive characteristics are inherent to the underlying job duties the beneficiary actually performed. The statement goes on to say that the beneficiary was responsible for setting revenue goals and generating sales incentive campaigns, delegating responsibilities to others, and training and supporting the company's managers. However, these statements also lack sufficient clarity as far as defining the actual underlying job duties that the beneficiary performed with regard to these broadly-stated job responsibilities. Neither the organizational chart nor the statements provided by the foreign entity establish that the beneficiary allocated his time primarily to tasks within a qualifying managerial or executive capacity. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

Further, despite the RFE instructing the petitioner to specify the executive or managerial job duties the beneficiary carried out and to allocate a percentage of time to each job duty, the petitioner provided only general information, which falls short of providing the detailed job description that the regulations and the RFE called for. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)). In this matter, the petitioner has not provided evidence that the beneficiary's time was primarily spent performing managerial or executive job duties.

On appeal, the petitioner asserts that its prior counsel did not properly represent its interests and asserts that the beneficiary is "in charge of products, marketing strategy, contracts, bank and goals." However, this statement does not impart any additional information about the beneficiary's employment abroad or help discern how much of the beneficiary's time was spent performing qualifying job duties versus non-qualifying tasks. Therefore, in light of the evidentiary deficiencies discussed above, we find that the evidence of record does not establish that the beneficiary has been employed abroad in a qualifying managerial or executive capacity and on the basis of this finding the instant petition cannot be approved.

#### B. Proposed Employment in the United States

We will now address the beneficiary's proposed employment with the petitioning U.S. entity.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. See 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. See *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

*Id.*

In the present matter, the petitioner submitted a deficient personnel plan, which indicates that at least three of the petitioner's projected employees – the two field marketing representatives and the administration and customer services representative – will be paid salaries that are below the State of Florida minimum wage.<sup>2</sup> Given the added notation, which states that all salaries reflect the employees' yearly wages, we have no reason to believe that the respective salary amounts that the petitioner provided in its proposed personnel chart accounted for less than one year of pay for each employee. This considerable deficiency gives rise to serious questions concerning the validity of the petitioner's personnel plan and the likelihood that the petitioner would properly staff its organization within its first year of operation, such that the beneficiary would be relieved from having to allocate his time primarily to performing non-qualifying operational tasks.

The petitioner also did not provide a detailed job description of the job duties the beneficiary would perform within the first year of the petitioner's operation and those he would perform thereafter. As previously indicated, when examining the executive or managerial capacity of the beneficiary, we will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(3)(ii). Here, the petitioner's vague job description fails to demonstrate how the beneficiary's role within the petitioning entity would evolve from having to operate within the context of a start-up company to operating within the scheme of a developed organization that can support the beneficiary in a primarily managerial or executive capacity.

Although the petitioner disputes the director's findings on appeal, it does not provide sufficient supporting evidence to overcome those findings. Accordingly, we find that the record lacks sufficient evidence to establish that the United States enterprise will more likely than not grow to the point that it will reasonably require the full-time services of an employee who would primarily perform qualifying managerial or executive duties. On the basis of this additional adverse conclusion, the instant petition cannot be approved.

#### IV. Conclusion

When we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that we abused our discretion with respect to all of our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1037 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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

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<sup>2</sup> *See* [http://www.floridajobs.org/minimumwage/Poster-FL\\_MinWage2014.pdf](http://www.floridajobs.org/minimumwage/Poster-FL_MinWage2014.pdf) showing that Florida's minimum wage in 2014 was is \$7.93 per hour, which means that a full-time employee working forty hours per week based on a 52-week work year, would receive an annual salary of approximately \$16,494.40.

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*NON-PRECEDENT DECISION*

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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, that burden has not been met.

**ORDER:** The appeal is dismissed.