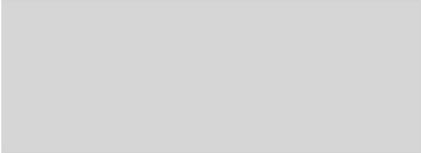




**U.S. Citizenship
and Immigration
Services**

(b)(6)



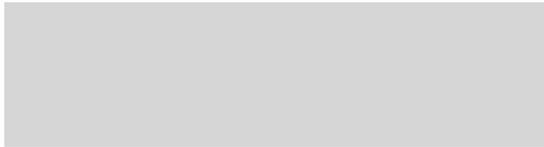
DATE: JUN 04 2015

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.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's status 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 was established in [REDACTED] and is registered to do business in New Jersey. On the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), the petitioner claims to be a "leading provider of performance management & interactive software solutions." The petitioning company is a subsidiary of [REDACTED] located in Israel. The petitioner obtained a blanket L-1 approval and transferred the beneficiary to the United States in 2012. The petitioner seeks to extend the beneficiary's employment as its IT infrastructure manager for two years.

The director denied the petition, concluding that the petitioner failed to establish that: (1) the beneficiary was employed abroad in a qualifying managerial or executive capacity; and (2) the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, the petitioner contends that the director's decision was erroneous, and submits a brief and additional evidence in support of this assertion.

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.

II. THE ISSUES ON APPEAL

The issues to be addressed are: (1) whether the beneficiary was employed abroad in a qualifying managerial or executive capacity; and (2) whether the beneficiary will be employed in the United States in a qualifying managerial or executive capacity.

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.

A. Employment Abroad in a Managerial or Executive Capacity

1. Facts

In a letter dated February 28, 2014, the petitioner stated that the beneficiary worked for its parent company located in Israel as a global systems team leader from 2006 until his transfer to the United States in L-1A status in 2012. The petitioner provided a description of the beneficiary's day-to-day duties, an organizational chart depicting the beneficiary and his subordinate staff, and other business documentation.

On April 11, 2014, the director issued a request for evidence (RFE) instructing the petitioner to provide additional evidence. Specifically, the director requested a more detailed duty description for the beneficiary including the percentage of time to be allocated to individual tasks. The director also requested additional documentation relating to the beneficiary's subordinate employees.

In response to the RFE, the petitioner provided a second duty description for the beneficiary, consistent with the initial description, which added a breakdown of time by percentage that the beneficiary allocated to his individual tasks. In addition, the petitioner identified the beneficiary's subordinates, and included their position titles and levels of academic achievement.

The director denied the petition, concluding that the petitioner had not established that the beneficiary managed a department, subdivision, function, or component of the foreign entity.

On appeal, the petitioner asserts that the director erred. The petitioner claims that the beneficiary managed the IT infrastructure function, a function that it characterized as essential, and that the beneficiary had "complete authority and responsibility to direct the entire scope of activities for the function."

2. Analysis

Upon review, the petitioner provided a detailed description of the job duties performed by the beneficiary, along with documentation supporting the identity, position and educational qualifications of his subordinate employees with the parent company abroad. Ultimately, the petitioner submitted sufficient evidence to establish eligibility for this nonimmigrant visa.

When examining the claimed managerial capacity of the beneficiary, we review the job duty description within the context of the totality of the record and weigh all relevant factors. These factors include the nature and scope of the petitioner's business, the petitioner's organizational structure and the beneficiary's position within it, the scope of the beneficiary's authority, the work performed by other staff within the petitioner's organization, and any other factors contributing to an understanding of the beneficiary's actual duties and role in a business.

The petitioner presented evidence, including a detailed description of the beneficiary's duties, which is sufficient to establish that his duties abroad were primarily managerial. The petitioner provided evidence establishing that the beneficiary managed professionals who were engaged in duties necessary to support an essential function or component managed by the foreign entity.

Accordingly, the petitioner has established that the beneficiary was employed abroad in a qualifying managerial capacity.

B. Employment in a Managerial or Executive Capacity in the United States

1. Facts

The petitioner's Form I-129 indicates that the beneficiary will be employed as its IT infrastructure manager, a position that the petitioner considers critical to its operations. The petitioner claims to be part of an organization that has over 24,000 customers in 100 countries. The petitioner was established in [REDACTED] and claims to currently employ 693 individuals.

The petitioner states that the beneficiary will manage a component of its information technology department and an infrastructure group. In support of the claim, the petitioner provided documentation describing the beneficiary's duties, an organizational chart depicting his subordinate employees, and other business related documents.

In the RFE issued on April 11, 2014, the director instructed the petitioner to provide additional documentation. The director acknowledged that it appeared the beneficiary was managing professionals. However, the director requested additional evidence, such as a more detailed description of the beneficiary's duties, which included the percentage of time to be devoted to individual tasks. The director also requested evidence to demonstrate that the beneficiary would manage a department, subdivision, function or component of the U.S. organization.

In response to the RFE, the petitioner resubmitted its organizational chart depicting the beneficiary's named subordinates and included evidence of their titles and a description of their position duties and requirements. As requested, the petitioner also provided a more detailed description of the beneficiary's duties which included the percentage of time that the beneficiary would devote to specific tasks. Finally, the petitioner discussed the beneficiary's role in the U.S. organization including his authority to hire and fire personnel.

The director denied the petition, concluding that the evidence did not establish that the beneficiary will manage an organization, department, subdivision, function, or component of the petitioning entity. The director stated that the beneficiary did not appear to be performing in a senior level position with duties and responsibilities higher than that of a typical first-line supervisor.

On appeal, the petitioner asserts that the director erred, claiming that the beneficiary manages a "key component" of its organization and that the director improperly concluded that the beneficiary did not manage a component or function because it was not "large" relative to the rest of the company. The petitioner also asserts that the beneficiary is not performing as a first-line supervisor because he is managing professionals.

2. Analysis

Upon review, we find that the petitioner provided a detailed job description for the beneficiary and established that the beneficiary will be acting in a managerial role, exercising discretion over the day-to-day operations of the infrastructure teams for the U.S. petitioner. The petitioner submitted sufficient evidence to establish eligibility for this nonimmigrant visa.

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)(4). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

In this matter, the evidence is sufficient to establish that the beneficiary will supervise and control the work of professional employees. Furthermore, the petitioner provided a detailed description of the beneficiary's duties, which allocated the percentage of time he devoted to specific tasks, including his authority to hire and fire personnel. Overall, the record establishes that the beneficiary will be primarily performing in a qualifying managerial capacity for the U.S. petitioner.

III. CONCLUSION

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *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). Here, the petitioner has submitted relevant, probative, and credible evidence that leads us to conclude that the beneficiary, more likely

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NON-PRECEDENT DECISION

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than not, was employed abroad and will be employed in the United States in a primarily managerial capacity.

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, that burden has been met.

ORDER: The appeal is sustained.