



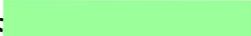
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 02 2015**

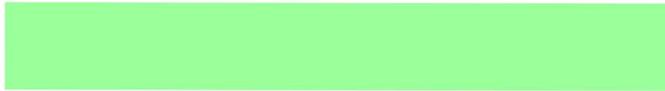
OFFICE: VERMONT SERVICE CENTER

FILE: 

IN RE:

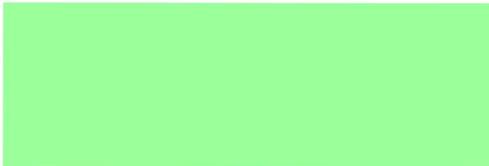
Petitioner:

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 relating 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,

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 withdraw the director's decision and remand the matter to the service center for further review and issuance of a new decision.

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, a Delaware corporation, states that it engages in software design and development services. The petitioner claims to be the parent company of [REDACTED] located in Sri Lanka. The petitioner seeks to employ the beneficiary as an associate architect for a period of three years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary will be primarily employed in a qualifying managerial or executive capacity in the United States. Although not a ground for denial, the director also stated that, on appeal, the petitioner will need to establish that the beneficiary has been employed in a qualifying managerial or executive capacity, or in a qualifying specialized knowledge capacity, for one year in the preceding three years at the foreign entity.

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 erroneously concluded that its "team structure" does not constitute a department, subdivision, function, or component of its organization. The petitioner solely submits this statement on appeal.¹

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.

¹ On the Form I-290B, Notice of Appeal or Motion, the petitioner marked the box at Part 3 indicating that a brief and/or additional evidence would be submitted to the AAO within 30 days. The record indicates that the petitioner did not file a brief or supplemental evidence within the allowed timeframe. We will consider the record complete as presently constituted.

- (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 primarily in a qualifying managerial or executive capacity in the United States. The petitioner has consistently claimed that the beneficiary will be employed in a managerial capacity in his role as associate architect/technical project manager of the petitioning company.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on March 7, 2014. The petitioner indicated on the Form I-129 that it engages in software design and development services with 901 current U.S. employees and a gross annual income of \$333 million. In support of the petition, the petitioner submitted a letter that included a lengthy description of the beneficiary's duties, along with a percentage breakdown of the amount of time he will devote to each, and indicated that the beneficiary's duties would be primarily focused on oversight and management of its software design and development team – two senior technology consultants/technical leads and one technology consultant/technical lead in the U.S. and an

existing team in Sri Lanka – for its [REDACTED] client. The petitioner also provided a position description for each of his subordinates in the U.S. and abroad, clearly indicating that they would carry out the actual tasks of producing a product or providing a service of the U.S. company.

The petitioner provided its organizational chart illustrating that it will employ the beneficiary as the technical project manager, with three U.S. subordinate technical leads and an existing team in Sri Lanka. The petitioner also explained that it uses a proprietary tool to track each employee's activities and performance regardless of location, which provides for the management of its global workforce more efficiently and even when the employees are not at the same location.

The director issued a request for additional evidence ("RFE") on March 19, 2014, instructing the petitioner to submit evidence that the beneficiary's position in the United States will be in a qualifying managerial or executive capacity.

In response to the RFE, the petitioner clarified the beneficiary's supervisory role and provided the same breakdown of duties for his position in the United States. The petitioner submitted copies of the beneficiary's subordinates' appointment letters, resumes, and educational credentials as evidence of employment and professional status.

The director denied the petition on May 27, 2014, concluding that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity in the United States. In denying the petition, the director observed that the petitioner consistently referred to the group of individuals the beneficiary is a part of as a "team" and found that management of a team does not satisfy the statutory requirement that an employee in a managerial capacity must manage the organization, or a department, or subdivision of the organization. The director further found that the petitioner did not submit evidence to establish how the beneficiary would control and manage the day-to-day activities of the individuals he supervises in India. The director finally found that the record does not sufficiently establish that the beneficiary 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.

On appeal, the petitioner simply states that the director erroneously concluded that its "team structure" does not constitute a department, subdivision, function, or component of its organization.

Upon review, the evidence in the record is persuasive. We find sufficient evidence to establish that the beneficiary will be employed in a primarily managerial capacity.

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." 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. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

When examining the 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). We find sufficient evidence to establish that the beneficiary will be performing duties in the proposed position that are primarily managerial in nature. Contrary to the director's observations, the petitioner has provided a description of the beneficiary's proposed duties at the U.S. company sufficient to establish that his duties will be primarily related to the management and supervision of the software design and development team for the [REDACTED] project within the petitioner's business, and not to the production of a product, provision of a service, or performance other non-managerial functions. The evidence submitted establishes that the beneficiary will supervise and control the work of subordinate professional employees and exercises authority to hire and fire employees under his supervision. *See* sections 101(a)(44)(A)(ii) and (iii) of the Act.

The director incorrectly assumed that the use of the word "team" implies that a hierarchical structure does not exist within the beneficiary's division. The petitioner has provided sufficient evidence to establish that the beneficiary manages a specific project component of its organization and supervises professional subordinate employees in the United States and abroad. We are satisfied that the beneficiary manages a component of the organization, supervises and controls the work of other professional employees, has the authority to hire and fire said employees, and exercises discretion over the day-to-day operations of the test software and firmware component of the U.S. company as required by section 101(a)(44)(A) of the Act.

As required by section 101(a)(44)(C) of the Act, 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. Here, the petitioner has established that, at a minimum, the beneficiary primarily manages a specific project component of its organization, in addition to directly overseeing professional employees in the United States and abroad. Given the overall purpose of the organization, the petitioner established a reasonable need for an associate architect/technical project manager at the U.S. company.

While the beneficiary will undoubtedly be required to apply his expertise to perform some higher-level business functions, we are persuaded that the beneficiary's subordinates in the United States and abroad will carry out the majority of the day-to-day non-managerial tasks required to produce a product or provide a service of the business. The petitioner need only establish that the beneficiary will primarily perform managerial duties. The petitioner has met that burden.

III. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

Although not a ground for denial, in her decision, the director stated that, should the petitioner file an appeal, it will need to establish that the beneficiary has been employed in a qualifying managerial or executive capacity, or in a qualifying specialized knowledge capacity, for one year in the preceding three years at the foreign entity.

Upon review, the evidence in the record is persuasive. We find sufficient evidence to establish that the beneficiary has been employed in a primarily managerial capacity at the foreign entity.

When examining the 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). Here, the petitioner has provided a comprehensive description of the beneficiary's duties with the foreign entity, which are mostly the same as his proposed duties at the U.S. company, sufficient to establish that his current duties are primarily related to the management and supervision of the software design and development team for the [REDACTED] project within the petitioner's business abroad, and not to the production of a product, provision of a service, or performance other non-managerial functions. The evidence submitted establishes that the beneficiary currently supervises and controls the work of subordinate professional employees and exercises authority to hire and fire employees under his supervision. See sections 101(a)(44)(A)(ii) and (iii) of the Act.

It appears that the beneficiary will assume the same position in the United States that he currently holds abroad, and as such, the position description and breakdown of duties provided by the petitioner are very similar. The petitioner submitted copies of historical organizational charts illustrating the beneficiary's roles and subordinates throughout his career at the foreign entity, as well as appointment letters, resumes, and educational credentials for his current subordinates as evidence of their employment and professional status. The petitioner also submitted copies of employee appraisals, promotion interview notes, and new hire interview recommendations completed by the beneficiary as evidence of his managerial duties and responsibilities while employed at the foreign entity.

In this matter, we are satisfied that the beneficiary manages a component of the organization, supervises and controls the work of other professional employees, has the authority to hire and fire said employees, and exercises discretion over the day-to-day operations of the software design and development team for the [REDACTED] component of the U.S. company as required by section 101(a)(44)(A)(iv) of the Act.

While the beneficiary is undoubtedly required to apply his expertise to perform some higher-level business functions, we are persuaded that the beneficiary's subordinates abroad carry out the majority of the day-to-day non-managerial tasks required to produce a product or provide a service of the business. The petitioner need only establish that the beneficiary devotes more than half of his time to managerial duties. The petitioner has met that burden.

IV. EMPLOYMENT ABROAD FOR ONE YEAR

Although the director's decision will be withdrawn, the AAO finds insufficient evidence in the record to establish that the foreign company employed the beneficiary full-time for one continuous year in the three-year period preceding the filing of the petition. The petitioner stated that the beneficiary was employed with the foreign entity from April 26, 2004 to February 17, 2012, and again from September 9, 2013 to the present. The petitioner indicated on the Form I-129 that the beneficiary changed employers and later returned to the foreign entity on September 9, 2013.

In its letter of support, the petitioner stated that the beneficiary was employed by the foreign entity in managerial positions as an "associate technical lead" from April 2006 to January 2008, as a "senior consultant – technology" from January 2008 to September 2013, and as an "associate architect – technology" from September 2013 to the present. However, the petitioner does not discuss the beneficiary's absence from February 17, 2012 to September 9, 2013 and seems to include that timeframe for his position as "senior consultant – technology."

The petitioner submitted the beneficiary's resume indicating that he was employed by [REDACTED] as an "architect / technical lead" from February 2012 to September 2013. The resume provides detailed information pertaining to the beneficiary's role and duties during such employment.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) states:

Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge. Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.

In the instant matter, it does not appear that the beneficiary meets the "one continuous year of full-time employment abroad" requirement at 8 C.F.R. § 214.2(l)(3)(iii). The Form I-129 was filed on March 7, 2014, therefore, we will look at the beneficiary's employment since March 7, 2011. The beneficiary was initially employed by the foreign entity continuously from March 7, 2011 to February 17, 2012, or 11 months and 10 days, and again from September 9, 2013 to March 7, 2014, the date of filing of the petition, or five months and 26 days. Given the beneficiary's break in employment at the foreign entity and his dates of employment within the three years preceding the filing of the petition, the beneficiary falls short of the one continuous year of employment abroad.

At this time, we take no position on whether the beneficiary qualifies for the classification sought. The director must make the initial determination on that issue after issuance of a new request for evidence and consideration of the petitioner's response.

V. CONCLUSION

Accordingly, we will withdraw the director's decision and remand the petition to the director for further review, issuance of a new request for evidence and entry of a new decision. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision dated May 27, 2014 is withdrawn. The petition is remanded to the director for entry of a new decision, which, if unfavorable to the petitioner, shall be certified to the AAO.