



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

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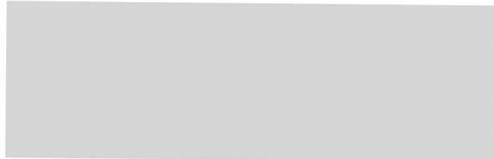
DATE: **MAY 13 2015**

PETITION RECEIPT #: 

IN RE: Petitioner: 
 Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker under 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 be "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 Form I-129, Petition for a Nonimmigrant Worker, 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 established in [REDACTED] states that it operates software design, development, and consulting services. It claims to be the parent company of [REDACTED] the beneficiary's employer in India. The petitioner seeks to employ the beneficiary as its "Senior Manager-Delivery" for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish: 1) that the beneficiary has been employed in a managerial capacity abroad; and 2) that the beneficiary will be employed in a managerial capacity in the United States.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the evidence is sufficient to establish that the beneficiary manages an essential function of the company and that the beneficiary manages a team of subordinate professional engineers.

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, 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. Managerial Capacity

The sole issue is whether the petitioner has established that the beneficiary has been and will be employed in a managerial capacity. The petitioner does not claim that the beneficiary has been or will be employed in an executive capacity as defined at section 101(a)(44)(B) of the Act.

A. Facts

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on March 3, 2014. The petitioner indicated that it has 901 U.S. employees and a gross annual income of \$333 million.

In support of the petition, the petitioner stated that the beneficiary has been employed by the foreign entity since June 2006 and has worked as an account manager since February 2012. The petitioner submitted a letter that included a five-page description of the beneficiary's duties, along with a percentage breakdown of the amount of time the beneficiary devotes to each duty. The petitioner

explained that the company is structured into teams that deliver services on a client-by-client basis and indicated that the beneficiary's duties are focused on the oversight and management of the petitioner's [REDACTED] client account. The petitioner indicated that the beneficiary's U.S. duties are nearly identical to those he performs abroad.

The petitioner provided organization charts depicting the structure of the beneficiary's team. The chart indicates that the beneficiary oversees three subordinate project managers, who, in turn, supervise architects, associate architects, tech leads, senior engineers, and engineers. The chart indicates that the beneficiary is subordinate to the Director/Delivery and Director/Technology. The petitioner provided position descriptions for each position on the organization chart.

The director issued a request for additional evidence ("RFE") on June 28, 2014, instructing the petitioner to submit additional evidence that the beneficiary has been employed in a managerial capacity abroad.

In response to the RFE, the petitioner clarified the beneficiary's role providing documented examples of the beneficiary's work. The provided the same breakdown of duties and stated that the beneficiary manages a team of 98 subordinate professionals with revenue of \$6.5 million.

The director denied the petition finding that the petitioner failed to establish that the beneficiary has been employed as the manager of an essential function. In denying the petition, the director noted that the petitioner failed to indicate how many employees worked onsite and stated that the director of delivery is more likely the manager of the project to which the beneficiary is attached. The director found that the beneficiary will supervise 98 of the petitioner's 8,100 employees and have control over one team working on a project worth \$6.5 million of the company's \$333 million dollar revenue and stated that the project is not an essential part of the organization because "the organization would function the same without it as it does with it." The director concluded that the beneficiary "appears to have some managerial control over the offshore portion of a project for [the petitioner's] client," but found that the evidence fails to establish that the project is an essential part of the organization.

On appeal, the petitioner asserts that the beneficiary manages an essential function "through the direct and indirect supervision and review of work performed by subordinate team members and through upwards reporting to him from subordinate managers." The petitioner reiterates that the beneficiary manages a team of 98 subordinate professionals grossing \$6.5 million in revenue. The petitioner asserts that neither the law nor the regulations require that a department, subdivision, function, or component be a particular size, in terms of personnel or revenue, to constitute an essential function. The petitioner asserts that it has established by a preponderance of the evidence that the beneficiary has been employed in a managerial capacity.

B. Analysis

Upon review, the evidence is sufficient to establish that the beneficiary has been and will be employed in a managerial capacity in his position of account manager.

The statutory definition of managerial capacity under section 101(a)(44)(A)(ii) of the Act allows for both “personnel managers” and “function managers.” Personnel managers must primarily supervise and control the work of other supervisory, professional, or managerial employees, whereas function managers must primarily manage an essential function within the organization. While the term “essential function” is not further defined by statute or regulation, a petitioner who claims that the beneficiary qualifies as a function manager must identify the essential function and describe in detail the duties to be performed in managing that function. 8 C.F.R. § 214.2(1)(3)(ii).

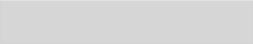
When examining the managerial capacity of the beneficiary, we will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(3)(ii). Beyond the required description of the job duties, we review the totality of the record when examining a beneficiary's claimed employment in a managerial or executive capacity, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

The petitioner provided detailed position descriptions and organization charts demonstrating that the beneficiary's duties are primarily related to the management and supervision of the [REDACTED] project, and not to the production of a product, provision of a service, or other non-managerial functions. The evidence establishes that the beneficiary supervises and controls the work of 98 subordinate managers and software engineering professionals who relieve him from performing most of the operational tasks associated with the delivery of the client projects. The petitioner also submitted sufficient evidence that the beneficiary holds a senior level within the project's organizational structure, and exercises the authority to hire and fire employees under his supervision. *See* sections 101(a)(44)(A)(ii) and (iii) of the Act. In the context of the petitioner's business model, the fact that the beneficiary's subordinate employees are located both onsite and offshore in India, does not preclude a finding that they nevertheless work under his supervision and relieve him from directly producing products and providing services for the petitioner's client.

Contrary to the director's finding, the beneficiary's managerial control over the specific client project does constitute “a department, subdivision, function, or component of the organization.” The petitioner has provided sufficient evidence that its client projects are distinct components of the company with complex organization structures that require independent management and a significant level of responsibility on the part of managers assigned to lead them. The petitioner has established a reasonable need for a managerial-level employee to supervise and coordinate the activities of the 98 professionals assigned to three client projects and to manage the delivery of projects to this client. *See* section 101(a)(44)(C) of the Act. The record establishes that the beneficiary has been and will be providing management for a client project, and that he exercises discretion over the day-to-day operations of the activities as required by 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 carry out the majority of the

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day-to-day non-managerial tasks required to produce the product and provide the services for the client. The petitioner need only establish that the beneficiary devotes more than half of his time to managerial duties. The petitioner has met that burden.

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 July 14, 2014 is withdrawn and the appeal will be sustained.

ORDER: The appeal is sustained.