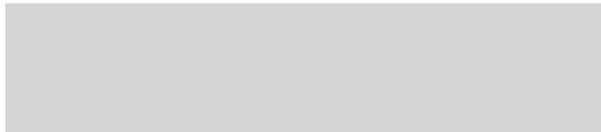




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 15 2015**

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

SELF-REPRESENTED

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) 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 nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's employment as a 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 California corporation, states that it operates a business consulting firm. It claims to be a subsidiary of [REDACTED], located in China. The beneficiary was previously granted one year in L-1A status in order to open a new office in the United States and the petitioner now seeks to extend his status for three additional years so that he may continue to serve as CEO.

The director denied the petition, concluding that the petitioner failed to establish (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; and (2) that a qualifying relationship exists between the petitioner and the foreign employer.

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 submits a brief and additional evidence.

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.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

II. The Issue on Appeal

The sole issue to be addressed is whether the petitioner established that the beneficiary will be employed in the United States in a qualifying managerial or executive capacity under the extended petition. The petitioner has submitted sufficient evidence on appeal to overcome the director's conclusion regarding the petitioner's qualifying relationship with the foreign employer.

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. The Facts

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on February 4, 2014. The petitioner indicated that it has three employees. In a letter submitted in support of the initial petition, the petitioner stated that was created "to allow the parent company to facilitate a project" to invite politicians, businessmen, scientists, artists, and other celebrities to speaking engagements in China. The United States office, therefore, is established "to serve as a liaison office for [REDACTED] to contact these potential speakers and convince them to make speech tours in China." The petitioner also notes that the U.S. petitioner also plans to "launch" a public relations business in the United States and organize business and academic conferences in the United States.

The petitioner further explained that current projects include negotiating and organizing speech tour for other celebrities including [REDACTED] and [REDACTED] as well as [REDACTED]

The petitioner explained that the current staff includes a Chief Operating Officer (COO) and an Assistant. The petitioner stated that the company was currently hiring for a Planning Coordinator and plans to hire a second Planning Coordinator by the end of 2014. The business plan included an organizational chart showing the COO reporting to the beneficiary as CEO. An assistant and two planning coordinators were shown reporting to the COO with only the assistant position currently filled.

The petitioner attached a document stating that, as the CEO, the beneficiary will be responsible for the following duties:

- Set up long and short term goals, business development direction, prepare business plan, develop business strategies for the subsidiary, decide and set budget for the subsidiary. Build corporate culture. 5%
- Communicate and report to the headquarters and inform headquarters on any changes in business directions and business strategies for the subsidiary. Identify problems and opportunities and report to the Board in China. Address these problems and opportunities to avoid setbacks and expand the company. 10%
- Build an efficient and effective working team, channel corporate culture to staff, give directions and supervise subordinates to ensure set goals are met with well implemented strategies. 5%
- Direct and coordinate the financial and budget activities, work closely with finance staff, to ensure budget is followed and operations is sufficiently funded. Work with CPA and tax expert to ensure the accuracy of the company's finance records. 10%
- Establish excellent working relations with strategic partners and vendors in order to implement business strategies 5%
- Establish excellent cooperative relations with speakers' agents and follow instructions from clients and headquarters to organize public relation events with the help of Planning Coordinators. Represent the subsidiary and promote its business nature. Attend seminars, conferences and other activities in the United States to break into the insiders' circle of the speaker business. Deliver speeches and present information at meetings or conferences in order to promote the company, exchange ideas, and accomplish objectives. 20%
- Analyze operations and evaluate performance of the subsidiary and its staff in meeting long and short term goals, and to determine areas of potential cost reduction, program improvement, or policy change. 10%
- Work with clients, PR officers in China and PR coordinators in the US to plan international public relations activities for clients. Work with PR officers in China to assure quality and positive media responses of events and activities organized. Implement standards, control, logistics and procedures of events. Evaluate all events and activities afterwards. 15%
- Negotiate and execute contracts with speakers' agents to organize Speech events. Prepare and present reports concerning events, its expenses and budgets. 20%

The petitioner submitted a copy of its IRS Form W-2 Wage and Tax Statement for 2013 for all of its employees. The Forms W-2 show wages of \$15,850 paid to the COO, \$3,600 paid to the assistant, and \$18,000 paid to the beneficiary. The petitioner also submits the Forms 941: Employer's Quarterly Federal Tax Return for all four quarters of 2013. The forms show wages paid of \$10,500 to one employee in the first quarter, \$1,750 paid to one employee in the second quarter, no employees paid in the third quarter, and wages paid of \$25,200 paid to three employees in the fourth quarter.

As evidence of current work, the petitioner included, among other items, (1) an authorization letter between the foreign entity and a client to engage in negotiations with [REDACTED] for an event in China; (2) copies of [REDACTED] to the board of the foreign entity from the beneficiary, and (3) e-mail communications with speaker's agents. The emails with the speakers' agents are sent from [REDACTED] or [REDACTED] and are signed by [REDACTED] of [REDACTED] located in China. There are also email communications between [REDACTED] Communications Director at [REDACTED] with the email address of [REDACTED]. The petitioner also submitted a "Firm Offer Form" to [REDACTED] to invite the speaker [REDACTED]. According to the form, the signing party on the contract would be the petitioner, the person completing the form was [REDACTED] with a [REDACTED] e-mail address, and the person to sign the contract if the speaker accepts is [REDACTED]. The authorization letter from the client, however, was provided to the foreign entity to serve as the service provider for the event to feature [REDACTED] as a key speaker.

On February 25, 2014 the director issued a request for additional evidence (RFE). The director instructed the petitioner to submit, *inter alia*, the following: (1) a statement describing the beneficiary's duties for the previous year, and those to be performed under the extended petition; and (2) a statement describing the staffing of the new operation.

The petitioner responded to the RFE. In response to the director's request for a more detailed description of the beneficiary's duties, the petitioner noted that the beneficiary did not report to the petitioning entity until December 2013, less than four months prior to filing for the current extension. The petitioner provided a list of accomplishments by the beneficiary for the United States entity. The petitioner also noted continuing projects including efforts to arrange an engagement with [REDACTED] communication with [REDACTED] professors, making contacts with [REDACTED] companies, and the production of a webpage for a U.S.-China lecture series.

In response to the director's request regarding hiring, the petitioner states that the COO became a permanent employee as of February 2014 and attached a copy of the employment contract. The petitioner noted the presence of the office assistant and reiterated that the hiring process was ongoing for the position of "PR Consultant."

The director denied the petition on May 5, 2014, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director noted that the petitioner's organization structure does not support an

executive or managerial position, as the beneficiary will primarily assist with the day to day non-supervisory duties of the business.

On appeal, the petitioner states that the duties performed by the beneficiary are all managerial or executive level duties. Specifically, the company executives are expected to engage in negotiations for speaker contracts. Additionally, the beneficiary is responsible for creating "samples, which the functional department can follow." The petitioner claims that these "samples" are business secrets that the CEO must keep. Finally, the petitioner states that he is the only person who can direct both the Chinese and United States offices.

B. Analysis

Upon review, and for the reasons stated herein, the petitioner has not established that it will employ the beneficiary in a qualifying managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The position description for the beneficiary submitted by the petitioner in the initial filing and the task descriptions submitted in response to the RFE do not establish that the beneficiary will be spending a majority of his time performing managerial or executive level duties. Specifically, the petitioner states that the beneficiary will spend 55% of his time establishing relationships with speakers, negotiating contracts, and working with clients to plan international public relations events. The petitioner claims on appeal that these duties must be carried out through executive to executive contacts. As evidence of these relationships, the petitioner submits e-mail communication with the [REDACTED]. The e-mails, however, appear to be between the [REDACTED] and a person named [REDACTED]. The petitioner provides no explanation as to whom this employee works for or his role in the petitioner's organization. Additionally, many of the submitted e-mail communications are between the [REDACTED] and [REDACTED] or a second person, [REDACTED]. Both of these individuals appear to work for a company called "[REDACTED]". Again, the petitioner has not provided any explanation as to the nature of this company or its relationship with the foreign or petitioning entity. These inconsistencies call into question who the beneficiary works for and what he does on a day-to-day basis. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Further, beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, 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. It is not clear what staff is available to relieve the beneficiary of non-qualifying duties. As of the time of filing, the petitioner claims to employ one full-time COO and an office assistant. The petitioner's Forms 941: Employer's Quarterly Federal Tax Return for 2013 evidence varying staffing levels throughout the first year of operations. The

third quarter shows that the petitioner had no employees, and the first two quarters report income levels that do not clearly evidence at least one full-time employee and one part-time employee. In response to the RFE, the petitioner submits an employment contract as of February 2014 for the position of COO. Even if the petitioner hired a full-time COO as of the date of filing, it is not clear what duties the COO will perform to relieve the beneficiary of his non-qualifying tasks. The e-mails and documentation contained in the file do not demonstrate any work product by the COO or otherwise substantiate the duties contained in the proffered position description for this employee. It appears from the prior contacts and procedure for the [REDACTED] tour that all of the associate tour details and tasks were handled by a company in China and not the United States entity. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

The petitioner states in response to the RFE and on appeal that it is in the process of hiring one to two additional employees. As of the date of filing, however, these prospective employees were not hired. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

The petitioner has not demonstrated that the beneficiary, as a personnel manager, will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel. *See* section 101(a)(44)(A)(ii) of the Act. Furthermore, the petitioner has not established that it employs a staff that will relieve the beneficiary from performing non-qualifying duties so that the beneficiary may primarily engage in managerial duties.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. Regardless of the beneficiary's position title of CEO, the record contains too many discrepancies and omissions to establish that the beneficiary allocates his time primarily to the broad goals and policies of the organization. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Based on the limited documentation furnished, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

III. Beyond the Decision of the Director

Beyond the decision of the director, the petitioner has not established that it is eligible for an extension of the initial one-year "new office" validity period. As previously noted, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) provides strict evidentiary requirements that the petitioner must satisfy prior to the approval of this extension petition. When a petition indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is ready to commence doing business immediately upon approval. At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to commence business, that it has the financial ability to commence doing business in the United States, and that it will support the beneficiary in a managerial or executive position within one year of approval. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). If approved, the beneficiary is granted a one-year period of stay to open the "new office." 8 C.F.R. § 214.2(l)(7)(i)(A)(3). At the end of the one-year period, when the petitioner seeks an extension of the "new office" petition, the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business "for the previous year" through the regular, systematic, and continuous provision of goods or services. *See* 8 C.F.R. § 214.2(l)(1)(ii)(H) (defining the term "doing business"). The mere presence of an agent or office of the qualifying organization will not suffice. *Id.*

There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. Furthermore, after one year, USCIS will extend the validity of the new office petition only if the entity demonstrates that it has been doing business in a regular, systematic, and continuous manner "for the previous year." 8 C.F.R. § 214.2(l)(14)(ii)(B). In the instant matter, the petitioner has not demonstrated that it can employ the beneficiary in a predominantly managerial or executive position.

Additionally, the petitioning organization is not clearly conducting business in the United States. The petitioner states in the initial petition that the United States organization was created "to allow the parent company to facilitate a project" to invite politicians, businessmen, scientists, artists, and other celebrities to speaking engagements in China. The United States office, therefore, is established "to serve as a liaison office" for the foreign entity. Furthermore, the contracts signed with clients in China authorization the negotiations with speaker's agents, as well as the firm offers provided to the speakers, appear to be signed with the foreign entity. It is not clear what business the petitioner is actually conducting, or will continue to conduct, in the United States.

For these additional reasons, the appeal will be dismissed.

III. Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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 not been met.

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NON-PRECEDENT DECISION

Page 10

ORDER: The appeal is dismissed.