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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



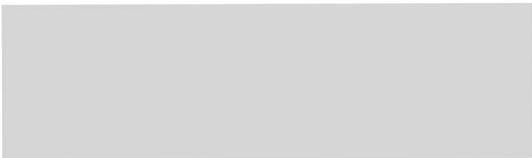
DATE: **MAY 28 2015**

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 be "Ron Rosenberg".

 Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner filed the 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 California corporation established on [REDACTED] states on the Form I-129 that it is an eyewear distribution business. The petitioner claims to be a subsidiary of [REDACTED] located in China. The petitioner seeks to employ the beneficiary as its President and General Manager for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity for at least one continuous year in prior to the beneficiary's application for admission.

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 asserts that the director misunderstood the position and time period that the beneficiary served in for her qualifying managerial position abroad. The petitioner submitted a brief and additional evidence on appeal.

We then issued a Request for Additional Evidence ("RFE") for further clarification regarding the beneficiary's duties with the foreign employer in the claimed managerial position. The petitioner provided a brief and additional evidence in response to the RFE.

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. Employment in a Managerial Capacity Abroad

The sole issue to be addressed is whether the beneficiary has been employed abroad in a primarily 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.

The petitioner filed the instant petition on December 6, 2013. The petitioner claims that the beneficiary qualifies as a manager due to her previous capacity as Deputy General Manager for the foreign employer. The petitioner states that the foreign entity is a professional eye wear manufactures established in [REDACTED]. According to the petitioner, the foreign entity has more than 100 employees with gross sales of \$1.2 million in 2012.

A review of the facts presented in the instant record indicates that the beneficiary assumed the role of a manager during her employment abroad. While the beneficiary's position admittedly included some non-managerial sales duties, the percentage breakdown attributed to the beneficiary's former position with the foreign entity indicates that this aspect of the beneficiary's position did not comprise the "primary" portion of her time. Rather, the record indicates that the beneficiary exercised discretionary authority with respect to the departments she managed, from defining long term goals and business strategies to overseeing product export and purchasing activities to successfully lead the foreign entity's sales and marketing efforts.

Further, the evidence of record establishes that the beneficiary directed other employees, relieving her from performing non-qualifying duties. The evidence submitted establishes that the beneficiary's position of Deputy General Manager is elevated above that of a first-line supervisor. *See* sections 101(a)(44)(A)(ii) and (iii) of the Act.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. Having examined the evidence contained in the instant record according to the preponderance of the evidence standard of proof, we find that the petitioner has provided probative evidence showing that the beneficiary is more likely than not employed in a qualifying executive capacity.

IV. 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 December 21, 2012 will be withdrawn and the appeal will be sustained.

ORDER: The appeal is sustained.