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A Welcome Administrative Appeals Office (AAO) Decision on the L-1A Manager Visa Category

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Those who closely follow the world of U.S. immigration adjudication trends are painfully aware of the hostile attitude exhibited both by U.S. Citizenship and Immigration Services (USCIS) adjudicators and consular officials at U.S. consulates abroad towards L-1B "intracompany transferee" visa petitions. Much ink has been spilled about the improper standards applied by U.S. government officials to L-1B "specialized knowledge" petitions, resulting in large numbers of unjustified denials of these petitions over the last five years.

But it is also true that USCIS has overstepped its authority and applied an unduly restrictive standard in adjudicating L-1A manager cases. The government decision-makers in many of these "manager" cases evidence a complete lack of understanding of global business operations and almost always question whether someone will truly function as a manager in the U.S. if they don't have a large number of U.S. direct reports. To be clear, the Immigration and Nationality Act (INA) and the regulations allow for both traditional managers of people as well as for "functional" managers – those who are responsible for an essential function of a business, even if they don't directly manage subordinates. See INA Section 101(a)(44)(A)(ii) and 8 C.F.R. § 214.2(l)(3)(ii).

Too many decisions coming out of both the California and the Vermont Service Centers evidence an incorrect presumption on the part of USCIS adjudicators. This incorrect presumption is the following: that when a U.S. office is small, with only a few total employees, anyone claiming that the L-1A transferee will work as a "manager" is effectively mischaracterizing the nature of the position. This presumption is unfair and is insulting to the global and U.S. business community. Practitioners report that while both USCIS Service Centers are issuing a significant percentage of incorrect L-1 decisions, the CSC appears to be issuing a larger percentage of unjustified RFE's (Requests for Evidence), NOIDS's (Notices of Intent to Deny) and denials.

In their decisions, USCIS adjudicators frequently cite an incorrect legal standard. The agency often claims that managers cannot function at a managerial level without a clear chain of U.S.-based professional workers reporting up to the manager. The law is clear that functional managers are permitted. Furthermore, even if a manager spends some portion of his or her time on some non-managerial duties, that fact does not mean that the individual is not functioning as a manager.

In this inhospitable environment for L-1 intracompany transferee petitions, it is therefore gratifying

when a company fights back and calls USCIS on its improper adjudication standards. Recently, an L-1A petitioner did just that, after the CSC denied the company's L-1A extension for their manager. The company justifiably did not stand for the denial and it fought back. The company filed a lawsuit in federal court against USCIS seeking injunctive action to compel the approval of the L-1A petition. Rather than risk an adverse federal court decision, USCIS certified the case to the AAO. *Matter of Z*, File WAC 13 103 50466. Happily, on September 13, 2013 the Administrative Appeals Office (AAO) overturned USCIS on its incorrect decision. The AAO took the CSC to task for "incorrectly inferring" that the manager would be directly involved in sales, despite the fact that he was going to supervise a sales manager and a sales team located at the parent company's overseas location.

The AAO's final statements in this excellent, well-reasoned decision summarize the proper standard:

"While the beneficiary is required to apply his business expertise in carrying out his job duties and perform some operational or administrative tasks, the petitioner has established by a preponderance of the evidence that the majority of the day-to-day non-managerial tasks associated with the function he manages are performed by his staff of ten direct and indirect subordinates and by external service providers. *Matter of Chatwathe*, 25 I&N Dec. 369, 376 (AAO 2010). As the statutory definition discusses managerial capacity as a function of the duties that the beneficiary "primarily" performs, the petitioner need only establish that the beneficiary devoted more than half of his time to managerial duties. The petitioner has met that burden."

I congratulate this company and their counsel in standing up to USCIS and fighting for justice for their beleaguered L-1A manager.

While the September 13th AAO decision has not yet been designated as a precedent decision, it absolutely should be. It is time for the AAO to designate precedent decisions that confirm the proper legal standards to be applied by USCIS and get the adjudications back on the right track. To do otherwise would be counter-productive and contrary to the interests of the global business community.

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