



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 18425467

Date: APR. 22, 2022

Appeal of Texas Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, a real estate investment company, seeks to temporarily employ the Beneficiary as its “executive deputy general manager” under the L-1A nonimmigrant classification for intracompany transferees.<sup>1</sup> Section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the Texas Service Center initially approved the petition, but later revoked the approval on notice, concluding that the Petitioner did not establish that (1) the Beneficiary would be employed in the United States in a managerial capacity, and (2) the entity that employed the Beneficiary abroad was doing business as defined in the regulations. The Director also observed that the Beneficiary had provided inconsistent information regarding his biographical data, education, and employment background on prior nonimmigrant visa applications submitted to the U.S. Department of State. The matter is now before us on appeal.

The burden of proof to establish eligibility for the benefit sought remains with the petitioner in revocation proceedings. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); and *Matter of Esteime*, 19 I&N Dec. 450, 452, n.1 (BIA 1987). Upon *de novo* review, we will dismiss the appeal.

## I. LAW

### A. The L-1A Classification

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary “in a capacity that is managerial, executive, or involves specialized knowledge,” for one continuous year within three years preceding the beneficiary’s application for

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<sup>1</sup> The Petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that it was seeking a “continuation of previously approved employment without change,” noting that the Beneficiary was previously granted one year in L-1A status pursuant to an approved petition valid from October 17, 2016 until October 16, 2017. The Petitioner filed a petition to extend the Beneficiary’s L-1A status in October 2017, and USCIS denied that petition in June 2018 [REDACTED]. At the time the instant petition was filed in July 2018, the Beneficiary was in the United States in B1 nonimmigrant status.

admission into the United States. Section 101(a)(15)(L) of the Act. 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 or executive capacity. *Id.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

## B. Revocation Authority

Under U.S. Citizenship and Immigration Services (USCIS) regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, a director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B). If the intended revocation is based in whole or in part on derogatory information that is discovered outside the record of proceedings, USCIS is obligated to provide notice of such information, and to make that derogatory information part of the record along with any rebuttal provided by the Petitioner. 8 C.F.R. § 103.2(b)(16)(i).

## II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The primary issue we will address is whether the Petitioner established that the Beneficiary would be employed in the United States in a managerial capacity.

“Managerial capacity” means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; 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; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

The statutory definition of “managerial capacity” allows for both “personnel managers” and “function managers.” Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. The term “function manager” applies generally when a beneficiary may not directly supervise or control the work of a subordinate staff but instead is primarily responsible for managing an “essential function” within the organization. *See* section 101(a)(44)(A)(ii) of the Act. If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that “(1) the function is a clearly defined activity; (2) the function is ‘essential,’ i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function’s day-to-day operations.” *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

## A. Facts and Procedural History

The Petitioner has consistently indicated that the Beneficiary will be employed as a function manager based on his responsibility for the core functions of its real estate development business in the United States. It explained that he has three main areas of responsibility including: (1) managing the large-scale [redacted] real estate development project with the Petitioner's partner, [redacted] (30% of his time); (2) negotiating, funding and developing smaller home renovation and sales projects in alliance with local strategic partners in the [redacted] metropolitan area (35% of his time); and (3) negotiating large-scale projects and investment opportunities with potential partners, sellers and investors (30% of his time).<sup>2</sup> The Petitioner provided a list of duties associated with each of these areas of responsibility.

The Director initially approved the petition in October 2018 but subsequently issued a notice of intent to revoke the approval following a February 2019 site visit and telephone interviews in which USCIS immigration officers (IOs) spoke with the Beneficiary and employees of [redacted] who share the same worksite. The Director determined that both the Beneficiary's stated duties and the submitted U.S. organizational chart appeared to mischaracterize the nature of the Beneficiary's position and his level of authority. Further, based on the Petitioner's claimed and documented level of business activity, the NOIR questioned the Petitioner's stated need for a full-time employee to perform managerial duties in the United States. The Director revoked the approval of the petition after reviewing the Petitioner's response to the NOIR, concluding that it did not establish that the Beneficiary would be employed in a managerial capacity.

## B. Job Duties

When examining the managerial capacity of a given beneficiary, we will look to the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the duties performed by the Beneficiary and indicate whether such duties are in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the company's organizational structure, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

As the Petitioner has consistently indicated that the Beneficiary's position involves three distinct areas of responsibility, we will discuss the evidence related to each below.

[redacted]

The record documents the Petitioner's investment in a large-scale land development project in which the Petitioner has partnered with [redacted] through a limited liability company [redacted]. The Petitioner (through a subsidiary) owns a 16.45% membership interest in this company. The project involves the conversion of raw land to residential lots for sale to a builder that is constructing a 400 to 500 home residential community (known as [redacted] in Maryland.

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<sup>2</sup> The Petitioner indicated that the remaining five percent of the Beneficiary's time was spent on accounting, tax and legal matters for which he had contracted a local attorney and accounting.

The operating agreement for [REDACTED] confirms that the Petitioner's subsidiary has one seat on this company's three-person board of managers and that the Beneficiary holds that seat on behalf of the company. The Petitioner indicates that the Beneficiary spends approximately 30% of his time managing this project and that his duties include the following:

- Decide the BOD meeting schedule and review report for BOD meeting
- Sitting in [REDACTED] meetings to select contractor firms;
- Negotiate and process [the Petitioner's] capital contribution amount to [REDACTED] project;
- Decide and process bank financing to the [REDACTED] project;
- Review bidding materials submitted by contractors and subcontractors;
- Evaluate and select contractors and subcontractors;
- Participate in the process of the land ownership transfer;
- Overview and approve zoning and permit applications and fulfillment;
- Overview and approve the company's investment and budgeting and making adjustment accordingly;
- Supervise [REDACTED]'s administrative division and project management division;
- Review and approve hiring and firing procedure submitted by [REDACTED]'s management;
- Conduct due diligence investigation and draft report to report to [the Petitioner's Chinese parent company] . . . regarding [REDACTED] project's progress.

The Petitioner submitted an organizational chart depicting the Beneficiary as its Deputy General Manager and indicating his authority over the [REDACTED]. The chart indicates that, as a member of the board of managers for this project, he oversees human resources and administration, an investment division, a project management division, and a financial division. The chart identifies the [REDACTED] and its major contractors as well as "other projects" and "division associates" under the Beneficiary's supervision. The Petitioner stated in supporting letters that non-managerial duties associated with the project are performed by the parent company's staff,<sup>3</sup> [REDACTED]'s office staff,<sup>4</sup> and contractors. The Petitioner also submitted a letter from [REDACTED]'s chief development officer stating that although the Petitioner does not own a majority share of the project, the two parties share the management responsibilities and that the Beneficiary "supervises every step of the development project," listing the same duties described above.

As noted above, USCIS conducted a post-adjudication site visit at the Beneficiary's worksite (the Petitioner's shared office space with [REDACTED] in February 2019. In the NOIR, the Director advised the Petitioner that the site visit revealed that the Beneficiary does not report to the worksite on a full-time basis and has no additional claimed worksites. The Director further noted that, based on information learned by USCIS IOs during the site visit, the Beneficiary primarily acts as a liaison rather than as

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<sup>3</sup> The organizational chart indicates that the foreign parent has "about 500 employees to provide support upon U.S. subsidiary's daily request," noting that such support may include daily administrative support, projects estimation, construction design, budget approval and secretarial functions. However, the Petitioner did not elaborate on any specific services performed by the parent company on the U.S. subsidiary's behalf or provide evidence that the Beneficiary has requested or received such support from employees based in China.

<sup>4</sup> A 2016 letter from [REDACTED] indicates that the Petitioner's employees share office space with [REDACTED] and have access to [REDACTED] staff for general office duties such as answering calls, making meeting arrangements, mail services and printing and copying documents.

the project's manager, that he does not have managerial authority over the [ ] project, any [ ] employees assigned to the project, or any contractors, and that he does not delegate tasks or have the authority to make personnel decisions related to the project, as claimed. The Director emphasized that the Petitioner nevertheless submitted an organizational chart indicating the entire project is carried out under the Beneficiary's supervision, and concluded that, based on the information obtained during the site visit, the chart provides misleading information.

In the NOIR, the Director also discussed the Beneficiary's responses to questions about the [ ] project that were posed by USCIS IOs during a telephonic interview. The Director noted that the Beneficiary confirmed his membership on the board of managers but stated that [ ] manages the project for the joint venture. The Beneficiary indicated that he visits the project site every week and informs [ ] if he has any concerns, takes pictures, writes reports on project phases, and prepares and sends project reports to the parent company's headquarters in China. The Director concluded that his role appears to be acting as a liaison, relaying project status and financial information back to the parent company.

The Director further identified several duties included in the submitted job description that appeared to conflict with information collected during the site visit. For instance, the Director found that the totality of the evidence does not support the Petitioner's claim that the Beneficiary participates in evaluating and hiring of contractors, supervising [ ]'s administrative and project management divisions, and reviewing hiring and hiring procedures. The Director also observed that the Beneficiary's responsibilities for taking photographs, collecting information and writing reports on the project's status are not managerial in nature as he appears to directly perform these operational tasks.

In response to the NOIR, the Petitioner explained that the Beneficiary acts as a function manager with respect to the [ ] project because he has been granted the authority to supervise the company's substantial investment in the project. The Petitioner claimed, and continues to claim on appeal, that the Director over-emphasized the fact that the Petitioner is only a minority owner in the venture, noting the Beneficiary is still "the top manager" for the petitioning company and entrusted with making decisions for the company with respect to the project. The Petitioner also emphasized that the board of managers for [ ] cannot finalize decisions without the Beneficiary's vote on matters that come before it.<sup>5</sup> In addition, the Petitioner noted that while the Beneficiary cannot unilaterally make decisions regarding the project, he can unilaterally make decisions on behalf of the petitioning company. The Petitioner maintains that the fact that [ ] has a dominant role in the management of the project does not undermine a determination that the Petitioner employs the Beneficiary in a managerial capacity with respect to overseeing the company's investment.

The Petitioner did not address the Director's determination that both the submitted organizational chart and the Petitioner's description of the Beneficiary's job duties convey that he does in fact oversee all aspects of the project and therefore provide information regarding his responsibilities and level of

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<sup>5</sup> The Petitioner has documented actions taking by [ ]'s board of managers by unanimous written consent of its three-member board. These actions, which bear the Beneficiary's signature, include approval of certain expenditures, actions on loan requests, and approving payments of distributions to members.

authority that is inconsistent with information obtained during the site visit. In fact, in its response to the NOIR, the Petitioner included the same list of job duties, referenced the organizational chart, and stated that such evidence demonstrates his “great authority in the overall management of the project.”

Upon review, we acknowledge that the Beneficiary’s membership on the [redacted] [redacted] board of managers grants him the authority to act on behalf of the petitioning company on certain matters related to the [redacted] project, most of which appear to relate to project’s budget, funding, and finances.<sup>6</sup> It is unclear whether the Beneficiary is required to consult with parent company personnel on these matters or whether he is authorized to act independently. Nevertheless, his membership on the board is documented in the record and was confirmed during the site visit.

However, the Petitioner has not addressed noted inconsistencies in the record regarding the Beneficiary’s role and responsibilities related to the [redacted] project. The Petitioner continues to state that he performs all duties stated in the job description despite contrary findings made by USCIS in connection with the site visit and interviews with the Beneficiary and [redacted] staff. As noted, the record does not establish that he reviews materials submitted by contractors, evaluates or selects contractors, supervises the administrative and project management divisions of [redacted] [redacted] or that he reviews and approves hiring procedures relating to the project. Further, the Petitioner continues to point to the previously submitted organizational chart as evidence that he functions at a senior level within the organization, even though the chart shows him supervising four divisions within the “[redacted] Project,” the entire [redacted] Project and “other projects” that have not been identified. The record does not support a determination that the Beneficiary performs these supervisory functions, or any supervisory functions, related to the project.

While the Petitioner is not required to demonstrate that the Beneficiary supervises subordinate personnel to support its claim that the Beneficiary would be employed as a “function manager,” it is expected to provide credible and probative evidence related to the Beneficiary’s role and responsibilities and to explain any inconsistencies in the record. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

We also agree with the Director that the Beneficiary’s responsibilities for taking photographs of the project’s progress and preparing reports for review by the Petitioner’s parent company, without further explanation, suggests that his role is at least, in part, that of a liaison between the foreign entity and [redacted]. Overall, while the record demonstrates that the Beneficiary likely performs some managerial duties as the Petitioner’s representative on the board of managers for [redacted] [redacted] the record does not support the Petitioner’s claim that 30% of his time is allocated to performing managerial duties related to the [redacted] project.

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<sup>6</sup> The record reflects that a separate company, [redacted] is responsible for most of the day-to-day management activities for the [redacted] project. The Petitioner is not a member in this LLC.

### Home Renovation and Resale Projects

The Petitioner indicates that the Beneficiary would be allocating 35% of his time to negotiating, funding, and developing home renovation and resale projects with several local joint venture partners in the [ ] metropolitan area. At the time of filing, the Petitioner listed nine projects noting that the Beneficiary had requested and received approval from its parent company for approximately \$1 million in funding for the listed projects with “more projects to come.” The Petitioner noted that his duties related to these projects would include evaluating proposals from strategic partners, selecting projects, purchasing properties for renovation, purchasing insurance, budgeting, negotiating with partners on funding and liability sharing, selecting contractors after evaluating bids, making final decisions on design, investigating and purchasing construction materials, daily supervision of the construction process on each project, weekly quality control inspections, making decisions on final sales prices and agent selection for sale of completed projects, and overseeing the final profit sharing distribution. The Petitioner submitted a letter from one of its local partners [ ] indicating that the Beneficiary performs these duties with respect to their joint projects.

The Petitioner also submitted: (1) a copy of its “Cooperation Agreement” with [ ] related to a home renovation project in [ ] Maryland; (2) a copy of a joint venture agreement between [ ] (as developer) and the Petitioner’s subsidiary [ ] [ ] as investor) indicating the companies’ intent to acquire, rehabilitate and re-sell a single-family home in [ ] Maryland; and (3) a joint venture agreement with similar terms, executed by [ ] [ ] as investor and [ ] as developer, for a home renovation project in [ ] Maryland. The agreement with [ ] indicates that the Petitioner, through its subsidiary, would be responsible for budgeting, funding, and coordinating finance, as well as hiring subcontractors, quality control, materials purchase, and daily supervision. The two joint venture agreements indicate that the developer (rather than the Petitioner) will be responsible for identifying, acquiring, rehabilitating, and selling the properties in question, while the Petitioner (as investor) would be responsible for contributing and providing the funds used to carry out the project. Based on this evidence, the record indicates that the Petitioner’s role in at least some of the projects has been limited to that of an investor and the evidence does not support its claim that the Beneficiary would be responsible for managing all aspects of every home renovation project undertaken by the company.

In the NOIR, the Director acknowledged the Petitioner’s statements that the Beneficiary would be devoting a substantial amount of his time to managing the nine home renovation projects listed in its supporting letter, but noted that, at the time the petition was filed in July 2018, six of the nine homes had already been resold. The Director also advised that during his telephone interview with USCIS, the Beneficiary stated that he did not have the authority to unilaterally make decisions regarding any aspects of the projects.

In its response to the NOIR, the Petitioner stated that the fact that six of the houses had already been sold “shows all the projects were active and heading towards the goal of completion” and demonstrates that the Beneficiary successfully developed them. The Petitioner noted that he initiated the projects, decided whether and how to develop them, reported his decisions to the Chinese parent company and enjoyed “great success” in doing so. The Petitioner reiterated the same job duties provided at the time of filing and did not further address this area of responsibility in its response to the NOIR.

We agree with the Director that it is significant that most of the home renovation projects identified in the record had already been completed at the time of filing. As noted, the Petitioner indicated that it expected the Beneficiary to spend 35% of his time on these projects once the petition was approved. If many or all the home renovation projects identified by the Petitioner were either already completed or nearing completion at the time of filing, then it is reasonable to question whether this area of responsibility would require 35% of his time. Although the Petitioner stated at the time of filing that there would be “more projects to come,” it neither identified nor documented additional projects in its response to the NOIR.<sup>7</sup> Further, as noted, the record contains unresolved discrepancies regarding the nature of the Petitioner’s role in the home renovation projects that it identified. Although the Petitioner indicated that the Beneficiary would be responsible for all aspects of management for the projects, it submitted agreements related to only three of the projects, and two of those identified the Petitioner’s role as solely that of an investor. This evidence did not support the Petitioner’s claim that it is “the main actor on the local projects” or that the Beneficiary, on behalf of the company, conducts “close management” of every project.

On appeal, the Petitioner once again claims that the fact that six of the nine renovated homes had been re-sold prior to the date of filing is evidence that the projects were “active and heading towards completion.” In support of the appeal, the Petitioner submits copies of three additional “Cooperation Agreements” between [REDACTED] and [REDACTED] for home renovation projects in the [REDACTED] area, signed in August 2018, May 2019, and March 2020. The Petitioner emphasizes that the Beneficiary’s signature on the agreements is evidence of his managerial authority but does not further address these projects or provide any details regarding their status.

According to the newly submitted cooperation agreements, [REDACTED]’s responsibilities for these projects would include purchasing the homes, providing all budget and financial estimates related to the renovation and sale, coordinating the hiring of contractors, “running the project,” and upon completion of renovations, proposing the sales price, handling the sale, and coordinating the closing process. The Petitioner’s stated responsibilities would include 50% fund contribution for the purchase and renovation costs, coordinating finance, and “quality control of the renovation process.” Based on the terms of these contracts, the Petitioner’s partner, rather than the Beneficiary, would be performing many of the duties that are included in the Beneficiary’s job description. The Petitioner has not provided an explanation for these inconsistencies.

Overall, despite the Petitioner’s statement that it has multiple ongoing home renovation projects that require 35% of the Beneficiary’s time, the record does not sufficiently support its claims regarding the scope of this area of its business or the nature of his duties related to these projects. The evidence submitted on appeal suggests that the company started one joint home renovation project annually in 2018, 2019 and 2020. While the record reflects that the Beneficiary has the authority (with the approval of the foreign entity) to commit the Petitioner to these contracts with local partners and to make some decisions regarding the projects, it does not establish that he consistently performs the duties stated in his job description. Further, the number of documented ongoing projects is limited,

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<sup>7</sup> The record contains a chart titled “Flipping Houses Projection” which indicates that the Petitioner projected that it would “flip” four houses per year in 2018 and 2019, and five houses per year in 2020 and 2021. The chart is not dated and does not identify any specific projects under development.



and the evidence does not support the Petitioner's claim that it requires the Beneficiary to allocate more than one-third of his time to this area of responsibility.

### Negotiating Potential Business

The Petitioner stated that the Beneficiary "has been traveling around the country to negotiate for large-scale Merger and Acquisition opportunities, potential real estate development projects, and potential construction projects with investment bankers, agents, potential partners and green tech companies." The Petitioner indicated that he would also be preparing due diligence reports related to these negotiations for the parent company's board of directors. The Petitioner noted that this "potential opportunity negotiation" and related work requires 30% of the Beneficiary's work time. The record did not include any recent evidence corroborating the Beneficiary's ongoing negotiating and reporting activities.

Moreover, the Petitioner and its parent company explained in supporting letters that the Chinese government restrictions on overseas investment had deterred the Petitioner from carrying out its original business plan, which had included pursuing additional large-scale investment opportunities, purchasing a construction company with 300 employees, and hiring multiple layers of employees in the United States. The Petitioner indicated that, after initially transferring two L-1A employees to the United States to oversee the planned expansion, its parent company had recalled the general manager, leaving the Beneficiary as the sole payroll employee in the United States.

In the NOIR, the Director advised the Petitioner that it would need to resolve inconsistent information regarding its expansion plans and the Beneficiary's associated responsibilities. Specifically, he stated:

[T]he record indicates that the beneficiary has been traveling the country to negotiate more large scale opportunities for [the Petitioner's parent company]. However, earlier in the very same support letter and again in the letter of support from [the parent company], it was stated that the [parent company] cannot invest any more money into large scale projects in the United States due to the ongoing trade dispute between the two countries. The record also repeatedly states that the [ ] project is the only major project in the United States.

In its response to the NOIR, the Petitioner acknowledged that "USCIS questioned whether [the Beneficiary] has been traveling the country to negotiate more large-scale business opportunities for [the parent company]." The Petitioner emphasized that it had already explained that it temporarily cannot invest more funds into large scale projects in the United States due to the ongoing trade disputes between the United States and China. It continued by stating that the [ ] project is expected to be profitable and that it "has started to look for the next investment opportunities in the United States," noting that it had invested a million dollars into residential projects in the [ ] area.

The Petitioner's response did not, however, clarify or support its previous claim that the Beneficiary had been or would be allocating 30% of his total work time to traveling the country to negotiate large-scale investment and merger and acquisition opportunities and reporting to the parent company regarding these opportunities. Although it appears that the parent company likely intended to have

the Petitioner pursue investment and expansion opportunities when it established the U.S. company, it has repeatedly acknowledged that it has been deterred from pursuing its initial business plan. The Petitioner has not provided evidence to establish any ongoing business negotiations of the type described, and it remains unclear why it claimed the Beneficiary would be spending such a significant portion of his time on these activities when it filed the petition in 2018. This unresolved inconsistency further undermines the probative value of the job description and the time allocations provided.

In summary, the Petitioner indicates that the Beneficiary allocates 30% of his time to the [ ] project, but the job description and the submitted organizational chart do not accurately convey his level of involvement with the project's management. As noted by the Director, although the record and site visit confirm his membership on the board of managers that makes decisions regarding funding issues for the project, the Petitioner appears to have overstated his responsibility for managing the project and it appears that his role, in significant part, requires him to act as a liaison between the foreign entity and its U.S. partner [ ].

The Petitioner states that he allocates 35% of his time to smaller scale home renovation projects but has not clearly documented the scope of its activities in this area and the number of ongoing projects under development. Further the supporting documentation does not corroborate the Petitioner's assertions that the Beneficiary manages all aspects of these projects, as many duties attributed to him are assigned by agreement to the company's local partners. Based on these deficiencies, we cannot determine that the job duties or the time allocations provided for this area of responsibility are accurate. Finally, although the Petitioner indicates that the Beneficiary spends 30% of his time traveling the country to negotiate and pursue additional large-scale projects and report on such opportunities to its parent company, it also states that its parent company is unable to make any additional large-scale investments and that it only requires the Beneficiary in the United States to oversee existing projects. The Petitioner's response to the NOIR did not adequately resolve the inconsistencies and ambiguities found in the record with respect to the nature of the Beneficiary's duties and the nature and scope of the Petitioner's business activities. *See Matter of Ho*, 19 I&N Dec. at 591-92.

Therefore, while the Petitioner provided a list of job duties that accounted for 100% of the Beneficiary's time, the record does not corroborate that he performs all the listed duties or that the time allocations provided are accurate. Whether a beneficiary is a managerial employee turns on whether the Petitioner has sustained its burden of demonstrating that their duties are "primarily" managerial. *See* section 101(a)(44)(A) of the Act. Here, for the reasons discussed, the Petitioner's description of the Beneficiary's tasks, and the amount of time allocated to his tasks, has not been shown to accurately reflect his actual duties and responsibilities within the context of the petitioner's business. Accordingly, we cannot determine whether the Beneficiary would be primarily performing duties that fall within the definition of managerial capacity. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

### C. Function Manager

The Petitioner's appeal focuses on the elements of a "function manager" position. As noted, if a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that "(1) the function is a clearly defined activity; (2) the function is 'essential,' i.e., core to the

organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations." *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

The Petitioner contends that the Beneficiary exercises discretion over its real estate development activities, that these activities are essential to the organization, that he occupies the senior position in the United States as the sole representative from the foreign entity, and that he has authority to make discretionary decisions related to the parent company's investments in the U.S. market. In making these claims, the Petitioner continues to rely on the job description provided at the time of filing, despite the Director's determination that information obtained during the site visit, and other evidence in the record, did not corroborate that the description accurately describes his duties or the amount of time he allocates to specific tasks. We agree with the Director that the job description, when considered with the totality of the evidence, does not clearly delineate the Beneficiary's actual day-to-day duties. While the Beneficiary may exercise some discretion over the parent company's investments in real estate projects in the United States, he will not be deemed a function manager under the statute simply because he has a managerial title or because he is the only U.S.-based employee in the organization.

To be eligible for L-1A nonimmigrant visa classification as a manager, the Petitioner must show that the Beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act, either as a personnel manager or a function manager. If the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, the Petitioner must establish that the Beneficiary will be *primarily* engaged in managerial duties. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *see also Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016) (stating that whether a beneficiary is a "function" manager turns in part on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial).

Here, due to the unresolved inconsistencies addressed above, the record does not establish that the Beneficiary's actual duties for the Petitioner are primarily managerial in nature. Therefore, the record does not establish that he will be employed in a managerial capacity as defined at section 101(a)(44)(A) of the Act, or that he will act primarily as a function manager.

The Petitioner also contends that the Director placed undue emphasis on the fact that the Beneficiary is the company's sole employee in the United States, asserting that it provided sufficient evidence that employees of its parent company, [REDACTED] its local partners and their contractors, and the Petitioner's own contracted accountant and attorney are available to provide support with administrative and other non-managerial tasks. If staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, USCIS must consider the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

The Director mentioned the lack of evidence corroborating the support the Beneficiary receives from employees outside the petitioning company. However, the Director's decision did not place undue weight on the size of the petitioning company. As noted, the Director emphasized that information

obtained by USCIS during the site visit did not corroborate that Petitioner's description of the Beneficiary's duties or the management structure depicted in the company's organizational chart, and these discrepancies alone provide sufficient grounds for the revocation. *See* 8 C.F.R. § 214.2(l)(9)(iii)(A)(4) (providing that the approval of an L-1 petition may be revoked on notice if the Director determines that the statement of facts contained in the petition was not true and correct).

Likewise, our conclusion that the Petitioner did not meet its burden to demonstrate the Beneficiary's employment in a managerial capacity is based on a determination that it did not establish that his duties are primarily managerial in nature. This determination is primarily based on unresolved inconsistencies in the record regarding his duties, the nature and scope of the Petitioner's activities at the time of filing, and the Beneficiary's responsibilities in the context of those activities. Our conclusion does not rest on the size of the petitioning company or its staffing levels.

For the reasons discussed above, the Petitioner has not established that the Beneficiary would be employed in the United States in a managerial capacity. Accordingly, we will affirm the Director's decision to revoke the approval of the petition.

#### IV. RESERVED ISSUES

Since the identified basis for revocation is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its appellate arguments regarding the Director's separate determination that it did not establish that the Beneficiary's foreign employer is doing business, and regarding the Director's discussion of inconsistent information that the Beneficiary had provided regarding his date of birth, education and employment history on prior nonimmigrant visa applications. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

#### V. PRIOR APPROVAL

As acknowledged by the Director, the Beneficiary was previously granted L-1A status that authorized him to work for the Petitioner in a similar position. Although that petition involved the same parties, it did not involve the same underlying facts, circumstances, and requirements. The prior approval was for an L-1A new office petition and based on the requirements at 8 C.F.R. § 214.2(l)(3)(v). A "new office" petition may be approved for a period not to exceed one year and may be extended pursuant to the regulation at 8 C.F.R. § 214.2(l)(14)(ii), which requires that a petitioner establish that it has been doing business and has developed to the point where it can support a managerial or executive position. As noted, USCIS denied the Petitioner's request to extend the Beneficiary's L-1A status at the end of the one-year "new office" period. The instant petition is not a "new office" petition or a request for an extension of such a petition, and therefore has different eligibility requirements. Further, the Petitioner has acknowledged that it had made changes to the initial business plan submitted with its new office petition and the record reflects that the site visit revealed new material information that was not available when the instant petition was initially approved by USCIS. Because this petition involved a change in circumstances, new adverse material information, and different eligibility

requirements, the Director was not required to give deference to the prior approval of a new office petition.

## VI. CONCLUSION

The Petitioner did not establish that it will employ the Beneficiary in a managerial capacity in the United States. Accordingly, we affirm the Director's decision to revoke the approval of the petition.

**ORDER:** The appeal is dismissed.