



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

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

In Re: 23353171

Date: DEC. 7, 2022

Appeal of Texas Service Center Decision

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

The Petitioner intends to operate as a diamond importer and exporter and seeks to employ the Beneficiary temporarily as “Business Development Manager” of its new office¹ under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the Texas Service Center denied the petition concluding that the Petitioner did not establish, as required, that the Beneficiary was employed abroad in a managerial or executive capacity and that the Beneficiary would be employed in a managerial or executive capacity within one year of the petition’s approval. The matter is now before us on appeal.

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity within one year of the petition’s approval. Because the identified basis for denial is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the Petitioner’s appellate arguments regarding the Beneficiary’s employment abroad. *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).

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity, or in a position requiring specialized knowledge for one continuous year within three years preceding the beneficiary’s application for admission into the United States. 8 C.F.R. § 214.2(l)(1). In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same

¹ The term “new office” refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a “new office” operation no more than one year within the date of approval of the petition to support an executive or managerial position.

employer or a subsidiary or affiliate thereof in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(ii).

In addition, regarding a new office petition, the petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The issue to be addressed in this decision is whether the Petitioner provided sufficient evidence to establish that its operation would support the Beneficiary in a managerial capacity within one year of the petition's approval.²

“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.

A. New Office Requirements

In the case of a new office petition, we review the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year of the petition's approval. Accordingly, we consider the totality of the evidence in determining whether the proposed position is plausible based on a petitioner's anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

The petition shows that the Petitioner claimed no employees and no income at the time of filing. In a supporting cover letter, the Petitioner stated that with the assistance of [REDACTED] owner of 90% of its stock, and [REDACTED] owner of 10% of its stock, the Petitioner plans to engage in the wholesale and import of diamonds from India and that it will “serve commercial customers in the U.S. with their diamond needs.” The Petitioner stated that it would rely on logistics providers to import and deliver products “nationwide” and that it would “maintain a professionally designed e-commerce site . . . to reach many potential clients,” including jewelry manufacturers, diamond dealers, and retail stores. In addition, the Petitioner stated that it intends to participate in trade shows and use

² The Petitioner does not claim that the Beneficiary's position in the United States would be in an executive capacity.

print and internet advertisements, web promotion, and online gem marketplaces to sell its products and expressed interest in expanding its operation into the watch wholesaling industry.

The Petitioner also discussed its personnel plan and financial backing. Regarding the latter, the Petitioner stated that it would be funded by its foreign parent company through cash and merchandise totaling approximately \$460,000. However, the Petitioner explained that the foreign entity “is holding the investment in India” pending resolution of the Petitioner’s name change “issues,” thereby indicating that the Petitioner had not received the foreign entity’s contribution as of the date this petition was filed. The Petitioner provided evidence showing that it obtained a loan in the amount of \$150,000³ from [REDACTED] its minority shareholder, which it claimed it would use in the meantime, to cover start-up costs and operating expenses during its first year of operation. The Petitioner did not adjust its financial projections or its operational objectives even though the amount of capital it had at the time of filing was significantly lower than the planned amount upon which the business plan was predicated.

In response to the Director’s request for evidence (RFE), the Petitioner claimed that it “is being funded with \$600,000”; the Petitioner explained that this contribution includes \$150,000 in cash and \$300,000 in inventory from the foreign parent entity in addition to the \$150,000 it already received from [REDACTED]. Although the Petitioner provided evidence showing that it received a delivery of diamonds valued at \$310,342 from the foreign parent entity, the delivery receipt reflects a transaction date of February 27, 2022, thus showing that the transaction took place after this petition was filed in January 2022. Likewise, the Petitioner provided bank documents as evidence of the foreign entity’s financial contributions towards the U.S. operation. However, the bank documents reflect transactions that took place in March 2022, thus showing that the foreign entity’s cash contributions were unavailable to the Petitioner at the time this petition was filed. We note that the burden is on the Petitioner to establish eligibility for the requested benefit *at the time of filing* the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971) (providing that “Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts.”).

Here, the record shows that at the time of filing, the Petitioner had approximately one third of the \$460,000 in funding that was originally anticipated. As such, it is reasonable to question whether, at the time of filing, the Petitioner had the ability to meet the objectives outlined in the business plan. The Petitioner has not provided sufficient evidence to show that it was adequately funded at the time of filing so that it could pay the Beneficiary’s salary and commence doing business. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(2).

The record also does not establish that the Petitioner will progress in its development and that it will be adequately staffed to relieve the Beneficiary from having to primarily perform non-managerial job duties beyond the new office phase of operation. *See* 8 C.F.R. § 214.2(l)(3)(v)(C) (requiring the intended U.S. operation to demonstrate the ability to support a managerial position within one year of

³ The Petitioner’s initial cover letter states that [REDACTED] extended a loan of \$148,000. However, in response to the request for evidence the Petitioner stated that the loan amount was \$150,000 and offered bank documents to corroborate the new loan amount.

the petition's approval). The Petitioner stated that it plans to fill the following positions during its first year of operation: 1) executive director; 2) business development manager (i.e., the Beneficiary's proffered position); 3) one sales representative; and 4) an administrative assistant. Although the Petitioner indicated that it plans to add a second sales representative in its third year of operation, the personnel plan shows that the Petitioner will operate with a single sales representative for the first two years of operation, despite anticipating a revenue increase from a projected \$2.5 million with 36 wholesale orders and 167 retail orders in the first year of operation, to over \$3.3 million with 48 wholesale orders and 226 retail orders in the second year of operation. The Petitioner indicates that it plans to attain these goals with the help of a four-person staff, which will be comprised of an executive director and a business development manager as the top-tier employees and an administrative assistant and a sales representative who will support the organization's management by performing operational duties. To meet the requirements of this visa classification, the Petitioner must establish that the Beneficiary's focus will shift to primarily executive or managerial job duties within one year of the petition's approval. *See* 8 C.F.R. § 214.2(l)(3)(v)(C) (requiring a new office petitioner one year from the date of the petition approval to support the designated beneficiary in managerial or executive capacity).

Here, the Petitioner points to a revised personnel plan that was submitted in response to the RFE; the revised plan shows that in addition to the four positions listed above, the Petitioner intends to fill two more positions – a sales analyst and a second sales representative. However, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). As such, we will focus on the proposed staffing as outlined in the original business plan. That said, the Petitioner has not provided sufficient evidence showing that a single sales representative and an administrative assistant would be sufficient to support a managerial position and relieve the Beneficiary from having to primarily assist with the organization's operational and administrative duties. We note that an employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See, e.g.,* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).

The new office regulations are premised on the understanding that a new company will progress to a stage of development where it will be able to support a beneficiary in a managerial or executive capacity. Given the evidentiary deficiencies discussed above, the Petitioner has not established that the proposed position is plausible based on its anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

B. Duties

When examining the executive or managerial capacity of a beneficiary, we will review a petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). Accordingly, we will discuss the Beneficiary's proposed job descriptions.

Although the Petitioner's business plan states that the Beneficiary will be employed in a managerial capacity within one year of this petition's approval, it provided two sets of deficient job descriptions that do not support this claim. Both sets of job duties are contained in the Petitioner's business plan.

The first list of duties does not include a percentage breakdown and states that the Beneficiary will do the following: “manage all aspects” of business development and daily operations; “set all company policies while hiring employees and leading the new team of staff”; identify new business opportunities and maintain relations with clients; “collaborate with the marketing team”; and “assist with drafting business plans, sales pitches, presentations, reference materials, and other documents. The Petitioner did not elaborate on the types of company policies the Beneficiary would set or the types of new business opportunities she would seek for the organization. The Petitioner also did not specify precisely how the Beneficiary would assist with sales pitches and presentations.

The Petitioner provided a second job description in the form of a percentage breakdown comprised of an entirely different list of job duties and no explanation as to how the two job descriptions are consistent with one another. Further, the percentage breakdown is deficient in that it accounts for only 90% of the Beneficiary’s time, leaving 10% unaccounted for; it also lists several job duties that are inconsistent with the organization’s projected staffing. For instance, the Petitioner stated that the Beneficiary will meet with a “purchasing/logistics assistant” regarding the purchase, storage, and delivery of diamonds. However, the Petitioner’s projected staffing does not show that it plans to hire a “purchasing/logistics assistant” during anytime within the first five years of operation. The Petitioner also stated that the Beneficiary would exercise managerial discretion over “subordinate managers,” even though its staffing composition does not show managerial or supervisory positions subordinate to the Beneficiary. The job descriptions of the Beneficiary’s proposed subordinates contain similar unexplained anomalies in that they make references to positions, such as marketing assistant, general manager, and a sales and marketing manager, which were not among the Petitioner’s proposed staffing hierarchy. *See Matter of Ho*, 19 I&N Dec. at 591-92 (requiring a petitioner to resolve evidentiary discrepancies with independent, objective evidence).

The percentage breakdown also states that the Beneficiary would be tasked with reviewing and approving financial reports, even though drafting such reports is not a task assigned to either of the Beneficiary’s subordinates. In fact, the proposed organizational chart shows that the executive director (i.e., the Beneficiary’s superior) would oversee a contracted accountant, thereby making it more likely that he, rather than the Beneficiary, would review and approve financial reports. Although the job duty breakdown states that the Beneficiary will “review administrative reports” with the administrative assistant, it is unclear who would draft those reports since the administrative assistant’s job duty breakdown does not specifically list drafting reports among that position’s assigned job duties. Further, the job duty breakdown states that the Beneficiary will be tasked with “[d]irecting and coordinating activities of the company concerned with the pricing and sales of diamonds.” However, the Petitioner did not identify the “activities” the Beneficiary would perform. Although the Petitioner stated that the Beneficiary would “oversee[] proper training of all new hires,” it is unclear who would actually conduct the training, nor is it clear that the Beneficiary’s two subordinates, who would comprise the entirety of the Petitioner’s support staff, justify the need for “establishing and maintaining a training program.” In addition, the Petitioner vaguely stated that the Beneficiary would oversee “the marketing and promotion strategy,” but it did not specify how such oversight would take place or discuss the Beneficiary’s involvement, if any, in the creation of a “proprietary website” with an ecommerce functionality, which the Petitioner included in its discussion of a marketing strategy.

In the denial, the Director stated that the Beneficiary’s job duties must show that she would primarily manage the organization, or a department, subdivision, or function. The Director concluded, however,

that the Petitioner would not adequately develop and be able to support the Beneficiary in a managerial position within a one-year period. On appeal, the Petitioner does not clarify the Beneficiary's job duties or outline a business plan that demonstrates how the organization will move away from the new office phase and progress into a phase of development wherein it will have the infrastructure to support the Beneficiary in a managerial capacity.

In conducting a review of the totality of the evidence, we examined the Beneficiary's claimed managerial capacity, including her job description, the company's proposed organizational structure, the presence of other employees to relieve the Beneficiary from performing operational duties, the nature of the business, and any other factors that may contribute to an understanding of the Beneficiary's actual duties and role in the business. Having contemplated these relevant factors, we find that the record lacks evidence showing that the Petitioner was adequately funded at the time of filing and it includes a vague job description that does not adequately describe the Beneficiary's job duties or establish that the Beneficiary would allocate her time primarily to managerial functions within one year of the petition's approval.

For the reasons discussed above, we conclude that the Petitioner has not established that the Beneficiary will be employed in a managerial capacity within one year of the petition's approval.

ORDER: The appeal is dismissed.