



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

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

In Re: 23352272

Date: DEC. 21, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a marketer and distributor of sports apparel, seeks to transfer the Beneficiary from its parent company in Pakistan and temporarily employ him in the United States as its chief executive officer (CEO). The company requests his classification under the L-1A nonimmigrant visa category as an intracompany manager or executive. *See* 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. The Director concluded that, contrary to the Act and Department of Homeland Security regulations, the Petitioner did not demonstrate the claimed managerial or executive nature of the Beneficiary's employment abroad or his proposed U.S. work. On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary would primarily manage an essential function of the U.S. company.

The Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We exercise de novo review on appeal. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

A petitioner seeking to employ an L-1A manager or executive must demonstrate that - for at least one continuous year in the three years before a beneficiary's admission to the United States - the petitioner or its parent, branch, subsidiary, or affiliate employed the beneficiary abroad in a capacity that was managerial, executive, or involved specialized knowledge. 8 C.F.R. § 214.2(l)(3)(i), (iii), (iv). The petitioner must also establish that the beneficiary's prior education, training, and employment qualifies them for a proposed U.S. managerial or executive position. 8 C.F.R. § 214.2(l)(3)(ii), (iv).

II. ANALYSIS

A. The Nature of the Beneficiary's Employment Abroad

The record shows that the Beneficiary co-founded the Petitioner's Pakistani parent in 2016 and, since that date, has served as its CEO. The parent makes sports apparel and wholly owns the Petitioner, a limited liability company that markets and sells the parent's goods in the United States. The parent's organizational chart indicates its employment of 75 people. The chart places the Beneficiary at the top of the parent's operations, directly supervising directors of operations and finance, and sales and marketing.

In response to the Director's request for additional evidence (RFE), the Petitioner asserted the Beneficiary's employment abroad in both a managerial and executive capacity. Thus, the company must demonstrate that his foreign role meets the definition of either the term "managerial capacity" or "executive capacity." *See* sections 101(a)(44)(A), (B) of the Act.

The term "managerial capacity" means work "primarily" involving:

- Managing an organization or its department, subdivision, function, or component;
- Supervising and controlling the work of other supervisory, professional, or managerial employees, or managing an essential function within the organization or its department or subdivision;
- Having authority to hire and fire or recommend those and other personnel actions if directly supervising another employee or employees, or functioning at a senior level within the organizational hierarchy or regarding the managed function; and
- Exercising discretion over the daily operations of the authorized activity or function.

Section 101(a)(44)(A) of the Act.

As the statutory definition indicates, an L-1A manager may manage either people or an "essential function" within an organization. Section 101(a)(44)(A)(ii) of the Act. The Petitioner did not assert the Beneficiary's management of a function abroad. We will therefore evaluate the managerial nature of his foreign role as a personnel manager.

In contrast to the definition of "managerial capacity," the term "executive capacity" means work "primarily" involving:

- Directing the management of an organization or a major component or function of it;
- Establishing the goals and policies of the organization or its component or function;
- Exercising wide latitude in discretionary decision-making; and
- Receiving only general supervision or direction from the organization's higher-level executives, board of directors, or stockholders.

Section 101(a)(44)(B) of the Act.

When considering the nature of a foreign position, USCIS examines the position's job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii) (requiring "a detailed description" of a beneficiary's employment). The Agency also considers: the foreign business's organizational structure; its nature; the duties of any workers subordinate to a beneficiary; whether any subordinate workers relieve a beneficiary from performing non-qualifying, operational duties; and other factors affecting the nature of a beneficiary's role.

As the Director found, the record does not establish that the Beneficiary works for the Pakistani parent "primarily" in a managerial or executive capacity. With the petition and in response to the Director's RFE, the Petitioner provided separate descriptions of the Beneficiary's job duties abroad. The Petitioner has not established the managerial or executive nature of some listed duties, such as: helping the board of directors "articulate its own role and accountabilities;" serving as "an external spokesperson for the company;" and overseeing donations to nonprofit organizations and occupational health and safety. Also, the foreign job-duty descriptions do not indicate how much time the Beneficiary spends on each duty. The record therefore does not demonstrate that he "primarily" performs managerial or executive duties abroad. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988) ("An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity.")

Moreover, the Director's RFE specifically requested a letter from the Petitioner's parent describing the Beneficiary's foreign duties "and the percentage of time spent on each." Contrary to the request, the parent's letter omits the requested time percentages. *See* 8 C.F.R. § 103.2(b)(14) ("Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request.")

The record also supports the Director's finding of inconsistencies in the Beneficiary's foreign job duties. The parent's letter provides specific examples of general duties that the Petitioner initially stated in the filing. But the letter also introduces many other duties, such as: serving as a company spokesman by providing motivational speeches and talking at seminars, churches, businesses, and government agencies; assuring adequate employee health and safety measures; and overseeing donations to non-profit organizations. The differing versions of the job duties cast doubt on the Beneficiary's true responsibilities with the parent and the nature of his foreign work. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring petitioners to resolve inconsistencies with independent, objective evidence pointing to where the truth lies).

The Director also noted that the Petitioner omitted proof of the parent's employment of the Beneficiary's purported subordinates. The omission casts doubt on the subordinates' existence and thus on the Beneficiary's claimed roles abroad as a personnel manager and executive. On appeal, the Petitioner submits pay records of the purported subordinates. The Director's RFE, however, notified the company of its omission of "evidence verifying the employment of the direct subordinates" and provided it with a reasonable opportunity to respond. We therefore decline to consider the pay records on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (barring consideration of appellate evidence if a petitioner previously received notice and an opportunity to provide the proof).

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary's employment abroad in a managerial or executive capacity. We will therefore affirm the petition's denial.

B. The Nature of the Proposed U.S. Employment

The record also supports the Director's denial based on the proposed U.S. employment. The Petitioner has not sufficiently demonstrated that the Beneficiary would work "primarily" in a managerial or executive capacity. *See* sections 101(a)(44)(A), (B) of the Act; 8 C.F.R. § 214.2(l)(3)(ii).

As with its evidence of the Beneficiary's foreign employment, the Petitioner omitted requested percentages of time he would spend on proposed U.S. job duties. The company also has not established the following proposed duties as managerial or executive in nature: monitoring the company's compliance with U.S. laws and regulations; ensuring accuracy and completeness of company financial disclosures to the U.S. government; and negotiating and signing agreements with future business partners. The record therefore does not demonstrate that the Beneficiary would "primarily" work in a managerial or executive capacity. *See Matter of Church Scientology*, 19 I&N Dec. at 604; *Brazil Quality Stones, Inc. v. Chertoff*, 531 F.3d 1063, 1070 (9th Cir. 2008) (stating that a beneficiary "cannot qualify for an L-1A visa simply because he performs managerial [or executive] tasks; such tasks must encompass his *primary* responsibilities") (emphasis in original).

On appeal, the Petitioner argues that its RFE response included a "breakdown of time [the Beneficiary] would spend on a typical working day." The written breakdown indicates that he would typically spend four hours a day meeting with potential new clients, one-and-a-half hours meeting with existing clients, and one-and-a-half hours reviewing e-mails and company reports and notifying production workers abroad of any new U.S. orders.

The breakdown of the Beneficiary's proposed time, however, omits several job duties. For example, the company initially stated that he would: monitor its compliance with relevant laws and regulations; determine its short- and long-term goals; manage its daily operations; and oversee its financial activities. Its RFE response added that he would execute its business plan and negotiate agreements with future business partners. The breakdown of the Beneficiary's typical proposed day does not indicate his performance of these duties. The Petitioner has not demonstrated how much time he would spend on each duty and thus whether he would "primarily" work in a managerial or executive capacity. *See Matter of Church Scientology*, 19 I&N Dec. at 604; *Brazil Quality Stones*, 531 F.3d at 1070. Also, the Petitioner's inclusion of new proposed tasks in its RFE response casts doubt on the actual job duties and the nature of his proposed U.S. work. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring petitioners to resolve inconsistencies).

For the first time, the Petitioner asserts on appeal that the Beneficiary would work primarily as a function manager. The company states that he would spend 60% of his time managing its business development function.¹ The breakdown of the Beneficiary's time supports his proposed role as a function manager. The document indicates that, by typically meeting potential new clients for four

¹ The Petitioner also states that the Beneficiary would spend 25% of his time as a manager (presumably a personnel manager) and 15% as an executive. Because the Petitioner indicates that the Beneficiary would not "primarily" perform these other duties, we need not consider whether he would work in a personnel managerial or executive capacity. *See* sections 101(a)(44)(A), (B) of the Act.

hours a day, he would spend most of his time on business development. As discussed above, however, the breakdown does not indicate the Beneficiary's performance of other proposed job duties, such as determining the company's short- and long-term goals and overseeing its financial operations. The Petitioner has not demonstrated how much time the Beneficiary would spend on these other duties and thus whether he would "primarily" serve as a function manager. *See Matter of Church Scientology*, 19 I&N Dec. at 604; *Brazil Quality Stones*, 531 F.3d at 1069 (stating that "regardless of an intracompany transferee's position in the organizational hierarchy," an employer must "demonstrate that the transferee's responsibilities are 'primarily' managerial"). The Petitioner's business plan also indicates the company's proposed hiring of a "Business Development Officer" in the Beneficiary's third year in the United States. The Petitioner has not explained whether the business development officer would assume any of the Beneficiary's duties regarding the company's business development function.

Although unaddressed by the Director, the record also does not demonstrate that the Petitioner has enough support staff to relieve the Beneficiary from primarily performing non-qualifying, operational duties. The Petitioner stated its employment of only one person, a part-time operations manager, who it said typically works a four-hour day. Its business plan indicates that, during the Beneficiary's first year of U.S. work, the manager would serve as his only co-worker. To qualify as a functional manager, however, the Beneficiary must "primarily" perform the proposed managerial duties. *See* section 101(a)(44)(A) of the Act. A petitioner must also demonstrate eligibility "at the time of filing the benefit request." 8 C.F.R. § 103.2(b)(1). Thus, the Petitioner did not demonstrate that its immediate support staff would relieve the Beneficiary from having to primarily perform non-qualifying, operating duties.

The Petitioner stated that the operations manager would handle operational duties, including: sorting mail; sending legal notices to a vendor who handles the company's payroll and taxes; paying bills; ensuring office maintenance; communicating with customers about orders; coordinating shipping with the overseas production team and - through other service providers - payroll, tax, and insurance activities; tracking customer shipments; monitoring e-mails; and arranging and scheduling the Beneficiary's meetings. But the part-time, four-hour-a-day nature of the manager's proposed work indicates that the Beneficiary would spend half his time in the office alone, potentially forcing him - in the manager's absence - to spend significant time on operational duties.

The Petitioner also stated that sales and marketing workers at its Pakistani parent would assist the Beneficiary by identifying and referring potential new U.S. clients to him. A petitioner may rely on support from overseas staff to demonstrate the company's proposed employment of a function manager. *Matter of Z-A-, Inc.*, Adopted Decision 2016-02, *6 (AAO Apr. 14, 2016). But unlike in *Z-A-*, the Petitioner has not demonstrated that the foreign workers are available and exclusively dedicated to supporting the Petitioner's U.S. business development. The record therefore does not establish that the Beneficiary would receive staff support sufficient to primarily manage the Petitioner's business development function.²

² USCIS cannot deny an L-1A petition based solely on a petitioner's size or the number of employees a beneficiary would supervise. Section 101(a)(44)(C) of the Act; *Brazil Quality Stones*, 531 F.3d at 1070-71. Here, we recognize the Petitioner's reasonable needs as a small start-up company and have considered additional factors, including the proposed job duties and the availability of foreign employees to support the Beneficiary.

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary's proposed work in the United States in a managerial or executive capacity. For this additional reason, we will affirm the petition's denial.

C. The Qualifying Relationship

Although unaddressed by the Director, the Petitioner also has not established it and the Beneficiary's foreign employer as "qualifying organizations." See 8 C.F.R. § 214.2(l)(3)(i). Qualifying organizations include parents and their subsidiaries. 8 C.F.R. § 214.2(l)(1)(ii)(G)(I).

The Petitioner identified itself as the subsidiary of the Beneficiary's foreign employer in Pakistan. The term "subsidiary" means a legal entity in which the parent directly or indirectly has an ownership interest and controls the entity. 8 C.F.R. § 214.2(l)(1)(ii)(K).

The record, however, does not demonstrate the claimed, qualifying relationship between the entities. Copies of the Petitioner's U.S. federal income tax returns for 2019 and 2020 identify the Beneficiary's foreign employer as the Petitioner's sole owner. But more recent evidence casts doubt on that purported relationship. In November 2022, the Petitioner applied to do business in Florida, identifying the Beneficiary - rather than his foreign employer - as the sole "member," or owner, of the petitioning limited liability company. See Fla. Div. of Corps., "Search for Corporations, Limited Liability Companies, Limited Partnerships, and Trademarks by Name," <https://search.sunbiz.org/Inquiry/CorporationSearch/ByName>. A petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591. Thus, the record does not demonstrate the Petitioner's claimed relationship to its purported parent, the Beneficiary's foreign employer.

The Director did not notify the Petitioner of this evidentiary deficiency. Thus, in any future filings in this matter, the company must explain the inconsistencies of record and submit additional proof of its claimed qualifying relationship to the Beneficiary's foreign employer.

III. CONCLUSION

The Petitioner has not sufficiently demonstrated the Beneficiary's employment abroad or his proposed U.S. work in a managerial or executive capacity. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.