



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

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

In Re: 20615272

Date: JUN. 10, 2022

Appeal of California Service Center Decision

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

The Petitioner, the U.S. office of a company engaged in metals and minerals trading and manufacturing, seeks to continue the Beneficiary's temporary employment as its general manager under the L-1A nonimmigrant classification for intracompany transferees.¹ Immigration and Nationality Act (the Act) section 101(a)(15)(L), 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 California Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner seeks to employ the Beneficiary in a primarily managerial or executive capacity. 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.

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity 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)(3)(v)(B). 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.*

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held;

¹ The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period from December 3, 2019, until December 2, 2020. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary 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 one year within the date of approval of the petition to support an executive or managerial position.

evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

II. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The sole issue to be addressed is whether the Petitioner provided sufficient evidence to establish that the Beneficiary's position with the U.S. entity would be in a managerial or executive capacity. The Petitioner does not clearly and consistently state whether the proposed position qualifies as employment in a managerial capacity or in an executive capacity. Rather, the Petitioner provided ambiguous statements that did not clarify this critical point in any of its prior submissions. The Director determined that the Petitioner did not establish that it would employ the Beneficiary in a primarily managerial or executive capacity. We agree, as explained below.

“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.

“Executive capacity” means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

Based on the statutory definitions of managerial and executive capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *See* sections 101(a)(44)(A) and (B) of the Act. The Petitioner must also demonstrate that the Beneficiary will be primarily engaged in managerial or executive duties, as opposed to ordinary operational activities alongside other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). Further, the Petitioner must clearly describe the duties to be performed by the Beneficiary and indicate whether such duties are either in an executive or managerial capacity.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, we must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

As a threshold matter, we note that a petitioner claiming that a beneficiary will perform as a “hybrid” manager/executive will not meet its burden of proof unless it has demonstrated that the beneficiary will primarily engage in either managerial or executive capacity duties. *See* section 101(a)(44)(A)-(B) of the Act. While in some instances there may be duties that could qualify as both managerial and

executive in nature, it is the petitioner's burden to establish that the beneficiary's duties meet each set of criteria as put forth in the statutory definition for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the beneficiary will be primarily employed in either a managerial or executive capacity.

At the time of filing, the Petitioner indicated that the Beneficiary had one employee and was in the process of setting up its new office. It stated that while in the process of hiring employees, the Governor of California ordered its operations to shut down as a result of the COVID-19 pandemic. The Director issued a request for evidence (RFE), asking for further evidence and information about the Beneficiary's duties and the staffing of the U.S. entity.

In response, the Petitioner submitted the following overview of the Beneficiary's duties:

Company policy, goals, strategy, etc. (30%):

[The Beneficiary] spends approximately 30% of his working time developing, establishing and updating the company's annual business policies, objectives, plans and strategies. He regularly convenes meetings of department managers to discuss new business issues and make needed adjustments of company policies, goals and strategies; represents the company in participating in major business meetings, conferences, and business shows in China and overseas; responsible for exchanging and sharing policy related developments and information of this industry with other major Chinese and foreign business partners. Report to Board of Shareholders and Supervisory Committee regularly to brief new issues on policy, goals, and strategies.

Sales and market development (30%)

[The Beneficiary] uses 30% of his working hours to initially set up and continuously supervise sales channels and marketing strategies for the company. Convey to the sales and marketing managers the policies and goals of the company's sales and marketing; follow up with the managers on the enforcement and accomplishments of the sales and marketing objectives and policies; give directions on how to solve any newly emerged issues and problems; daily in person over phone or via other communication means with the sales and marketing managers inquiring about the development of important contracts and provide guidance on promoting further the company products. Report to Board of Shareholders and Supervisory Committee regularly to brief new issues on sales and marketing situations.

Finance (20%):

[The Beneficiary] spends 20% of his working time on the company's financial advantages. First, he is responsible for formulating short-term and long-term trade and financial investment plans and goals; interview with the administrative manager or financial officer responsible for the company's financial management and review weekly the major financing reports of the company; making decisions for major financing strategies of the company such as general funds allocations and investment

channels establishment; provide guidance on how to accumulate investment funds and how to use the funds to generate more revenues. Report to Board of Shareholders and Supervisory Committee regularly to brief new issues on company financing issues.

Personnel Management (20%):

[The Beneficiary] uses 20% of his working time for a personnel management. Regularly meet with the administrative manager to check the overall performances of the employees, especially managers and key employees; directly responsible for the interviewing, hiring and firing of department managers; give monthly written reviews of the managers' job performance; talk to managers and key employees when finding or receiving any complaints about them; make decision on needed promotions, rewards or disciplines on the managers and key employees. Report to Board of Shareholders and Supervisory Committee to regularly brief major employment issues.

The Petitioner also summarized the Beneficiary's duties regarding the opening of its new office, noting that the Beneficiary secured an office lease, hired and trained personnel, handled information technology services such as setting up the company's communication channels and its website, obtained necessary business licenses, and secured sales contracts. In support of this assertion, the Petitioner submitted numerous documents pertaining to its business operations, including tax returns, website printouts, photos of its premises, a copy of its office lease, and payroll records for its employees.² The Petitioner also submitted a declaration from the Beneficiary discussing the impact of the pandemic shutdown on business operations. Finally, the Petitioner submitted a general overview of the Beneficiary's role with the foreign parent company and the manner in which the Beneficiary contributed to the direction of the foreign parent and its subsidiaries.

In the denial notice, the Director concluded that the Petitioner had not established the Beneficiary's duties have been, and would be, primarily managerial or executive. The Director noted that the statement of duties was vague and general, and did not provide a clear overview of the actual duties performed by the Beneficiary. The Director also noted that the nature of the Beneficiary's foreign duties, and the extent to which they were relevant or contemporaneous to the Beneficiary's duties in the United States, was unclear. Finally, the Director concluded that the Petitioner had not established the existence of subordinate staff who would relieve the Beneficiary from performing non-qualifying duties.

On appeal, the Petitioner provides an overview of the history and corporate structure of the parent company and its subsidiaries, as well as financial documentation demonstrating the business operations of these entities. The Petitioner claims that the Beneficiary "writes policies and rules on behalf of the company and also plans for the growth of the Corporate entity," in addition to regularly meeting with the Board of Directors as well as shareholders to provide updates on the company's management. The Petitioner resubmits the previously submitted overview of the Beneficiary's duties, referring to this document as a summary of the Beneficiary's "executive" duties, while simultaneously claiming that he is managing the U.S. entity and supervising its newly-hired personnel.

² We note that much of the submitted documentation originated after the filing of the extension petition.

Here, the Petitioner has offered competing claims about the Beneficiary's employment. On the one hand, it states that the Beneficiary will perform "executive duties," where he will focus on policy, goals and strategy, while on the other hand, it claims that the Beneficiary would manage personnel, including hiring, training, and interviewing new employees. Further, despite providing a job duty breakdown with time allocations, the Petitioner did not clearly describe the Beneficiary's proposed position or convey a meaningful understanding of his actual daily tasks. For instance, the Petitioner stated that the Beneficiary would make and adjust the company's policies, goals and strategies, but it provided no specific information describing these policies, goals and strategies.

The Petitioner also stated that the Beneficiary would formulate short- and long-term trading and financial investment plans. However, the Petitioner did not identify any of the Petitioner's investments or specify the actions the Beneficiary would take to increase efficiency within the scope of the U.S. operation. Further, in considering the claim that the Beneficiary would make personnel decisions and train new hires, we cannot overlook the fact that the Petitioner hired no employees during the one-year period allotted to opening its new office, including several pre-pandemic months. Reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The Petitioner has not consistently stated whether the Beneficiary's job duties should be classified as executive or managerial, and it has also provided deficient job descriptions that preclude a meaningful understanding of precisely how the Beneficiary would either direct the management of the organization and set that organization's policies or how he would manage the organization and supervise act as a personnel manager. Furthermore, the fact that the Beneficiary will manage or direct the business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" managerial or executive in nature. Sections 101(A)(44)(A) and (B) of the Act. While the Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making, these elements alone are insufficient to establish that the Beneficiary's actual duties would be primarily managerial or executive in nature. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner's failure to meet fundamental requirements, as described above, impedes our ability to assess the Beneficiary's role within the scope of the U.S. organization. Finally, given the vague references to the Beneficiary's level of responsibility within the overall corporate hierarchy and his interaction and oversight of foreign departments and personnel, we lack a meaningful understanding of how, if at all, he would be relieved from primarily performing non-qualifying duties by any foreign-based subordinates.

Beyond the required description of the job duties, we also examine the company's organizational structure, the duties of a beneficiary's subordinate employees, 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. Because a petitioner must meet all eligibility requirements at the time of filing, we must consider the

state of the company at the time it filed the extension petition in December 2020. *See* 8 C.F.R. § 103.2(b)(1).

At the time of filing the extension petition, the Beneficiary was the Petitioner's only employee. We acknowledge the Petitioner's assertion that it faced extreme difficulties in hiring employees and conducting routine business transactions in its first year of operations as a result of the COVID-19 pandemic. The record reflects, however, that the Petitioner hired no employees other than the Beneficiary during the one-year new office period. Notably, no employees were hired between December 2019 and March 2020, before the pandemic struck. Moreover, while the Petitioner asserts in response to the RFE and on appeal that it has conducted numerous business transactions and hired several employees, all of these activities occurred after the filing of the extension petition.

USCIS must take into account the reasonable needs of the organization in light of the overall purpose and stage of development of the organization if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity. *See* section 101(a)(44)(C) of the Act. However, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require USCIS to examine the organizational structure and staffing levels of the Petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. If a business does not have the necessary staffing after one year to sufficiently relieve the beneficiary from performing operational and administrative tasks, the petitioner is ineligible for an extension. Here, while the Petitioner claims that the Beneficiary has been and will continue to be employed in a primarily managerial or executive capacity, it does not explain how the Beneficiary was relieved from performing non-qualifying duties at the time of filing without subordinate employees to support him. The fact that the Petitioner hired new employees subsequent to the filing of the extension petition is insufficient to establish that the Petitioner could support the Beneficiary in a primarily managerial or executive position at the time of filing.

We acknowledge the Petitioner's submission of evidence pertaining to its parent company and affiliates in support of its global presence and the Beneficiary's broader role within the overall corporate hierarchy. Although the Petitioner includes some descriptions of the tasks the Beneficiary has performed for these companies, and implies on appeal that the Beneficiary directs various departments within the corporate hierarchy such as international and domestic business, capital management, information resources, and administrative management, it is unclear whether these duties were performed exclusively during his previous employment abroad, or whether they are performed contemporaneously with his role as general manager for the U.S. office. The Petitioner does not sufficiently identify the Beneficiary's placement within the company's overall hierarchy or state the number of foreign-based employees, if any, who report directly to him or are otherwise available to relieve him from performing non-qualifying duties under the extended petition. Therefore, although we acknowledge the Petitioner's general assertion that the Beneficiary maintains a role in the overall corporate hierarchy while serving as general manager for the U.S. company, the record contains insufficient evidence that this role affects his U.S. employment such that he is relieved from performing non-qualifying duties.

In sum, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. If a business

does not have the necessary staffing after one year to sufficiently relieve the Beneficiary from performing operational and administrative tasks, the Petitioner is ineligible for an extension. Here, the Petitioner did not demonstrate that a subordinate staff was available at the time of filing to perform the non-qualifying operational and administrative duties of the business.

We acknowledge that the COVID-19 pandemic posed challenges for both new and established businesses. While we note the Petitioner's claimed hardships as a result of the pandemic, the one-year new office period included several pre-pandemic months, and the Petitioner cites no USCIS policies or announcements that would extend the one-year new office period mandated by the regulations.

Finally, we note that while the appeal was pending, USCIS updated the *USCIS Policy Manual's* guidance regarding deference to prior approvals. *See* 2 *USCIS Policy Manual* A.4(B)(1), <https://www.uscis.gov/policymanual>; *see also* USCIS Policy Alert, PA-2021-05, *Deference to Prior Determinations of Eligibility in Requests for Extensions of Petition Validity* (Apr. 27, 2021), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210427-Deference.pdf>. However, we do not defer to prior approvals where there has been a material change in circumstances or eligibility requirements. 2 *USCIS Policy Manual*, *supra*, at A.4(B)(1). This includes situations in which the regulations require criteria to be met after approval, such as L-1A extension petitions for new offices detailed at 8 C.F.R. § 214.2(l)(3)(v)(C) (a new office has one year from the date of the initial approval to support an executive or managerial position). *See* 8 C.F.R. § 214.2(l)(14)(ii) (a petitioner seeking to extend an L-1 petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer).

Here, while we acknowledge the Director's prior approval of the Petitioner's new office petition, we will not defer to the prior approval because, as noted above, the record does not credibly demonstrate that the Petitioner has the necessary staffing after one year to sufficiently relieve the Beneficiary from performing operational and administrative tasks.

III. CONCLUSION

For the reasons discussed above, the record does not show that the Petitioner would employ the Beneficiary in a primarily managerial or executive capacity, or that the Petitioner's new office had developed to an extent that it could support a primarily managerial or executive position at the time it filed the extension petition in December 2020.

ORDER: The appeal is dismissed.