



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

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

In Re: 20291086

Date: MAR. 31, 2022

Appeal of California Service Center Decision

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

The Petitioner, a distributor of wood products, seeks to continue the Beneficiary's temporary employment as its managing director under the L-1A nonimmigrant classification for intracompany transferees. The Beneficiary initially transferred based on an approved new office petition with validity dates of November 1, 2019, until October 31, 2020.¹ 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 new office had developed to the point where it could employ the Beneficiary in a primarily managerial or executive capacity. The matter is now before us on appeal.²

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.

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 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.*

When the initial visa petition involved the opening of a new office, the subsequent extension petition must include the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations (i.e., that one entity is a branch, parent, subsidiary, or affiliate of the other);

¹ 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.

² U.S. Citizenship and Immigration Services (USCIS) records show a second receipt number for the Petitioner's appeal, [REDACTED]. In a separate decision, we have dismissed the duplicate appeal as moot.

- (B) Evidence that the United States entity has been doing business for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

See 8 C.F.R. § 214.2(l)(14)(ii).

“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.³

To show that a beneficiary is eligible for L-1A nonimmigrant visa classification as a manager, a petitioner must show that the beneficiary will perform all four of the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A) of the Act. If a petitioner establishes that the offered position meets all four elements set forth in the statutory definition, the petitioner must then prove that the beneficiary will be *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the petitioner’s other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

A petitioner must meet all eligibility requirements at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). Therefore, we must consider the state of the company at the time it filed the extension petition. The Petitioner’s address is in a warehouse in [REDACTED] Florida. The Beneficiary was the Petitioner’s only employee at the time it filed the extension petition in October 2020. The record includes conflicting information about the Petitioner’s products. The Petitioner initially stated in its business plan that it was established in order to act as a distributor for wood molding products manufactured by its affiliates in South Africa. Following a notice of intent to deny the petition, the Petitioner stated that its “routine primary operational activities” consist of “Receiving . . . Warehousing . . . [and] Distributing . . . wooden industrial pallets, crates, and building products.” But sales records from May to September 2020 do not indicate that the U.S. company has sold any products other than fence pickets imported from Brazil.

At the time of filing the extension petition, the Petitioner asserted that it “faced extreme difficulties in conducting routine business transactions in 2020” owing to the COVID-19 pandemic. At that time, the Petitioner did not elaborate or explain how the company’s actual development during the one-year new office period differed from the initial plans.

³ The Petitioner does not claim that it seeks to employ the Beneficiary in an executive capacity.

On the petition form, the Petitioner stated that the Beneficiary most recently entered the United States on February 21, 2020, only a few weeks before pandemic restrictions began in mid-March. But government records show that the Beneficiary's L-1 A status began at the time of a *previous* arrival on December 6, 2019 based on his November 1, 2019 approval start date, more than three months before the pandemic was declared a national emergency in the United States. The Petitioner indirectly acknowledged this earlier entry on the petition form, stating that the Beneficiary's employment abroad ended in December 2019.

The Petitioner stated that, during the one-year new office period, the Beneficiary accomplished the following:

- Secured revenue generating clients
- Secured Accounting services – 3rd party
- Developed procedures
- Developed goals and plans
- Monitored financial reports
- Developed and adjusted U.S. budget/monitored U.S. Budget
- Developed and adjusted strategic plans in the context of the organization
- Developed major events timeline, including adjusted hiring timeline
- Represented the company to the public, industry, and stakeholders – engaged in business development
- Maintained facilities

An extension petition must include a statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition. 8 C.F.R. § 214.2(l)(14)(ii)(C). The information in the above list is too vague to give a reliable impression of the Beneficiary's activities during the new office period. For example, the company's "facilities" consist of 3000 square feet of rented warehouse space; the Petitioner does not explain what the Beneficiary did to "maintain" that space, or how such maintenance relates either to performing in a managerial capacity or to preparing the company to support such a capacity. The Petitioner also does not say what the Beneficiary did to represent the company to the public, industry, and stakeholders, apart from outreach to prospective clients in what is essentially the role of a sales representative.

The record indicates that the Petitioner sold hundreds of thousands of dollars' worth of fence pickets between May and September 2020, but had no employees other than the Beneficiary, and there is no evidence that the Petitioner engaged any contractors apart from an accounting service. It therefore appears that the Beneficiary personally performed the non-managerial tasks relating to the sale and delivery of the merchandise.

Printouts of email messages include conversations with various clients, but the Beneficiary appears to have undertaken much of this activity in his continuing capacity as an official of the Petitioner's foreign affiliates in South Africa. Other messages discuss arrangements for individual sales and shipments, which appears to be the role of a sales representative rather than a manager.

An issue related to the new office petition, and material to any extension thereof, relates to the Petitioner's business activity in the United States.

An extension petition for a new office must include evidence that the United States entity has been doing business for the previous year. *See* 8 C.F.R. § 214.2(l)(14)(ii)(B). The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines *doing business* as the regular, systematic, and continuous provision of goods, services, or both. Consistent with this requirement, a new office petition must show that the petitioner has acquired sufficient physical premises to commence business, that it has the financial ability to commence doing business in the United States, and that it will support the beneficiary in a managerial or executive position within one year of approval. *See* 8 C.F.R. § 214.2(l)(3)(v). A new office petitioner must meet these conditions in order to show that it is ready to commence doing business immediately upon approval of the petition, and thereby will have been doing business “for the previous year” when the time comes to file an extension petition.

Part 5 of the petition form, lines 15 and 16, instructed the Petitioner to list the company’s gross annual income and net annual income. When the Petitioner filed the extension petition, it simply wrote “Profit” on both lines instead of specific figures. The record, however, contains an unaudited income statement dated September 30, 2020, which does not indicate that the company had, in fact, turned a profit as claimed. Rather, the statement shows \$35,802 in “Gross Profit,” offset by \$56,162 in “Expenses,” for a net loss of \$20,359.

The materials in the record do not show the regular, systematic, and continuous provision of goods or services throughout the one-year new office period. Tax documents in the record show that the company had no income in 2019. The Petitioner asserts that the Beneficiary “began to gain traction with initial clientele in early 2020,” before the onset of the COVID-19 pandemic severely curtailed the company’s business activity. The previously submitted income statement, however, showed no sales income in the first four months of 2020, including the earliest months of the year before the pandemic had significantly affected the U.S. economy. While the statement shows five- or six-figure sales in May, July, August, and September, the significant periods with no income show that, even before the effects of the pandemic, the Petitioner was not engaged in the regular, systematic, and continuous provision of goods or services for the year preceding the October 2020 filing of the extension petition.

Also, as elaborated further below, the Petitioner hired no employees other than the Beneficiary during the one-year new office period, either before or after the pandemic struck. The Petitioner has not shown that, at the end of the new office period, it was in a position to employ the Beneficiary in a primarily managerial capacity.

We now turn to the Beneficiary’s activities following the one-year new office period. The Petitioner initially asserted that, during the extension period, the Beneficiary will “[o]versee establishment of new office and operations set up in the U.S.” On appeal, the Petitioner similarly asserts that the Beneficiary will “establish the business” and “build the U.S. Team.” Establishing and staffing the new office, however, were tasks for the new office period, which has already elapsed. We note that, in response to a request for evidence (RFE), the Petitioner proposed that an extension be granted “only for the typical new office L-1A validity period of one year,” rather than the two years typically granted in an extension. But the regulations make no provision for allowing a given business location more than one year under the more lenient new office provisions. The regulations at 8 C.F.R. § 214.2(l)(14)(ii) make it clear that, at the end of the one year new office period, L-1 status may only

be extended if the employer has advanced beyond the initial developmental stage and is doing business, rather than continuing to prepare to do so. If the petition is not accompanied by evidence that the entity is sufficiently established, set up, and doing business at the end of that first year, then the company's underdeveloped state is grounds for *denying* an extension rather than *granting* it, as the employer would not support a beneficiary in a primarily managerial or executive position.

The letter the Petitioner submitted with the extension petition also indicated that the Beneficiary would devote 20% of his time to "Direct[ing] Supervisory and Managerial personnel." At the time the Petitioner filed the extension petition, however, the Petitioner had no personnel other than the Beneficiary, and therefore no supervisors or managers for the Beneficiary to oversee. As noted above, a petitioner must meet all eligibility requirements at the time of filing. Therefore, major elements of the Beneficiary's claimed managerial capacity cannot be contingent on conditions that did not yet exist at the time of filing, including the availability of subordinate staff.

We acknowledge the Petitioner's assertion that the Beneficiary is a function manager, and as such his duties need not entail supervisory tasks at all; but in this instance, the Petitioner has specified that the Beneficiary *would* engage in such supervision. Given this assertion, it is appropriate to consider the company's staffing.

The company's structure, as described, presumes the presence of several subordinate workers:

- Warehouse Manager (to be hired Month 1-Month 2)
- Forklift Operator (to be hired Month 2-Month 3)
- Delivery Driver (to be hired Month 7-Month 8)
- Sales Manager (to be hired Month 4-Month 5)
- Sales Associate (to be hired Month 4-Month 5)
- Office General Administrator (to be hired Month 10)

The Petitioner does not specify who would perform the tasks of each of these positions before each position is filled, or how the company would be able to conduct business if no one performs those tasks. This is a critical point because, while the one-year new office period is designed to allow a new company to hire initial staff and begin operations, any extension beyond that period requires the company to be already substantially operational and doing business. Designating the Beneficiary as a function manager rather than a personnel manager does not relieve the Petitioner of the requirement to demonstrate that the company is already engaged in the functions that the Beneficiary would manage. The Petitioner asserts that "establishing" the company is, itself, a function that the Beneficiary would manage, but initial work to establish the company is a short-term, preliminary task allowed a one-year approval rather than allowing for an ongoing essential function of the business.

The Petitioner's response to a notice of intent to deny shows that, as of August 2021, ten months after the Petitioner filed the extension petition, the company had filled only two of the subordinate positions (the warehouse manager and forklift operator), implying that the Beneficiary himself remained responsible for sales and administrative duties in the absence of subordinate personnel to perform those tasks. This information supports the conclusion that the Petitioner was not yet able to support a primarily managerial position at the time it filed the extension petition.

In response to a request for evidence, the Petitioner requested deference to the approval of the new office petition. In the denial notice, the Director stated that deference does not apply, because the requirements of a new office petition are materially different from the requirements for a subsequent extension. Therefore, the approval of a new office petition (predicated on a petitioner's short-term plans) does not imply eligibility for an extension (which is contingent on the petitioner actually achieving and fulfilling those plans).

The Director denied the petition, noting that the Beneficiary was "the only company employee, at the time of filing," and that, because he could not delegate operational tasks to subordinates, "it appears that the beneficiary was primarily involved in the performance of routine operational activities of the entity rather than in the management of a function of [the] business."

On appeal, the Petitioner contends that the Director placed undue emphasis on the company's staffing (or lack thereof). The Petitioner notes that section 101(a)(44)(C) of the Act requires us to "take into account the reasonable needs of the organization . . . in light of the overall purpose and stage of development of the organization" when considering staffing levels. Nevertheless, eligibility for an extension following one year as a new office requires the Petitioner to have reached a "stage of development" beyond the earliest start-up phase. The Petitioner's delay in advancing beyond that earliest stage is an adverse factor, rather than evidence of eligibility for an extension.

We acknowledge, as the Petitioner argues, that an individual might conceivably serve in a managerial capacity even with no subordinate employees. Nevertheless, someone – whether employees or contractors – must relieve a function manager of non-managerial tasks by actually performing the function, thereby allowing the Beneficiary to *primarily* work in a managerial capacity.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii)(C) requires each petitioner to explain the beneficiary's *past* duties during the one-year new office period, and also the beneficiary's *intended* duties during the extension period. This regulation reflects our recognition and expectation that a beneficiary's duties will change after the new office period. After the one-year new office period, the expectation is that a beneficiary will act in a primarily managerial or executive capacity for a fully-functioning business, rather than engage in start-up activities that do not involve the provision of goods or services.

The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the intended U.S. operation one year within the date of approval of the new office petition to develop to the point where it will support an executive or managerial position. There is no provision in USCIS regulations allowing for an extension of this one-year period. If, after that year, the business does not have the necessary staffing (in the form of employees or contractors) to sufficiently relieve the Beneficiary from performing a significant amount of operational and administrative tasks, then the Petitioner is ineligible for an extension.

The Petitioner asserts that the COVID-19 pandemic affected its ability to commence operations:

[The Petitioner] felt this impact in the U.S. just as it was beginning to open its U.S. branch. [The] operational activities of the business are not conducive to remote work. The activities require onsite, in-person employee participation, which was impossible to accomplish due to the interruptions brought on by the pandemic. Due to this unexpected event, [the Beneficiary] did not need more employees. The reasonable

needs of the business would not have been met by hiring more employees that would be unable to work because of the stay-at-home orders. USCIS should have taken into consideration the unprecedented circumstances concerning the global pandemic, and how a pandemic can affect the reasonable needs and stage of development of the new business in making its determination.

The Petitioner, however, contends that the company had in fact begun selling products and fulfilling orders. If these tasks required the presence of staff in the warehouse location, then we must conclude that the Beneficiary performed those tasks himself. If, on the other hand, the Beneficiary was able to perform these tasks remotely, for example via email, without actually handling any merchandise, then the question arises whether he needed to be at any specific location in the U.S. or otherwise to send emails. Such circumstances would approach “the mere presence of an agent or office,” which does not qualify as “doing business” under 8 C.F.R. § 214.2(l)(1)(ii)(H).

We acknowledge that the COVID-19 pandemic posed challenges for both new and established businesses. But, on appeal, the Petitioner cites no USCIS policies or announcements that would suspend, prolong, or renew the one-year new office period mandated by the regulations. The record does not show that the Petitioner’s new office had developed to an extent that it could support a primarily managerial position at the time it filed the extension petition in October 2020.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.