



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

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

In Re: 21956044

Date: OCT. 4, 2022

Appeal of California Service Center Decision

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

The Petitioner intends to operate a comprehensive IT solutions business. It seeks to employ the Beneficiary temporarily as the “International Infrastructure 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 California 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 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 primary issue to be addressed 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 Petitioner claimed no employees and no income at the time of filing and stated that the Beneficiary would be compensated \$38,400 annually. As supporting evidence, the Petitioner provided a business plan, which includes an “actions” timetable itemizing steps the Petitioner plans to take in its first year of operation. The business plan tasks the Beneficiary with obtaining the “required permits and licenses,” stating that the Beneficiary will complete this task upon approval of this petition. The Petitioner did not specify which permits and licenses are prerequisites for commencing business

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

activity, nor did it provide an approximate timeframe for completing this process. It is therefore unclear when the Petitioner would be able to commence business activity.

The business plan also states that the Petitioner “will focus its efforts on consulting and software development” and that it will also sell “courses through digital platforms.” However, the business plan does not establish that the Petitioner will have the necessary staffing to commence these endeavors during its first year of operation. The business plan contains a profit and loss statement which lists the Beneficiary, a sales supervisor, and two specialized business advisers as part of the Petitioner’s first-year operating expenses. However, it is unclear when the Petitioner plans to hire employees or contractors who will carry out the consulting and software development services that it envisions as its main revenue source. Although the business plan makes broad references to a “partnership” with [redacted] which is described as the Petitioner’s “channel to start providing consulting services,” the record contains no evidence of a formal business relationship between the Petitioner and [redacted] or evidence establishing [redacted] role, if any, in the Petitioner’s business. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Furthermore, the Petitioner’s projected profit and loss statement does not indicate that the Petitioner plans to incur expenses for contracting [redacted] or any other consulting or software development service providers during its first year of operation. The absence of evidence showing that the Petitioner plans to incur such expenditures is at odds with the Petitioner’s first-year revenue projections, which show a gradual revenue increase from \$8350 in the third month of operation to \$21,100 in the twelfth month, totaling an estimated \$150,250 in annual revenue. The source of this projected growth is unclear, given that the Petitioner’s first year hiring plan and projected expenses include no provisions for IT consultants or software developers.

In a request for evidence (RFE), the Director sought evidence that would determine whether the Petitioner would have the organizational structure and staffing levels to support the Beneficiary in a primarily managerial capacity by the end of its first year of operation. More specifically, the Director questioned whether the Petitioner would be able to support the Beneficiary in a managerial or executive position by the end of its first year of operation and asked the Petitioner to describe the scope of its business and financial goals and to provide evidence of any capital contributions used to fund its operation.

In response, the Petitioner resubmitted its original business plan, emphasizing the “actions” timetable and proposed staffing during its first year of operation. The Petitioner pointed to the staffing information in the business plan, which lists and includes job descriptions for six proposed positions: a chief executive officer, an international infrastructure manager, a system manager, an unspecified number of “programmers and developers,” a sales supervisor, and a specialized business adviser. However, the Petitioner’s first-year profit and loss statement indicates that in its “new office” phase of operation the Petitioner intended to hire four employees, filling only three of those positions – an international infrastructure manager, a sales supervisor, and two specialized business advisers. In addition, the Petitioner provided a projected organizational chart depicting a nine-person staff. However, it offered no information as to when it plans to fill positions beyond the three listed in its first-year profit and loss statement. As such, it is unclear whether the Petitioner will have adequate staffing to relieve the Beneficiary from necessary operational tasks, such as marketing and selling the

Petitioner's services to clients, building and maintaining the Petitioner's website, and performing administrative tasks, such as, for instance, answering phones, scheduling meetings, or issuing invoices and collecting payments from clients.

Likewise, it remains unclear how the Petitioner plans to provide IT services to its clients. Because the RFE response contains only a resubmitted copy of the original profit and loss statement, which does not include IT professional services among the operating expenses, it remains unclear how and when the Petitioner will have an IT staff to work on client projects. This ambiguity is particularly problematic given that the Petitioner's business plan makes repeated references to a "development team" and indicates that in months 10-12 of its first year of operation the Petitioner plans to "[g]enerate new IT tools to offer [] clients." The Petitioner did not explain how it plans to meet this business objective without allocating funds to staff its organization with IT service providers. Although the Petitioner provided several of its bank account statements showing that payments were made to [REDACTED] [REDACTED] there is no corresponding invoices or other documentation specifying what those funds were for. Because the record lacks evidence establishing the nature of the Petitioner's relationship with [REDACTED] we cannot conclude that a "partnership" was formed between the two entities or that the latter serves as a vehicle for providing IT services to the Petitioner's clients. *See id.*

As stated earlier, the Petitioner must demonstrate 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). In the matter at hand, it is unclear whether the Petitioner will be adequately staffed and funded to reach this objective. The business plan includes a projected balance sheet that contains a breakdown of the Petitioner's assets and liabilities, showing no "paid-in capital" but rather \$26,720 in "total owner's equity"; the same amount was shown under "net profit" and "net cash flow from operations," which were incorporated into the "projected cash flow statement" for fiscal year 2022.

On appeal, the Petitioner contends that its foreign owners have contributed \$95,450 between December 2020 and December 2021. Although the Petitioner provided its bank statements accounting for that time period, it is unclear that any of the deposited funds, many of which originated from [REDACTED] represented funds from the company's owners. The deposits from [REDACTED] represented a large number of the deposits into the Petitioner's bank account between December 2020 and December 2021, ranging in amounts from below \$20 to over \$3000. However, no information was provided about [REDACTED] explaining who or what that is or their significance within the context of the Petitioner's intended business operation. The Petitioner did not establish that the deposits from [REDACTED] represented funds contributed by its owners. Further, according to the business plan, "total owner's equity" amounted to \$26,720; this amount is inconsistent with the claim that owners contributed over \$95,000 towards the start-up operation. The Petitioner must resolve this incongruity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, according to the Petitioner's profit and loss projections, total expenses during its first year of operation are estimated to be \$123,530. This amount far exceeds the \$26,720 in owner equity and it also exceeds the \$95,450 in claimed owner contributions. Furthermore, the Petitioner provided no evidence of a formal agreement with the Petitioner's owners agreeing to pay a specified amount towards the U.S. endeavor, nor is there any discussion explaining when and how owners would contribute owner equity, and whether a contribution would be paid in increments or in one lump sum.

The Petitioner also argues that the Director neglected to factor in its projected revenue, claiming that it plans to generate \$150,250 during its first year of operation, which would be “more than enough to cover the expenses and to generate a profit.” However, the record lacks sufficient evidence to support this revenue projection. As discussed earlier, the Petitioner did not factor any IT employees or contractors into its first year hiring plan and operating expenses. As such, it does not appear that the Petitioner would have the IT staff necessary to provide services to clients, thereby leading us to question how revenue would be generated. Although the Petitioner contends that the “[f]oreign [e]ntity’s organizational structure will play a part in” its U.S. operation, it did not elaborate on what that “part” would be or explain how the foreign entity would promote the Petitioner’s growth beyond a nascent developmental phase and ensure that the Petitioner would be able to support the Beneficiary in a managerial position within one year of the petition’s approval.

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. Here, the Petitioner provided a deficient business plan that lacks adequate information about how its projected staff and funding during its first year of operation will enable the Petitioner to meet its financial burdens and revenue projections.

B. Duties

We also reviewed the job descriptions of the Beneficiary and his projected subordinates and find the evidence to be insufficient to establish that the Beneficiary would perform primarily managerial job duties within one year of the petition’s approval.

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 has not provided sufficient evidence to support this claim. The Petitioner provided job descriptions for the Beneficiary in the business plan, which states that the Beneficiary would be responsible for “finding the best technological solutions” for the Petitioner’s clients and serving as “the first contact with the client and demonstrating the experience of the Company and the capacity offered in terms of computer solutions.” These responsibilities indicate that the Beneficiary’s position would include operational elements requiring the provision of IT solutions and direct client interaction. The Petitioner did not, however, incorporate these responsibilities into the Beneficiary’s job duty breakdown, which is included in the business plan, nor did it indicate how much of the Beneficiary’s time would be devoted to working on IT solutions and meeting with clients. The Petitioner must demonstrate 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).

Further, the job duty breakdown states that the Beneficiary will “[s]upervise the job performance of the system manager, manages [*sic*] the programmers and developers, and directs [*sic*] the work of the sales supervisor and specialized commercial advisor.” However, it is unclear when the Beneficiary would be fully able to execute this job duty, given that the Petitioner’s personnel plan only provides staffing projections for the first year of operations and does not state when the Petitioner plans to fill the positions of the programmers and developers or the sales supervisor. In addition, according to the organizational chart provided in response to the RFE, the Beneficiary’s only subordinates would be

the system manager and a sales supervisor; the three “programmer & developer” positions are depicted as subordinates of the system manager while the two specialized business advisors are depicted as subordinates of the sales supervisor. These discrepancies also lead us to question the accuracy of other aspects of the Beneficiary’s job duty breakdown, which states that the Beneficiary would “[a]chieve growth and reach of [*sic*] sales objectives by successfully managing the work of specialized commercial advisers.” As noted above, the projected organizational chart is at odds with this claim as it shows that the specialized commercial advisers would be subject to direct supervision by the sales supervisor rather than the Beneficiary. *See Matter of Ho*, 19 I&N Dec. at 591-92 (requiring a petitioner to resolve evidentiary discrepancies with independent, objective evidence).

The job duty breakdown also states that the Beneficiary will be responsible for maintaining “a safe and healthy work environment” through “rules and procedures.” However, it is unclear what types of rules and procedures will promote “a safe and healthy work environment,” nor does this convey a sense of what underlying actions would be required of the Beneficiary in the normal course of the Petitioner’s daily operations. Likewise, the Petitioner broadly stated that the Beneficiary would be responsible for ensuring “safe and efficient operations,” but it did not elaborate as to the specific tasks the Beneficiary would be required to perform to meet this objective.

On appeal, the Petitioner contends that in addition to the duties and responsibilities listed in the business plan, the Beneficiary would also “continue to manage his department in the [f]oreign [e]ntity.” However, the Petitioner does not further elaborate on the tasks the Beneficiary would perform for its U.S. organization, either in its initial phase of operation or in the future. Further, although the Petitioner claims that the foreign affiliate’s organizational structure “will play a part in the new U[.]S[.] operation,” it does not explain how the foreign entity will impact the Beneficiary’s role and job duties.

As previously noted, we review the totality of the evidence when examining the Beneficiary’s claimed managerial capacity, including his 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. Here, the Petitioner provided a vague job description that does not adequately describe the Beneficiary’s job duties or establish that the Beneficiary would allocate his time primarily to managerial functions within one year of the petition’s approval. Furthermore, the Petitioner’s supporting evidence includes a deficient business plan that contains unexplained irregularities and precludes a finding that the projected support staff will relieve the Beneficiary from having to allocate his time primarily to performing non-managerial job duties beyond the Petitioner’s first year of operation.

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.