



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

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

In Re: 25691242

Date: APR. 28, 2023

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner describes itself as a residential design services company. It seeks to continue the Beneficiary's temporary employment as its general director and CEO under the L-1A nonimmigrant classification for intracompany transferees.¹ See 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 that the Beneficiary would be employed in the United States in a managerial or executive capacity. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *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

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). The prospective U.S. employer must also be a qualifying organization that seeks to employ a beneficiary in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(i).

¹ The record indicates that the Petitioner previously filed a "new office" petition on the Beneficiary's behalf, and that petition was approved for the one-year period from September 27, 2021, until September 15, 2022. 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.

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; 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. 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. Beyond the required description of the job duties, we 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. Accordingly, we will discuss evidence regarding the

Beneficiary's job duties along with evidence of the nature of the Petitioner's business, its staffing levels, and its organizational structure.

A. Duties

As a threshold matter, 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 in addition to the Beneficiary, it had hired an executive assistant, a project architect, and an office manager. Regarding the Beneficiary's duties, the Director noted that the statement of duties submitted was a restatement of the Beneficiary's duties under the original office petition that included vague duties and listed broad tasks. Accordingly, 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 stated that in the next two years, the Beneficiary will divide his time between the direction of management within the company and establishing goals and policies for the business development. The Petitioner also submitted the following overview of the Beneficiary's duties:

Direction of Management within the Company (40%)

- Exercising complete executive control over all personnel matters, including hiring all personnel, setting performance standards, deciding on employee compensation, and terminating staff when necessary.
- Assuring that proper training procedures are established for the positions hired, including the Office Manager, Project Architect, and Executive Assistant for the first year.
- Setting the strategic direction and setting key performance management indicators.
- Provision of a quarterly dashboard analysis of financial and performance outcomes.
- Mapping the trajectory for the team and monitor progress against planned trajectory in areas of service delivery quality assurance and financial growth.
- Assessing the roles of the company to determine whether adjustments to the business plan are needed, specifically with the hiring and firing of personnel.
- Providing strategic leadership and identify actions to be put in place to remedy poor performance, replicate good performance and reward achievements, including time scales and cost.

- Ensuring annual objectives are agreed with all staff with the teams and ensure that all staff are trained and developed.

Establish goals and policies for the business development (60%)

- Developing business relationships, generating and negotiating new income for [the Petitioner] to agreed monthly and yearly set target invoiced revenue.
- Acting as the face of the organization, the Beneficiary will represent [the Petitioner] to potential clients through direct communication in face to face meetings, telephone calls, marketing materials and emails.
- Managing important external relationships with all clients.
- Fulfilling contracts and successful handover to personnel within the company, including the Project Architect and Office Manager.
- Leading the staff in possessing drive, motivation, and acute attention to detail in ensuring all opportunities for [the Petitioner] are captured and explored.
- Representing [the Petitioner] at industry events and trade shows, in a professional manner will leverage [the Petitioner] intention of gaining business leads and contacts.
- Developing, managing, and maintaining a pipeline of potential business at all times utilizing staff members as the Beneficiary deems best to complete this goal.
- Creating and being accountable for all client proposals, contracts, and any further documentation, in line with the Petitioner's procedures.
- Having a thorough understanding of the clients' objectives, budgets, and overall goals for their projects.
- Participating in response to tenders and handle requests for information in a timely and accurate manner.
- Keeping up to date with issues affecting the design and construction industry.

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 again noted that the statement of duties did not provide a clear overview of the actual duties performed by the Beneficiary, or how the Beneficiary would be relieved from performing non-qualifying tasks. The Director also concluded that the Petitioner had not established that the Beneficiary's subordinate staff would relieve him from performing non-qualifying duties, and specifically noted that the modifications in the Petitioner's organizational structure in response to the RFE constituted a material change.

On appeal, the Petitioner asserts that the Director's finding was erroneous, and asserts that although the Beneficiary's stated duties are more akin to those of an executive, they nevertheless meet the definitions of both managerial and executive capacity. 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.

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 supervising 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 set the strategic direction and set key performance management indicators for the Petitioner, but it did not identify these key indicators nor did it provide specific information describing the manner of the company's direction. Likewise, the job description broadly states that the Beneficiary would provide strategic leadership without elaborating on the tasks this responsibility would entail. 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 also stated that the Beneficiary would serve as the face of the organization, noting that he would represent the Petitioner in face to face meetings, telephone calls, marketing materials and emails, as well as represent the Petitioner at industry events and trade shows in an effort to gain business leads and contacts. The Petitioner also claimed that the Beneficiary would handle all external client accounts. 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 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 the organization's policies or how he would manage the organization and 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.

B. Staffing

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. Moreover, 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. Because the 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 September 2022. *See* 8 C.F.R. § 103.2(b)(1).

At the time of filing the extension petition, the Petitioner had four employees: the Beneficiary, an executive director, a project architect, and an office manager. According to the Petitioner's organizational chart, all three employees reported directly to the Beneficiary.

In the RFE, the Director noted that the position descriptions for these individuals were deficient, and requested additional information regarding their roles within the company and the manner in which they relieved the Beneficiary from performing non-qualifying duties. The Director also noted that no information regarding their job requirements or educational backgrounds was provided. Moreover, the Director specifically noted a discrepancy regarding the office manager's stated duties, which included "supervising monitoring the work of staff." Noting that the organizational chart depicted no subordinate staff under the office's manager's supervision, the Director requested clarification on this issue.

In response, the Petitioner submitted an updated organizational chart, demonstrating that the Petitioner directly supervised the office manager and executive assistant, and that the office manager now directly supervised the project architect. As noted by the Director, this organizational chart differed from the chart submitted in support of the extension petition, where the Beneficiary directly supervised all three of the aforementioned positions.

On appeal, the Petitioner acknowledges the Director's concerns regarding the modified organizational chart, but focuses on the Beneficiary's decision to hire an office manager during its first year of operations instead of a design architect as originally indicated in its business plan. The Petitioner claimed that the hiring of an office manager was essential to allow the Beneficiary to primarily perform the managerial and executive duties required by his position. The Petitioner, however, did not clarify the reasons for the modification of its organizational hierarchy as depicted on the second organizational chart.

Upon review, we concur with the Director's determination that the modified organizational chart constitutes a material change. In its response to the RFE, the Petitioner modified the organizational structure of the Petitioner. In sum, the initial chart had the project architect reporting directly to the Beneficiary, while the second chart delegated supervisory responsibility over the project architect to the office manager.

The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to an RFE, a petitioner cannot offer a new position to a beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. A petitioner must establish that the position offered to a beneficiary, when the petition was filed, merits classification as a managerial or executive position. *See* 8 C.F.R. § 103.2(b)(1). If significant changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not

supported by the facts in the record. The information provided by the Petitioner in its response to the Director's RFE did not clarify or provide more specificity to the original duties of the office manager's position, but rather modified the Petitioner's organizational structure to correspond with the office manager's claimed supervisory duties.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers."² See section 101(a)(44)(A) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." *Id.* If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Although a beneficiary is not required to supervise personnel, if a petitioner claims that a beneficiary's duties involve supervising employees, then a petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See section 101(a)(44)(A)(ii) of the Act.

Although requested in the RFE, the Petitioner did not provide the level of education required to perform the duties of its executive assistant, project architect, and office manager. Any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Thus, the Petitioner has not established that the Beneficiary's subordinates possess baccalaureate degrees and that their positions require such degrees, such that we can consider these employees to be professionals. The Petitioner has also not shown that the Beneficiary's subordinates supervise other employees or that they manage a department or function, such that they can be classified as managers or supervisors. Although the Petitioner modified its organizational chart in response to the RFE to make the office manager's position supervisory in nature, the new chart did not clarify or provide more specificity to the office manager's position, but rather modified the Petitioner's organizational structure to assign the office manager a supervisory title. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services (USCIS) requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). We will not consider the office manager's new position in the organizational chart for purposes of determining whether the Beneficiary oversees supervisory employees.

For the reasons outlined above, the Petitioner has not shown that the Beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

As noted by the Petitioner on appeal, 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

² Here, the Petitioner did not claim that the Beneficiary would be employed as a function manager.

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 the business does not have sufficient staffing after one year to relieve the Beneficiary from primarily performing operational and administrative tasks, the Petitioner is ineligible by regulation for an extension.

In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position. As noted above, in addition to the Beneficiary’s vaguely stated job description, the description also indicates that the Beneficiary will be the primary face of the Petitioner. The Petitioner claims that the Beneficiary will handle all external relationships with its clients, will represent the Petitioner at industry trade shows to solicit potential business, and will meet with clients face to face as well as distribute marketing materials. Such duties appear more akin to those of a marketing or sales associate than to a manager or executive. Therefore, 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.

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 adequately describe the Beneficiary’s job duties within the context of its operations nor did it demonstrate that sufficient subordinate staff was available at the time of filing to perform the non-qualifying operational and administrative duties of the business.

III. DEFERENCE

Lastly, in matters involving an extension request to a previously approved petition, USCIS, where appropriate, defers to its prior decision when the extension request is filed by the same parties and for the same position in the same nonimmigrant classification. *See generally* 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. *See* 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).

As acknowledged by the Director, the Beneficiary was previously granted L-1A status that authorized him to work for the Petitioner in the offered position. Although there is a previous finding of eligibility, the burden of proof in the request for an extension of petition validity remains on the petitioner. *See* section 291 of the Act. Here, we will not defer to the prior approval because, as noted above, the record does not consistently state whether the Beneficiary's job duties should be classified as executive or managerial, and also contains deficient job descriptions that preclude a meaningful understanding of precisely how the Beneficiary would either direct the management of the organization and set the organization's policies or how he would manage the organization and act as a personnel manager. Moreover, the record as constituted 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.

IV. CONCLUSION

For the reasons discussed above, the Petitioner has not established by a preponderance of the evidence that it would employ the Beneficiary in a primarily managerial or executive capacity, or that its 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 September 2022.

ORDER: The appeal is dismissed.