



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

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

In Re: 25551641

Date: FEB. 14, 2023

Appeal of California Service Center Decision

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

The Petitioner describes itself as an oil and gas engineering services operation. It seeks to continue the Beneficiary's temporary employment as "president" under the L-1A nonimmigrant classification for intracompany transferees.<sup>1</sup> See 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 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.

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 withdraw the Director's decision and remand the matter for consideration and entry of a new decision consistent with the following analysis.

The record indicates that the Petitioner previously filed a new office petition, which was approved for one year.<sup>2</sup> A petitioner seeking to extend an L-1A petition that involved a new office is subject to specific provisions that are enumerated in 8 C.F.R. § 214.2(l)(14)(ii). Although some provisions are common to new office and non-new office extensions, certain provisions are unique to the filing of a new office extension, such as evidence that the petitioner had been doing business for the previous year, 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

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<sup>1</sup> 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 July 17, 2019, until July 16, 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.

<sup>2</sup> The Petitioner responded "yes" in Section I, Item 12 of the L Classification Supplement, when asked whether the Beneficiary is coming to the United States to open a new office. However, there is no provision in USCIS regulations that allows for a petitioner to extend this one-year period as a new office. Because the Petitioner's prior petition was under the new office designation, the Petitioner cannot file a second new office petition. It is unclear whether they checked the new office petition box in attempt to reflect an extension of a new office petition.

positions held along with evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity. *Id.*

However, in the denial, the Director did not acknowledge that the Petitioner's prior filing was for a new office, nor did the Director cite the regulations that apply when a petitioner seeks an extension of a previously filed new office petition.<sup>3</sup> Rather, the Director cites to 8 C.F.R. § 214.2(1)(3), which applies to any individual petition that is not either a new office or new office extensions. Because the Director did not cite the applicable regulations for a new office extension or apply those regulations to the facts in this matter, the Director's decision cannot be affirmed based on this deficiency.

Notwithstanding the Director's error, the record does not indicate that sufficient evidence was provided to demonstrate that the Beneficiary would perform primarily managerial or executive duties or that the Petitioner has the capacity to relieve the Beneficiary from having to perform primarily operational tasks under an approved new office extension petition. The Director must review the petition and evidence and determine whether the Petitioner has established eligibility within the context of the applicable regulations.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

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<sup>3</sup> In the Petitioner's initial supporting statement, the Petitioner referred to the prior petition as "the initial request for an L-1A visa," and the current petition lists the one-year approval period which is consistent with a new office filing.