



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

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

In Re: 24076931

Date: JAN. 19, 2023

Appeal of California Service Center Decision

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

The Petitioner describes itself as a trucking and logistics operation.¹ It seeks to continue the Beneficiary's temporary employment as "executive manager" under the L-1A nonimmigrant classification for intracompany transferees.² 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 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).

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

¹ At part 5, item 12 of the Form I-129, the Petitioner listed its business type as "import and export of industrial parts/consultation."

² The Petitioner previously filed a "new office" petition on the Beneficiary's behalf. That petition was approved for the one-year period from October 31, 2019, until October 30, 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.

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. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The issue to be addressed in this decision is whether the Petitioner established that the Beneficiary's position under an extended petition would be in an executive capacity.³

"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 executive capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. Sections 101(a)(44)(B) of the Act. The Petitioner must also prove that the Beneficiary will be *primarily* engaged in executive 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). The description of the job duties must clearly describe the duties to be performed by the Beneficiary and indicate whether such duties are in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

Beyond the required description of the job duties, we examine the company's organizational structure, the duties of the Beneficiary's subordinate employees, the presence of other employees to relieve the Beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to our understanding of the Beneficiary's actual duties and role in a business.

A. Factual Background

The Petitioner claimed one employee and listed its business type as "import and export of industrial parts/consultation" at part 5, item 12 of the Form I-129. In a separate support letter, the Petitioner stated that the Beneficiary "is employed as an executive" and provided a job description in the L Classification Supplement to the Form I-129, which states that the Beneficiary's proposed job duties will include oversight of the Petitioner's "financial performance, investments and other business ventures," overseeing and assigning work to "executives," reviewing reports of "lower ranking managers," and resolving "problematic situations."

After reviewing the record, the Director issued a request for evidence (RFE), instructing the Petitioner to address various evidentiary deficiencies, including those concerning the Beneficiary's U.S. position.

³ At the time of filing and on appeal, the Petitioner stated that the Beneficiary's proposed employment would be in an executive capacity. As such, we will apply the statutory definition for executive capacity in assessing whether the Petitioner is eligible for the benefit sought herein.

The Petitioner was asked to provide a detailed statement describing the job duties the Beneficiary performed during the previous year and those he intended to perform under an extended petition along with the percentage of time to be allocated to each proposed job duty. The Petitioner was also asked to disclose its staffing composition, including the number of employees and their respective positions, and to submit an organizational chart depicting each employee's position title and placement within the company's hierarchy. In addition, the Petitioner was asked to provide evidence of wages paid over the past year, including payroll summaries, quarterly wage reports, and Form W-2s.

The Petitioner's response included a statement that was signed by the Beneficiary and stated that "it is the unequivocal intention of the parent and U[.]S[.] company that the beneficiary continues to function in a managerial capacity" and perform "essential functions," such as assuming the role of liaison between the U.S. entity and the foreign employer, managing a "team of professionals" at the Petitioner's California headquarters, overseeing "all U.S.-based staff," and "guid[ing] the [Petitioner's] vision and growth." The signature line identified the Beneficiary's position title as "General Manager and President" of the U.S. entity, and the Beneficiary was described as a manager of a "list of professionals," including "administrators, warehouse workers, sales representatives, receptionists, and laborers." The letter stated that the "initially projected staff" would be comprised of four to five full-time employees and tasked the Beneficiary with recruiting, interviewing, and hiring "the management and the administrative team for the business."

The response statement also includes two percentage breakdowns, titled "Year 2 Function Allocation of Time" and "Year 2 and beyond Function Allocation of Time," respectively. The latter allocates 20% of the Beneficiary's time to each of the following: 1) providing "final managerial oversight and decision[-]making regarding content"; 2) "[f]oster[ing] and develop[ing] relationships with ecommerce web designers"; 3) managing finances; 4) acting as liaison between the Petitioner and the foreign company "regarding growth objectives"; and 5) developing strategies "to expand customer base and increase profitability."

The other breakdown states that the Beneficiary will allocate 20% of his time to reviewing performance data such as financial statements and activity reports, 20% to implementing and executing "policies, goals/objectives, and procedures," 10% to making staffing decisions by interviewing and hiring employees and overseeing their performance, and 10% to "direct[ing] and coordinat[ing] business and financial activities with other subsidiaries." The breakdown allocates the remaining 40% of the Beneficiary's time to the following activities:

- Directing and coordinating business activities related to pricing, sales and logistical services.
- Overseeing website design and content.
- Developing operational policies and procedures and managing finances.
- Providing "final managerial oversight . . . regarding content."
- Developing relationships with advertisers.
- Liaising with the foreign entity about "growth objectives" and strategizing "to expand customer base and increase profitability."
- Overseeing departmental performance, work schedules, and delegation of duties.

After reviewing the supporting evidence, the Director concluded that the Petitioner did not establish that it would employ the Beneficiary in a managerial or executive capacity. The Director noted that

the Petitioner made inconsistent references pertaining to the Beneficiary's employment capacity and position title. Namely, the Director pointed out that the Petitioner originally claimed that the Beneficiary would be employed in an executive capacity and would assume the position of "executive manager," but in response to the RFE it claimed that the Beneficiary would be employed in a managerial capacity and would assume the position of general manager. The Director also noted that the Petitioner provided two job descriptions bearing similar titles, but it did not clarify when the listed job duties would be performed or provide a list of duties the Beneficiary performed during the Petitioner's first year of operation.

Ultimately, the Director determined that both job descriptions lacked sufficient detail about the Beneficiary's specific activities, past or future, and referred to "executives" and "lower ranking managers" without evidence showing that the Petitioner is staffed with such positions. Despite acknowledging the Petitioner's claim that it intends to hire four or five full-time employees, the Director noted that the Petitioner claimed only one employee in the Form I-129 and questioned who was available to relieve the Beneficiary from having to perform non-managerial or non-executive job duties at the time the petition was filed.

B. Analysis

On appeal, the Petitioner argues that the Director "fails to apply the appropriate standard of evidence" and asks that we defer to USCIS's prior determination, which was an approval of the Petitioner's original petition. The Petitioner also claims that the inconsistencies in the RFE response regarding the "erroneous categorization of [the Beneficiary]'s position" were the result of the petition's preparer. The Petitioner therefore reverts to its original claim that the Beneficiary would assume the position of executive manager and that this position is in an executive capacity.

We conclude that the Petitioner has not provided sufficient evidence to overcome the denial. Although we recognize that the Petitioner's prior initial petition was approved, we note that this petition was filed when the Petitioner was deemed a "new office." The new office designation is reserved for entities that have been doing business in the United States for less than one year at the time of filing and are therefore subject to regulations that are separate from those that apply to a petitioner filing to extend a petition stemming from an approved new office petition. *See* 8 C.F.R. § 214.2(l)(1)(ii)(F) (defining "new office"). Because there is a material change in eligibility requirements from those that were applicable to the filing of the initial new office petition, we will not defer to the prior approval. *See* 2 *USCIS Policy Manual* A.4(B)(1), <https://www.uscis.gov/policymanual>.

Further, the Petitioner offers no evidence to support the claim that the noted inconsistencies regarding the Beneficiary's position title and employment capacity were the result of errors made by the preparer of the petition. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Here, the record shows that the petition was signed by the Beneficiary, who certified, under penalty of perjury, that he "reviewed this petition and that all of the information contained in the petition, including all responses to specific questions, and in the supporting documents, is complete, true, and correct." Likewise, the response statement containing the inconsistent information was also signed by the Beneficiary and indicates that the statement was executed in the Beneficiary's capacity as "General Manager and President." Given that the Beneficiary, in his capacity as the Petitioner's authorized signatory, signed both the

petition and the response statement containing the inconsistent information, the Petitioner bears the burden of resolving any inconsistencies in the record with independent, objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* In the present matter, the Petitioner does not offer evidence to resolve the noted inconsistencies thus leading us to question the reliability of the Beneficiary's position title and job descriptions.

Aside from the above noted discrepancies, the content of the job descriptions is deficient, offering primarily vague job responsibilities and making no distinction between duties that the Beneficiary performed during the Petitioner's first year of operation and duties he intends to perform under an extended petition. Despite being asked to provide percentage breakdowns listing the Beneficiary's job duties during the Petitioner's first year of operation, the Petitioner did not comply with this request and provided only job descriptions addressing the Beneficiary's prospective employment. 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).

Moreover, the job descriptions that the Petitioner did provide lack adequate detail about the actual tasks the Beneficiary would perform within the scope of a trucking business. For instance, the job description titled "Year 2 Function Allocation of Time" states that 20% of the Beneficiary's time would be spent implementing and executing "policies, goals/objectives, and procedures," but it does not identify specific policies, goals, or procedures or specify the underlying tasks the Beneficiary would perform to satisfy this policy-making role. Likewise, the same job description broadly states that the Beneficiary would direct and coordinate "business and financial activities with other subsidiaries," but it does not identify specific business or financial activities, elaborate on the tasks this responsibility would entail, or identify the "other subsidiaries" that would be involved. Further, this job duty breakdown groups together seven other duties and states that these duties together would comprise 40% of the Beneficiary's. However, a percentage of time was not assigned to each individual duty and the description does not elaborate on the process for developing policies and procedures for managing finances, nor does it explain how the Beneficiary would direct and coordinate pricing, sales, and logistics or how he would oversee website design and departmental performance.

Although a second job description was provided which seemingly addressing job duties "beyond" the Petitioner's second year of operation, the content of that job description is equally vague and conveys no meaningful understanding of the Beneficiary's duties within the context of the Petitioner's transportation and logistics operation.

In addition to the deficiencies described above, neither job description explains how the Beneficiary would be relieved from having to perform non-managerial or non-executive job duties within the scope of an operation that claimed to have been staffed with only one employee at the time this petition was filed. The Petitioner's one-person operation is at odds with its reference to a "team of professionals" and its claim that the Beneficiary will oversee website design and review performance data and financial statements. It is unclear who, if not the Beneficiary would perform the underlying operational duties if the Petitioner had no other staff to perform such tasks at the time of filing. 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). Although the Petitioner indicates that it plans to employ “a team of 4-5 full-time employees” and names employees who currently occupy the positions of operations manager, manager, and head of brokerage services, there is no evidence that these, or other positions, were filled at the time of filing. Likewise, neither the Petitioner’s submission of payroll documents dated in 2021 nor the Petitioner’s claim that it has “expanded its operation in the [b]rokerage business” demonstrates eligibility in this case, as both the payroll documents and the expansion claim signify a reliance on circumstances that did not exist at the time of filing. The affected party has the burden of establishing eligibility for the requested benefit *at the time of filing* the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971) (providing that “Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts.”).

The Petitioner also refers to a “new organizational chart” to show its reliance on the foreign entity’s staff to help relieve the Beneficiary from having to perform primarily non-executive job duties. *See, e.g.,* sections 101(a)(44)(A) and (B) of the Act (requiring that one “primarily” perform the enumerated managerial or executive duties). Although we acknowledge the Petitioner’s submission of an organizational chart on appeal, the Petitioner neglected to provide this evidence when it was first requested in the RFE. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the Petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the Director’s request for evidence. *Id.* Under the circumstances, we need not and do not consider the sufficiency of the newly submitted organizational chart.

In sum, the Petitioner did not adequately describe the Beneficiary’s job duties within the context of a one-person transportation business, nor did it establish that it was adequately staffed to support the Beneficiary in an executive position at the time this petition was filed.

III. CONCLUSION

Given the evidentiary deficiencies described above, we cannot conclude that the Beneficiary’s proposed position would be in an executive capacity under an extended petition.

ORDER: The appeal is dismissed.