



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

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

In Re: 25690692

Date: MAR. 22, 2023

Appeal of California Service Center Decision

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

The Petitioner, a distributor of agricultural equipment and parts, seeks to extend the Beneficiary's temporary employment as its president 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 Petitioner would employ the Beneficiary in an 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

"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.

To establish that a beneficiary is eligible for L-1A classification as an executive, a petitioner must show that the beneficiary will perform all four of the high-level responsibilities set forth in the statutory

¹ The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for a one-year period ending on November 18, 2019. 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.

definition at section 101(a)(44)(B) 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 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).

On appeal, the Petitioner asserts that the denial contains factual errors that adversely impacted the Director's analysis of the proposed U.S. employment. The record supports this assertion. In describing the evidence submitted at the time of filing, the Director incorporated information (on pages 6 and 8 of the decision) that pertains to the Petitioner's foreign affiliate rather than to the Petitioner. Therefore, the decision does not reflect that the Director reviewed the Petitioner's initial evidence pertaining to its staffing and structure. Further, this error led the Director to determine that the Petitioner made material changes to its claimed staffing and structure in response to a request for evidence (RFE). Specifically, the Director observed that the Petitioner had submitted two "drastically different accounts of the staffing over supposedly the same time period." This conclusion is incorrect; the staffing appeared "drastically different" because the Director compared the foreign entity's organizational chart to the Petitioner's organizational chart.

The Director ultimately determined that the Petitioner did not establish that the Beneficiary will "direct the management of the organization or a major component or function of the organization" consistent with section 101(a)(44)(B)(i) of the Act. In reaching this determination, the Director acknowledged that the Beneficiary is "managing the entire organization" but found that he cannot be "managing the management of the organization of which there appears to be only first line employees." The decision further states that the Petitioner lacks a "sufficiently complex organizational structure" and noted that the Beneficiary's direct subordinate, a vice president, "notably has no supervisory duties provided."

An executive generally directs the management of the organization, major component, or essential function of a given organization by controlling the work of managerial or lower-level executive employees. This control could either take the form of direct supervision of those managers or executives or could be more indirect under some circumstances.² Here, the Director concluded that the vice president who reports to the Beneficiary "has no supervisory duties," and that she therefore cannot be considered a subordinate manager.

The Petitioner indicates that the vice president, who is also a member and manager of the petitioning limited liability company, is responsible for managing the "overall operations, personnel and financial resources of the company," among other responsibilities. This position has subordinate personnel identified on the organizational chart whose employment is corroborated by supporting documentation. Therefore, the record does not provide adequate support for the Director's determination that the Petitioner's vice president "has no supervisory duties" and could not otherwise be considered a managerial employee. As noted, the Director's determination that the Beneficiary does not qualify for the requested classification was largely based on a determination that he will not "direct the management" of the organization through direct or indirect oversight of subordinate managers or lower-level executives under section 101(a)(44)(B)(i) of the Act and emphasized the relatively small number of personnel working directly for the company. The Director did not further

² *See generally*, 2 *USCIS Policy Manual* L.6(D), <https://www.uscis.gov/policy-manual> (discussing the definition of "executive capacity").

consider the Petitioner's claims that it has a reasonable need for an executive position notwithstanding the small size of the company as required under section 101(a)(44)(C) of the Act.

An officer must fully explain the reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Based on the foregoing discussion, we conclude that the decision contained both factual errors and inadequately supported conclusions, and as a result did not fully inform the Petitioner why its evidence was insufficient to establish eligibility for the benefit sought.

Accordingly, we withdraw the Director's decision and remand the matter to the Director for entry of a new decision. On remand, the Director should review the previously submitted evidence (including the Petitioner's appeal) considering the foregoing discussion and may request any additional evidence relevant to the eligibility requirements for this classification.

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