



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

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

In Re: 28599930

Date: OCT. 05, 2023

Appeal of California Service Center Decision

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

The Petitioner, which intends to operate a sports bar, seeks to temporarily employ the Beneficiary as the general manager of its new office under the L-1A nonimmigrant classification for intracompany transferees. *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 (1) the Beneficiary has been employed abroad in a managerial or executive capacity and (2) the Petitioner would employ the Beneficiary in the United States in a managerial or executive capacity within one year. 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 as a new office, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l)(3)(v)(B). In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

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). A petitioner seeking approval of an L-1A new office petition 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 company 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. ANALYSIS

The Director denied the petition, in part, based on a determination that the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity within one year. The Petitioner has consistently described the offered position of general manager as a managerial role.

“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.

To establish a beneficiary’s eligibility for L-1A classification as a manager, a petitioner must show that the beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If a petitioner establishes that the offered position meets all elements set forth in the statutory definition, it must prove that the beneficiary will be *primarily* engaged in managerial duties within one year, as opposed to performing ordinary operational activities alongside the company’s other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

In the case of a new office petition, we review a beneficiary’s proposed job duties as well as the petitioner’s business and hiring plans and evidence demonstrating how the business intends to grow and expand during the first year of operations. A 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. Accordingly, the totality of the evidence must be considered in analyzing whether the proposed managerial or executive position is plausible considering 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).

A. Nature of Business and Proposed Duties

The Petitioner indicates that it intends to operate a sports bar and provided a lease agreement for premises to be used as a bar and restaurant. The Petitioner explained that the bar is “an established business we plan to revitalize.” It described the Beneficiary’s proposed duties as general manager as follows:

- In charge of sourcing for and recruiting competent employees on behalf of the organization;
- Ensure that proper orientation is conducted for each new employee;
- In charge of employee welfare, training and performance appraisals;

- Conducts market research continuously and ensures that new markets are identified on behalf of the company;
- Drafts effective marketing strategies for the company;
- Conducts direct marketing on behalf of the company;
- Ensures that all stocks for [the business] are clearly accounted for (incoming and outgoing);
- Checks stock levels consistently and ensures that they are re-stocked at certain levels;
- Monitors industry trends and ensures that stocking practice is up to standard;
- Procures all the supplies needed by [the business];
- Sources for reliable vendors and suppliers on behalf of the sports bar;
- Drafts the purchasing contract document on behalf of the company and reviews it on a consistent basis.

In denying the petition, the Director observed that many of the listed duties, such as procuring supplies, monitoring and maintaining stock levels, conducting market research, performing direct marketing tasks, monitoring industry trends, and sourcing vendors and suppliers, as described, do not fall within the statutory definition of managerial capacity. We agree with this assessment of the job description. The Petitioner indicates that the Beneficiary would exercise authority over personnel matters and perform some higher-level duties such as determining the business' marketing strategy and perhaps making final decisions regarding suppliers and purchase contract terms. However, given the number of non-managerial tasks assigned to the Beneficiary, the Petitioner has not established that these types of higher-level responsibilities would primarily occupy his time within one year. Further, although the submitted description indicates that the Beneficiary would be responsible for the company's marketing strategies, the company's business plan indicates that this responsibility has been assigned to the company's controller who is "empowered to draft effective marketing strategies for the company in line with our corporate values and goals." Therefore, it is unclear whether or to what extent the Beneficiary would be responsible for establishing company strategy in this area.

Overall, the duties of the offered position, as described by the Petitioner, are not primarily managerial in nature and do not establish that the Beneficiary would be relieved from significant involvement in the day-to-day operational and administrative tasks necessary to operate the company's bar and restaurant business.

On appeal, the Petitioner asserts that the Director "neglects to comprehend that the beneficiary will be serving as the General Manager" and "is responsible for filing the appropriate financial reports with their respective authorities," such as the IRS, the Social Security Administration and various Texas state agencies. The Petitioner further states that the Director "fails to comprehend that any successful business must prepare financial reports such as financial statements," and notes that the Beneficiary, as general manager, will be responsible for these reports. The Petitioner emphasizes that "these tasks are far beyond the duties of a manager or supervisor."

The fact that the Beneficiary has the job title "general manager" and will perform some qualifying duties 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" executive or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. As discussed above, while the

Beneficiary may exercise some discretion over aspects of the company's day-to-day operations, the position description the Petitioner provided does not indicate that his actual duties will be primarily managerial in nature. The actual duties themselves 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).

Regarding the Petitioner's statement on appeal, the company has not previously claimed that the Beneficiary would be responsible for preparing its internal financial statements or for filing its tax and financial reports with federal and state authorities. In fact, the Petitioner stated that these duties have been assigned to the company's controller, who is senior to the Beneficiary in the company's organizational chart. Therefore, the Petitioner's claim that the Director overlooked such responsibilities is not persuasive. Further, the Director's decision reflects a proper review of the Beneficiary's proposed duties within the context of the totality of the evidence, which includes the Petitioner's business plan, expected staffing and structure, and financial projections. For the additional reasons discussed below, the Petitioner has not met its burden to show that it would realistically develop to the point where it would require the Beneficiary to perform primarily managerial duties within one year.

B. Projected Staffing, Finances and Business Plan

A new office petition must include evidence of the proposed nature of the office, describing the scope of the entity, its organizational structure, and its financial goals. 8 C.F.R. § 214.2(l)(3)(v)(C)(1).

The Petitioner submitted a 13-page business plan that includes an industry overview, an executive summary, a description of the company's proposed product and service offerings, general staffing plans, a market analysis, a sales forecast, a summary of start-up expenditures, and a list of milestones the business expects to meet ahead of its grand opening. The business plan indicates that the company expects to achieve sales of \$350,000 in its first year of operations. The Petitioner's initial proposed organizational chart indicated that employees reporting directly or indirectly to the Beneficiary would include an assistant manager, bartender(s), bar back(s) and a delivery driver, but the business plan did not include a timeline for hiring staff, their anticipated salaries, or indicate the total number of staff to be hired during the first year of operations.

The Director issued a request for evidence (RFE) advising the Petitioner that additional information would be required to establish that the company would, more likely than not, support a managerial or executive position within one year. The Director requested a detailed timeline reflecting the Petitioner's anticipated hiring plans and other actions it anticipates taking during its first year of operations, as well as a letter from the foreign entity indicating the proposed number of employees and types of positions, and an explanation of how the company will develop to support the Beneficiary's claimed managerial position.

In response to the RFE, the Petitioner asserted that, at the time it filed the petition in April 2022, it had planned to commence its business operations within six months but emphasized that "we are absolutely uncertain how long it may take USCIS to approve our petition which will allow the beneficiary to serve as the Controller [*sic*] and begin operations of the U.S. business." The Petitioner re-submitted the same business plan along with a revised organizational chart and a media report

regarding the booming market for sports bars in the United States, which the Petitioner claimed is “evidence of the potential financial growth of the U.S. business.”

The Petitioner’s revised organizational chart indicated that the Beneficiary would directly supervise bartender(s), who would oversee bar back(s) and wait staff. The chart did not include the assistant manager or driver positions included on the initial chart and the Petitioner did not explain why it had revised the company’s proposed staffing and structure. The Petitioner indicated that new employees would commence working two weeks before opening to allow for training and orientation, but provided no additional information regarding the company’s hiring plans for the first year.

The Director concluded that the Petitioner’s response was insufficient to overcome the evidentiary deficiencies addressed in the RFE. The Director considered the revised organizational chart, emphasizing that it did not show that the Beneficiary would be engaged in the supervision and control of managerial, supervisory or professional employees, as required by section 101(a)(44)(A)(ii) of the Act, or that the number and type of staff to be hired would relieve him from significant involvement in the day-to-day non-managerial operations of its bar and restaurant business.

On appeal, the Petitioner asserts “[i]t has been over a year since this petition was filed. How can the Service ask us for an opening date if we have no way of predicting when we will receive an approval of [the petition].” The Petitioner indicates that it is prepared to hire staff if the petition is approved and that the Beneficiary would immediately begin interviewing, hiring, and training his “management staff.” It does not specifically address the deficiencies discussed in the Director’s decision.

Upon review, we agree with the Director’s determination that the Petitioner did not adequately support its claims regarding the proposed nature and scope of the new office, its projected staffing, and its financial goals.

The Petitioner’s business plan is lacking in detail and does not include a description of how the company intends to operate the intended business based on its proposed staffing for the first year of operations. Notably, there is a lack of correlation between the company’s proposed staffing and its proposed business activities, which precludes a determination that the projected staff would sufficiently relieve the Beneficiary from significant involvement in the company’s day-to-day operational and administrative activities. For example, although the business plan and other evidence in the record (including the lease agreement and photographs of the leased premises) indicate the Petitioner’s business is a restaurant and bar, the company does not indicate that it intends to hire cooks or other kitchen staff. The business plan also states that the company will offer catering services, sports book betting, and other services including “training” and “consultancy,” but did not elaborate on what those services would entail or who would be responsible for providing them.

As discussed above, the Petitioner’s description of the Beneficiary’s duties includes many non-managerial tasks. While the Petitioner indicates that he will have the authority to hire and fire staff, the record supports the Director’s conclusion that the Beneficiary would not be engaged in the supervision of subordinate managers, supervisors or professionals, a conclusion that the Petitioner has

not contested on appeal.¹ The job description provided for the bartender position does not include supervisory duties, and the Petitioner has not established that the positions of bartender, barback or server are professional positions requiring a bachelor's degree. Although the Petitioner initially claimed that the Beneficiary would supervise an assistant manager, the duties attributed to that position were not supervisory, and the Petitioner did not include the position on its latest organizational chart.

Moreover, as noted, the Petitioner states that it intends to offer products and services that are beyond the scope of the duties that would be performed by the proposed staff of bartenders, barbacks and wait staff. Absent evidence that the Petitioner intends to hire staff to, for example, work in its kitchen, it is unclear how the Beneficiary would be relieved from performing additional non-managerial duties associated with the restaurant operations.

There are similar deficiencies with respect to the level of detail provided in the company's financial projections. Because the Petitioner's projected revenue, cost and expense figures are not adequately detailed and supported in the record, it did not establish how its projected staffing levels and organizational structure would realistically be achieved. The business plan includes a projected gross sales figure for the first year and a breakdown of start-up expenses, but otherwise lacks any financial projections. The included breakdown of expected start-up expenditures amounts to \$103,000; however, it is unclear how those figures were derived. For example, the Petitioner indicates that the "cost of leasing a facility for a year and carrying out renovations" would be \$40,000. According to the terms of the submitted lease agreement, the Petitioner's rent alone for the first year of operations would be \$210,000, more than five times the amount projected for rent and renovations. Further, the Petitioner indicates that it did not expect to open for business for six months, so did not anticipate paying any expenses out of cashflow for that extended period. These facts raise questions as to whether the provided start-up expenditures are realistic and whether the company will have sufficient funds to commence operations as planned.

Although the Petitioner asserts that sports bars are currently enjoying significant financial success in the U.S. market, it cannot meet its evidentiary burden as a new office petitioner under 8 C.F.R. § 214.2(l)(3)(v)(C) by submitting media reports about the industry in which it tends to operate. A petitioner has the burden to establish that its specific business would, more likely than not, 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 by submitting the evidence required by the regulations.

¹ L-1A managers who supervise subordinate staff 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." Section 101(a)(44)(A) of the Act. To determine whether a beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

Those regulations require the Petitioner to disclose the size of the U.S. investment and its financial ability to commence doing business. Here, the record lacks information and supporting evidence regarding the anticipated size of the U.S. investment and therefore does not show that the new office would have the funding to cover its start-up expenditures. The business plan contains one sentence addressing the source of the company's start-up capital, noting that the business is "owned equally by a group of investors." The record does not contain sufficient evidence that the investing partners had already invested or committed to investing capital to cover the new office's start-up and initial operating expenses. The Petitioner's partnership agreement indicates that its seven partners made a combined capital contribution in the amount of \$50,000 on February 11, 2022, but the record does not include evidence of this contribution or indicate that additional contributions would be made to cover the stated start-up costs. Although the Petitioner submitted a 2021 audit report for the foreign entity in support of its claims that funds are available for investment, the figures provided in this report are in Indian rupees and it remains unclear what amount each partner is willing and able to invest in the U.S. company.

For all the foregoing reasons, we agree with the Director's conclusion that the record contains insufficient evidence to demonstrate that the Beneficiary would be removed from significant involvement in the day-to-day operations of the company by the end of one year. The Petitioner has consistently stated that the Beneficiary will occupy a senior position in its new office but has not submitted a job description or supporting evidence sufficient to demonstrate that he would primarily engage in managerial duties, or that the new office would develop to the point where it could support a managerial position, after the initial year of operations.

III. RESERVED ISSUE

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its appellate arguments regarding the Director's separate determination that it did not establish that the Beneficiary was employed abroad in a managerial or executive capacity. *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).

IV. CONCLUSION

For the reasons discussed, the record does not establish that the Petitioner's new office would employ the Beneficiary in a managerial capacity within one year. Accordingly, we will dismiss the appeal.

ORDER: The appeal is dismissed.