



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

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

In Re: 28569411

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 controller 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.

“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.

“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, a petitioner must show that the beneficiary will perform the high-level responsibilities set forth in the statutory definition of managerial capacity or executive capacity at section 101(a)(44)(A) or (B) of the Act. If a petitioner establishes that the offered position meets all elements set forth in one of the statutory definitions, it must prove that the beneficiary will be *primarily* engaged in managerial or executive duties within one year, as opposed to performing operational activities alongside the Petitioner’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. 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 indicates that the Beneficiary will be employed as its controller and summarized his duties as follows:

- In charge of making policies that will affect the overall direction of the sports bar;
- Ensures that policies are effectively communicated and implemented to all the members of the staff;
- Liaises with business partners on behalf of the company;
- Responsible for ensuring that all the financial information and statements of the sports bar are prepared accurately;
- Ensures that the budget for use by the sports bar is effectively implemented;
- Prepares tax reports and submits same to relevant tax authorities[.]

The Petitioner’s initial letter in support of the petition attributed additional responsibilities to the controller position, including:

- Discretionary authority to hire, promote, dismiss, or demote any employee of the U.S. entity;
- Oversee the management staff and support and direct the new office in the first year of business;
- Develop the policies and procedures as well as the culture of this new business;
- Hire and train management staff in customer service and cash handling procedures;
- Establish safety and theft prevention programs as well as financial rewards or other benefits for meeting sales goals;
- Monitor and report the business’ finances and make decisions regarding the company’s spending, debt service, investment strategies, and profits.

In denying the petition, the Director observed that the description was insufficient to establish that the Beneficiary’s duties would be primarily managerial or executive in nature. In this regard, the Director emphasized that the Beneficiary’s stated responsibilities for preparing and submitting tax reports and ensuring the accurate preparation of financial information and reports are not duties typically performed by a manager or executive.

On appeal, the Petitioner asserts that the Director “neglects to comprehend that the beneficiary will be serving as the Controller” 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 controller, will be responsible for maintaining these reports. The Petitioner emphasizes that “these tasks are far beyond the duties of a manager or supervisor.”

We agree that the Petitioner did not meet its burden to establish that the Beneficiary would be engaged primarily in managerial or executive duties within one year. Some of the duties attributed to the offered position, such as responsibility for developing policies and procedures affecting the “overall direction” of the business, paraphrase the definition of executive capacity at section 101(a)(44)(B) of the Act, while his authority to hire staff would fall under the definition of managerial capacity at section 101(a)(44)(A) of the Act. However, many of the remaining duties, such as training staff in

customer service and cash handling, monitoring finances, and preparing and submitting tax filings, do not clearly fall within the definitions of managerial capacity or executive capacity. While the Petitioner emphasizes the critical nature of the Beneficiary's finance-related responsibilities, the record does not indicate that the Petitioner intends to hire or contract any staff, such as an accountant, bookkeeper or administrative staff, to assist him with routine tasks associated with these responsibilities. Therefore, while we do not doubt his authority to make decisions affecting the company's finances, the record does not demonstrate how much time he would allocate to these higher-level duties, as opposed to performing operational or administrative tasks necessary for the day-to-day operations of the business.

The fact that the Beneficiary is a minority partner of the business and will perform some qualifying duties based on his senior position within the company does not necessarily establish his 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. The Petitioner bears the burden of documenting what portion of the Beneficiary's duties will be managerial or executive and what proportion will be non-managerial or non-executive. *See Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991). Here, the Petitioner submitted a general description that does not sufficiently delineate how the Beneficiary will allocate his time among qualifying and non-qualifying duties.

Further, the position description alone is insufficient to establish that a beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as a petitioner's business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the proposed position. As noted above, the totality of the evidence must be considered in analyzing whether the proposed duties are 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). 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 or executive 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)(C)(v)(I).

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 a security guard, a general manager, 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 claimed Beneficiary's claimed managerial or executive 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 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 a general manager, who, in turn would supervise bartender(s), bar back(s) and wait staff. The chart did not include the security guard, assistant manager or driver positions that appeared on the initial organizational chart and the Petitioner did not explain why it had revised the company's proposed staffing and structure. The Petitioner stated on the chart 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, and determined the company's explanation of its proposed business lacked sufficient detail to support its claim that it would be able to support a managerial or executive position within one year. On appeal, the Petitioner asserts "[i]t has been over a year since this petition was filed and we have no means of predicting our opening date." The Petitioner indicates that it will expeditiously hire staff if the petition is approved but does not otherwise address the Director's conclusions.

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 would be hiring any 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. 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 having to engage in these duties. While we acknowledge that the day-to-day supervision of the bar staff will be delegated to the general manager, the record does not support a determination that the company would have sufficient personnel to perform other routine duties associated with the operation of a bar and restaurant, such that the Beneficiary could reasonably allocate his time primarily to managerial or executive tasks.

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. This discrepancy raises 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.

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 expenses and any other first-year operating expenses that would not be covered by cash flow, particularly given the Petitioner's assertion that it expected to open for business six months into the first year. 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 start-up and initial operating costs. Although the Petitioner submitted a 2021 audit report for the foreign entity in support of its claims that funds are available, the figures provided 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 new office would support a managerial or executive position within 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 or executive duties, or that the new office would develop to the point where it could support a managerial or executive 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 or executive capacity within one year. Accordingly, we will dismiss the appeal.

ORDER: The appeal is dismissed.