



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

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

In Re: 28563616

Date: SEP. 08, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a used motor vehicle dealer and exporter, seeks to temporarily employ the Beneficiary as the general manager of its new office 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 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 Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary has been employed abroad in a managerial or 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 dismiss the appeal.

## I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving 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. 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 petitioner 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 petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope

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<sup>1</sup> 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).

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 sole issue to be addressed is whether the Petitioner established that the Beneficiary has been employed abroad in a managerial or executive capacity. In denying the petition, the Director acknowledged the Petitioner's claim that the Beneficiary's position with its foreign affiliate involved both executive and managerial duties, but primarily focused on the definition of managerial capacity in analyzing the submitted evidence, noting that the Petitioner did not show that the position satisfied all four prongs of the statutory definition at section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A).<sup>2</sup>

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary was employed abroad in an executive capacity. The Petitioner does not contest the Director's determination that the evidence of record was insufficient to demonstrate the Beneficiary's employment was in a managerial capacity. Therefore, we restrict our analysis to whether the Beneficiary has been employed in an executive capacity.

"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, 8 U.S.C. § 1101(a)(44)(B).

To establish that a beneficiary is eligible for L-1A classification based on their employment abroad in an executive capacity, a petitioner must show that the beneficiary performed all four of the high-level responsibilities set forth in the statutory definitions at section 101(a)(44)(B) of the Act. If a petitioner establishes that the former position meets all four elements set forth in the statutory definition, the petitioner must then prove that the beneficiary was *primarily* engaged in executive duties, as opposed to ordinary operational activities alongside other company employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

In determining whether the beneficiary's duties were primarily executive, we consider the required description of the job duties, the company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other personnel to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding the beneficiary's actual duties and role in the business.

The Petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker that the Beneficiary has worked as its foreign affiliate's general manager since 2013 but has also referred to the position title

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<sup>2</sup> While in some instances there may be duties that could qualify as both managerial and executive in nature, it is the petitioner's burden to establish that the beneficiary's duties meet each prong set forth in the statutory definition for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the beneficiary has been primarily employed in either a managerial or executive capacity.

as “president.” The Petitioner stated on the petition that his duties included “formulating policies, managing the company’s operations, personnel, purchasing or administrative services.” The record reflects that the foreign entity is engaged in the import and sale of motor vehicles and is majority-owned by the Beneficiary.

In a supporting letter, the Petitioner stated that the Beneficiary’s role as the foreign entity’s “Manager/President” is “an executive position,” in which he has been “responsible for overseeing all aspects of the organization.” The Petitioner listed his duties as:

- Supervising and controlling the work of professional employees including planning, directing and monitoring [their] work.
- Managing the organization including directing financial strategy, planning, and forecasts; conferring with shareholders, creating short and long-term business strategies, monitoring of internal processes of the company.
- Overseeing day-to-day operations including identifying and assessing new business opportunities, payment of payroll, buying and selling vehicles, signing and approving corporation documentation.
- Legally representing the company, having authority to review, develop, negotiate and bind it in contract and acting as the corporate bank account signature.
- Explore, identify, and make decision on the need for further investment, and analyze, report and direct opportunities for expansion and projection of future company growth.

The Petitioner emphasized the Beneficiary’s “oversight of all the management of the organization” and his responsibility to establish the “strategic goals and policies of the organization.”

The initial evidence also included an employment verification letter from the foreign entity, stating that the Beneficiary had been employed as “manager, associate and president” since September 2013. The letter states that his duties as manager included “payroll payment, internal company process follow-up, purchase of vehicles, deals closure, financing approval and accountancy of bank accounts” while his responsibilities as president included “signing and approval of internal documents.”

The initial evidence suggested that the Beneficiary has executive level authority over the foreign entity as its senior employee and majority owner, including responsibility to develop the company’s processes, policies, strategies, and goals. However, the role as described also included several non-executive administrative and operational tasks, such as direct supervision of lower-level workers, purchasing inventory, and direct involvement in the company’s sales transactions. The initial descriptions of the Beneficiary’s job duties did not demonstrate what proportion of his time was allocated to executive duties, and what proportion was spent on non-executive tasks. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

In a request for evidence (RFE), the Director advised the Petitioner of its burden to establish that the Beneficiary spent more than half of his time performing duties in either a managerial or executive capacity and provided a list of suggested evidence to assist the company in meeting that burden. Specifically, Director requested a more detailed description of the Beneficiary’s typical duties and the percentage of time spent on each and additional evidence of the foreign entity’s staffing levels, management structure, and the duties performed by subordinate employees.

In response, the Petitioner submitted a letter from the foreign entity's administration manager. The letter further describes the duties the Beneficiary performed for the foreign entity, classifying some of them as executive in nature and others as managerial in nature. With respect to his executive duties, the letter states that he allocated 60% of his time, in total, to the following duties:

- General Planning (15%) – Plan organize, direct, control, coordinate, analyze, calculate and conduct the work of the company, as well as set the general objectives, both in the short-term and the long-term.
- Design strategies and data analysis (10%) – Formulate general purchasing strategies and vehicles sales, according to the objectives set as well as measure the results against planning and establishing the necessary policies to achieve the goals.
- Improve financial performance (10%) – Look for profitable vehicle business options that increase percentage and total profits in behalf of the company.
- Lead the team and maintain good harmony (7.5%) – Keep staff motivated and create a friendly environment for the team.
- Know the products and the competition (7.5%) – Research the characteristics, functionality, and uses of the different lines of vehicles that will be marketed.
- Elaboration of budgets (5%) – Supervise all staff, budgets and operations of the business unit as well as optimize expenses.
- Recruitment and hiring of staff (5%) – Evaluate and recruit staff to ensure correct selection.

While the foreign entity's letter characterized these as executive-level responsibilities, it indicated that the Beneficiary was required to perform non-executive functions associated with them. For example, the Petitioner indicated that some of his duties require him to "conduct market research" to determine which product lines are likely to be profitable, to analyze different vehicle features for the purpose of establishing prices, and to check the market regarding vehicle prices on different platforms, such as auctions, social networks, and apps. The Petitioner did not explain how these market research duties fall within the definition of "executive capacity," nor does the record indicate that other staff members assisted the Beneficiary with these tasks. Therefore, although the Petitioner indicated that the Beneficiary allocated more than half of his time to executive duties, it is evident that some portion of that time was spent on non-executive functions.

The foreign entity's letter explains that the Beneficiary allocated the remainder of his time to "management" duties, but the listed tasks reflect his significant involvement in sales and customer service functions that are not consistent with the statutory definitions of managerial or executive capacity. For example, the letter stated that his "management" duties included advising customers and potential buyers about products by meeting with them to determine their needs and offering vehicles that meet their requirements, using social media to advertise available vehicle deals, properly carrying out vehicle sales, following up with customers post-sale to ensure their satisfaction with purchased vehicles, and performing "other related tasks."

Finally, we note that certain duties initially attributed to the Beneficiary, most notably his responsibility for researching and purchasing inventory, were absent from the position description provided in response to the RFE. However, the record does not indicate that any other staff assist with or performed this critical function for the company and it is reasonable to conclude that these activities would have required a significant portion of the Beneficiary's time based on the nature of the business.

The Beneficiary's authority to determine a budget and strategy for purchasing inventory may be a qualifying responsibility; however, the evidence in the record, including additional evidence submitted on appeal, indicates that he was directly involved in individual purchase transactions, making arrangements for the company's participation in vehicle auctions, arranging vehicle imports through agents, and inventory record keeping and monitoring. While all these activities are necessary for the operation of the foreign entity's business, the Petitioner did not establish how they are executive in nature.

In its appellate brief, the Petitioner places particular emphasis on the Beneficiary's level of authority, noting that he is "the organization's representative with the government in connection with customs" and "the only authorized individual who can enter into contractual obligations on behalf of the organization as it relates to facilities, purchasing strategies, shipping, vendor relations, and financial contracts."

The Beneficiary's authority as the majority owner and senior employee of the foreign entity is well-established in the record. However, the fact that the Beneficiary has responsibility for directing the operations of a business does not necessarily establish eligibility for classification as an intracompany transferee in an executive capacity within the meaning of section 101(a)(44)(B) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive in nature. While it is evident that the Beneficiary exercised discretion over the foreign entity's day-to-day operations and possessed the requisite level of authority with respect to policies, strategies, and discretionary decision-making, the record indicates that he also devoted a significant portion of his time to marketing, sales, customer service, and purchasing functions that fall outside the scope of the statutory definition of executive capacity, rather than allocating these tasks to lower-level personnel. 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). Here, the Petitioner did not meet its burden to establish that the Beneficiary's actual duties were primarily executive in nature.

## B. Staffing and Organizational Structure

In analyzing a company's staffing and structure, we must take into account the reasonable needs of the organization; a company's size alone may not be the only factor in determining whether the Beneficiary is or would be employed in a managerial or executive capacity. See section 101(a)(44)(C) of the Act. However, it is appropriate for USCIS to consider the size of the foreign entity in conjunction with other relevant factors, such as the absence of employees to perform the non-managerial or non-executive operations of the company. *Family Inc.* 469 F.3d at 1313. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The Petitioner stated on the Form I-129 that the Beneficiary supervised ten employees while employed by the foreign entity. An organizational chart submitted at the time of filing depicts the Beneficiary at the top of the organizational hierarchy and shows that he directly supervised an administration manager (Y-C-), three sales representatives, a mechanic, two cleaning workers and a car washer. The chart depicts two employees reporting to the administration manager – an administrative assistant and an accounts receivable assistant. The initial evidence did not include additional information regarding the foreign entity's staff and their duties.

The Petitioner's response to the RFE included a revised organizational chart and a summary of duties for each listed employee. While the initial chart identified Y-C- as the administration manager and indicated that this position supervised only the accounts receivable assistant and administrative assistant positions, the latter chart indicated that the position was held by Z-T-, who stated that this position is required to "supervise the operations of the entity, keep control of the accountant records, and analyze data jointly with the Executive Manager for decision-making purposes," responsibilities that appear to extend beyond those attributed to the position at the time of filing. The revised organizational chart depicts the administration manager as the Beneficiary's sole direct report. Further, Y-C-, who was initially identified as the administration manager, does not appear on the revised organizational chart but is identified in the employee list as the company's secretary. The Petitioner offered no explanation for these changes to the foreign entity's organizational structure.

In addition, there are other notable inconsistencies with respect to the foreign entity's staffing. Both organizational charts indicate that E-V- serves in the position of "administrative assistant," but the employee list provided in response to the RFE indicates that this individual is employed as a "supervisor" who sets performance goals and deadlines in line with the company's vision and plans, organizes workflow, and monitors employee productivity.

Further, while both organizational charts depict the Beneficiary's oversight of ten employees, the employee list submitted in response to the RFE, includes only eight subordinate employees, including the above-referenced "secretary" who does not appear on the revised chart. In addition, the organizational chart identifies three sales representatives, but only one salesperson is named on the employee list. These inconsistencies and unexplained changes are material given the Petitioner's claim that the Beneficiary carried out certain functions through subordinate personnel and had sufficient personnel to relieve him from significant involvement in the day-to-day operations of the company alongside other staff. The Petitioner has not resolved these ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the Petitioner provides employment verification letters for many of the foreign staff prepared by Z-T- in her capacity as administration manager. These letters are consistent with the information provided in response to the RFE, but do not explain the inconsistencies in the record. Further, these letters, which provide hiring dates for each employee, indicate that the sole salesperson on the employee list, the mechanic and the claimed "supervisor" were all hired after the Beneficiary relocated to the United States on May 1, 2021. At the time of filing in October 2022, the Beneficiary had been in the United States for over 17 months as a B-2 visitor.

The Petitioner must establish that the Beneficiary was employed in a qualifying capacity abroad for at least one year in the three years preceding the filing of the petition in October 2022. *See* 8 C.F.R. § 214.2(l)(3)(iii). The one-year foreign employment requirement is only satisfied by the time a beneficiary spends physically outside the United States working full-time for a qualifying organization. *See* 8 C.F.R. § 214.2(l)(1)(ii)(A) (providing that trips to the United States for business or pleasure shall not be counted toward fulfillment of this requirement); *see generally*, 2 *USCIS Policy Manual* L.6(G)(1), <https://www.uscis.gov/policy-manual>. Given the Beneficiary's physical presence in the United States between May 1, 2021 and the date of filing in October 2022, the Petitioner must establish that the Beneficiary's one year of qualifying employment abroad occurred between October

2019 and May 2021, prior to his entry in B-2 status. The record lacks a clear picture of the company's staffing levels and structure during that period and therefore does not show that the foreign entity's staff relieved him from significant involvement in non-executive functions.

Further, even if we consider the foreign entity's claimed current staffing levels, the record does not support a determination that the company has employees to assist the Beneficiary with his responsibilities for market research, advertising, purchasing, import, and sales functions, as discussed above. For example, the duty description provided for the sole salesperson on the employee list supports our determination that the Beneficiary was directly involved in the foreign entity's sales activities. The record indicates that the salesperson assists with establishing the sales lot and showroom, encourages customers to make purchases, collaborates with the manager to make attractive offers to interested customers, and works with the manager to develop sales agreements. However, the position did not wholly relieve the Beneficiary from involvement in individual sales transactions.

Overall, the record suggests that the Beneficiary performed a combination of executive and non-executive duties in his role as the foreign entity's general manager. However, it does not support a conclusion that he allocated more than half of his time to qualifying executive duties, or that he had sufficient staff assigned to relieve him from significant involvement in operational tasks necessary for the day-to-day operations of the business. For the reasons discussed above, the Petitioner has not met its burden to establish that the Beneficiary was employed abroad in an executive capacity as defined at section 101(a)(44)(B) of the Act.

Finally, although not addressed by the Director, we observe multiple references in the record to the fact that the Petitioner's affiliate in the Dominican Republic was not the Beneficiary's sole employer during the relevant three-year period between October 2019 and October 2022. The Petitioner's statement on the Form I-129 and a supporting letter indicate that the Beneficiary concurrently held a position as "owner and General Manager of [redacted] from 2015 until 2020. The Beneficiary's resume submitted at the time of filing also indicates his employment with [redacted] from "2018 to this date."

The regulation at 8 C.F.R. § 214.2(l)(3)(iii) requires evidence that the Beneficiary has at least one continuous year of *full-time* employment abroad with a qualifying organization within the three years preceding the filing of the petition. If the Beneficiary did in fact have up to three concurrent employers during the relevant period, additional explanation and evidence may be required to demonstrate that his employment with the Petitioner's Dominican Republic affiliate was on a full-time basis. While this additional issue is not grounds for our dismissal of this appeal, the Petitioner will be required to address it in future filings, whether in further pursuit of the instant petition or with regard to any other employment-based petition where his full-time employment abroad is relevant to establishing eligibility.

### III. CONCLUSION

The Petitioner has not established that the Beneficiary has been employed abroad in an executive capacity. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.