



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

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

In Re: 28603794

Date: SEP. 12, 2023

Appeal of California Service Center Decision

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

The Petitioner, a podcast producer and manager, seeks to temporarily employ the Beneficiary in the United States as an executive administrator. The company requests his classification under the L-1A nonimmigrant visa category as an intracompany transferee who will work in a managerial or executive capacity. *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. The Director concluded that, contrary to the Act and regulations, the Petitioner did not demonstrate:

- The Beneficiary's employment abroad for at least one continuous year within the three-year period before the petition's filing;
- The managerial or executive nature of his foreign work; or
- The Petitioner's likely ability, within one year of the petition's approval, to support a managerial or executive position.

On appeal, the Petitioner contends that the Director overlooked evidence.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the company has not established the Beneficiary's foreign employment in a managerial or executive capacity. We will therefore affirm the petition's denial.

I. LAW

A petitioner seeking to employ an L-1A manager or executive must demonstrate that - for at least one continuous year in the three years before a beneficiary's initial U.S. admission in nonimmigrant status - the petitioner or its parent, branch, subsidiary, or affiliate employed the noncitizen abroad in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(i), (iii), (v)(B). An L-1A petitioner must also establish that a beneficiary's education, training, and experience qualify them for the U.S. managerial or executive position. 8 C.F.R. § 214.2(l)(3)(ii), (iv).

The Petitioner seeks to employ the Beneficiary in a “new office,” an organization that has been doing business in the United States for less than one year. *See* 8 C.F.R. § 214.2(l)(ii)(F) (defining the term “new office”). Besides the requirements discussed above, an L-1A petition for a new office must demonstrate that the petitioner: secured physical premises sufficient to house its operations; and, within one year of the petition’s approval, would support a managerial or executive position. 8 C.F.R. § 214.2(l)(3)(v)(A), (C). An L-1A new office petition must also provide information regarding:

- The office’s proposed nature, including the entity’s scope, organizational structure, and financial goals;
- The size of the U.S. investment and the foreign entity’s financial ability to pay the beneficiary and begin U.S. operations; and
- The foreign entity’s organizational structure.

8 C.F.R. § 214.2(l)(v)(C)(1)-(3).

II. ANALYSIS

The record establishes the petitioning corporation as a wholly owned subsidiary of a Canadian company. Like the Petitioner, its parent company produces and manages podcasts. The Petitioner claims that its parent has employed the Beneficiary, the holder of a Venezuelan bachelor’s degree in philosophy, since June 2021 as an executive administrator. The Petitioner seeks to employ him in the same position in the United States.

The Petitioner asserts the Beneficiary’s work abroad in managerial, executive, and specialized knowledge capacities. The company contends that the Director erred in disregarding evidence of the Beneficiary’s specialized knowledge.

The term “specialized knowledge” means knowledge of an organization’s products, services, research, equipment, techniques, management, or other interests and its application in international markets, or advanced knowledge or expertise of the organization’s processes or procedures. 8 C.F.R. § 214.2(l)(ii)(D). But specialized knowledge does not qualify a beneficiary for L-1A status at a new office. 8 C.F.R. § 214.2(l)(3)(v)(B); 2 *USCIS Policy Manual* L.(8)(B) (“Unlike other L-1 petitions, eligibility for L-1A new office approval may not be established through qualifying experience involving specialized knowledge.”) We will therefore consider only whether the Beneficiary worked abroad in a managerial or executive capacity.

A. Managerial Capacity

The term “managerial capacity” means work “primarily” involving:

- Managing an organization or its department, subdivision, function, or component;
- Supervising and controlling the work of other supervisory, professional, or managerial employees, or managing an essential function within the organization or its department or subdivision;

- If directly supervising another employee(s), having authority to hire and fire or recommend those and other personnel actions, or functioning at a senior level within the organizational hierarchy or regarding the managed function; and
- Exercising discretion over the daily operations of the authorized activity or function.

Section 101(a)(44)(A) of the Act.

As the statutory definition indicates, an L-1A manager may manage either people or an “essential function.” Section 101(a)(44)(A)(ii) of the Act. “Personnel managers must primarily supervise and control the work of other supervisory, professional, or managerial employees, whereas function managers must primarily manage an essential function within the organization.” *Matter of Z-A-, Inc.*, Adopted Decision 2016-02, *4 (AAO Apr. 14, 2016).

When determining a foreign position’s nature, USCIS first considers the job’s duties. *See* 8 C.F.R. § 214.2(l)(3)(ii) (requiring “a detailed description of the services to be performed”); *see also 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) (“The actual duties themselves reveal the true nature of the employment.”) USCIS then considers the entire record, weighing all relevant factors, including: the nature and scope of the foreign entity’s business; its organizational structure, staffing levels, and a beneficiary’s position within the organization; the scope of a beneficiary’s authority; the entity’s employment of others who could have relieved a beneficiary from performing operational duties; the duties of a beneficiary’s subordinates; and other factors affecting a beneficiary’s business role. *Matter of Z-A-, supra*, at *4.

1. Job Duties

In response to the Director’s request for additional evidence, the parent’s president stated that the Beneficiary manages a team of executive assistants, security personnel, and, during busy times, temporary part-time administrative workers. The Beneficiary also reportedly liaises with company workers in other departments and external firms and agencies that provide services to the company, such as lawyers, tax accountants, and banks.

The parent’s president stated that the Beneficiary spends the following percentages of his time performing the following duties:

- Team Management (50%) - Supervises a team of executive assistants and security personnel, ensuring: meetings’ scheduling and coordination; correspondence management; travel arrangements; planning and implementation of security measures; compliance with company budget; completion of research and reports; and confidentiality maintenance.
- Acting as a Liaison (40%) - Communicates with other company managers, team members, partners, and outside entities. Participates in meetings. Responds to inquiries. Provides updates on company decisions. Works with attorneys to draft contracts for employees, contractors, and vendors. Handles complaints and legal issues. Works with tax accountants to coordinate tax preparation and filings. Works daily with accounting department and bank to prepare substantial payments or receive large payouts.

- Human Resources (HR) Support and Corporate Document Management and Organization (10%) – Recruits and vets employees and recommends hiring and firing. Ensures smooth employee orientation process. Coordinates employee leaves. Ensures company’s compliance with HR requirements. Oversees creation, storage, retrieval, and disposal of company documents and records.

The job duties do not support the Beneficiary’s employment “primarily” in a managerial capacity. The duties indicate that he performs personnel/team management duties, at most, 50% of the time. The duties therefore do not establish that he “primarily” manages personnel. *See* section 101(a)(44)(A) of the Act.

Also, as the Director found, the job’s title and duties conflict with other evidence. The Petitioner submitted a copy of the Beneficiary’s resume, stating the parent’s employment of him not as an executive administrator but rather as an “Executive Assistant.” The resume also states his performance of the following duties:

Especial administrative assistance to the CEO of the company. Calendar and event management, email management, documentation management, travel and accommodation booking, and corporate and external communication. HR Coordination services. Corporate document management and organization. Assistance with various social media and operational functions. Assistance with various social media, including monitoring corporate accounts and channels, and communicating with viewers and external parties.

The Beneficiary’s job title and duties on his resume differ from those stated by the parent’s CEO. The job duties on the resume do not indicate the Beneficiary’s management of personnel. Rather, the duties indicate his performance of daily, administrative tasks. The Petitioner has not explained the inconsistent job titles and duties. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies). Thus, the purported job duties do not support the Beneficiary’s employment abroad in a managerial capacity.

2. The Parent’s Organizational Structure

The parent’s organizational chart also does not support the claimed managerial nature of the Beneficiary’s foreign work. The chart indicates the parent’s employment of 18 people. The company’s top three tiers include its president, CEO, chief operating officer (COO), and logistics head. The Beneficiary is in the fourth tier alongside the company’s controller, brand and project manager, and CTO project manager. The chart shows the Beneficiary’s supervision of two executive assistants and two security workers, who are on the company’s bottom tier.

The parent’s organizational chart identifies the Beneficiary as a supervisor. But the chart does not indicate that any of his foreign subordinates manage or supervise others. Thus, as the Director found, the chart shows that the Beneficiary is a “first-line” supervisor. “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. The term

“professional” means an architect, engineer, lawyer, physician, surgeon, or teacher as listed in section 101(a)(32) of the Act or “any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.” 8 C.F.R. § 204.5(k)(2). The Petitioner has not demonstrated that the Beneficiary’s foreign subordinates are professionals. The company has not established that any of the subordinates’ occupations require baccalaureate degrees for entry. Also, the record indicates that only one of his subordinates has a bachelor’s degree. Thus, the parent’s organizational chart does not support the Beneficiary’s foreign employment in a managerial capacity.

Other evidence also undermines the claimed managerial nature of the Beneficiary’s work abroad. As evidence of the parent’s hiring of the Beneficiary in June 2021, the Petitioner submitted copies of employees’ email messages. The messages indicate that an executive assistant - whom the Beneficiary purportedly supervises - trained him in his position. The record also shows that the salaries of his purported subordinates exceed his own. These additional inconsistencies also cast doubt on the Beneficiary’s claimed employment abroad in a managerial capacity. The record therefore does not establish him as a personnel manager at the Canadian parent.

3. Function Manager

The Petitioner also contends that the Beneficiary works in a managerial capacity abroad because he manages an essential function of the parent. *See* section 101(a)(44)(A)(ii), (iii) of the Act (defining the term “managerial capacity” to include both personnel and function managers). To establish a beneficiary’s employment as a “function manager,” a petitioner must demonstrate that:

- the function is a clearly defined activity;
- the function is “essential,” i.e., core to the organization;
- the beneficiary primarily managed, as opposed to performed, the function;
- the beneficiary acted at a senior level within the organizational hierarchy or with respect to the function managed; and
- the beneficiary exercised discretion over the function’s day-to-day operations.

Matter of G- Inc., Adopted Decision 2017-05, *4 (AAO Nov. 8, 2017).

The Petitioner stated that the Beneficiary managed its parent’s administrative function. But the Petitioner did not meet all the requirements specified in *G-*. The company did not demonstrate that: the function is a clearly defined activity “essential” to the organization; he primarily managed - as opposed to performed - the function; or he exercised discretion over the function’s daily operations. The record therefore does not establish the Beneficiary’s foreign work as a function manager.

On appeal, the Petitioner contends that the Beneficiary works abroad in a managerial capacity because he: manages the parent’s administrative division or function; supervises the work of professional employees; has authority to recruit and train employees and to recommend their hiring and firing; and exercises discretion in managing the company’s administrative division.

But the record does not support the Petitioner’s contentions. As previously indicated, the company has not resolved evidentiary discrepancies. *See Matter of Ho*, 19 I&N Dec. at 591. If the Beneficiary

supervises others, why does his resume omit his supervisory duties? If his four subordinates are professionals, why does the record indicate that only one has a bachelor's degree? Because the Petitioner has not resolved these and other inconsistencies, the company has not demonstrated the Beneficiary's employment abroad in a managerial capacity. We will next consider whether he worked in Canada in an executive capacity.

B. Executive Capacity

The term "executive capacity" means work "primarily" involving:

- Directing the management of an organization or a major component or function of it;
- Establishing the goals and policies of the organization, component, or function;
- Exercising wide latitude in discretionary decision-making; and
- Receiving only general supervision or direction from higher-level executives, a board of directors, or stockholders of an organization.

Section 101(a)(44)(B) of the Act.

Thus, an L-1A executive must hold an elevated position within an organization. A beneficiary must have the ability to "direct the management" and "establish the goals and policies" of an organization or a major component or function of it. Section 101(a)(44)(B) of the Act. A petitioner must show how the organization, component, or function is managed and demonstrate that the beneficiary would "primarily" focus on its management, goals, and policies, rather than on its daily operations. *Id.*

The Petitioner contends that the Beneficiary works in an executive capacity because he: directs the management of the parent's administrative division; establishes the company's administrative goals, policies, and procedures; exercises wide latitude in discretionary decision-making regarding the administrative division; and receives only general oversight from the company's CEO and COO.

Again, however, because of unresolved evidentiary discrepancies, the record does not support the Petitioner's contentions. The job duties listed on the Beneficiary's resume do not include: directing management of the parent's administrative division; establishing administrative goals, policies, and procedures; or exercising wide latitude in discretionary decision-making. Also, the letter from the parent's president states that the Beneficiary only "helps" to develop organization policies, budgets, and plans. Further, the parent's organizational chart does not indicate his direction of the company's administrative division. The chart indicates that none of his subordinates are managers or supervisors. *See VHV Jewelers, LLC v. Wolf*, 17 F.4th 109, 114 (11th Cir. 2021) (upholding USCIS' interpretation of the phrase "direct the management" in section 101(a)(44)(B) of the Act to require an executive's management of a subordinate level of managerial employees).

As previously indicated, a petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. at 591. The Petitioner has not explained the inconsistencies regarding the Beneficiary's foreign duties and his position in the parent's organizational structure. The Petitioner therefore has not demonstrated the purported executive nature of his work abroad.

Our determinations that the Petitioner has not established the Beneficiary's foreign work in a managerial or executive capacity resolve this appeal. We therefore decline to reach and hereby reserve the company's appellate arguments regarding the length and continuity of the Beneficiary's foreign employment and the company's ability to support a manager or executive within one year of the petition's filing. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (holding that agencies need not make "purely advisory findings" on issues unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate, appellate issues where an applicant is otherwise ineligible for relief).

III. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's employment abroad in a managerial or executive capacity. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.