U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36077550

Date: JAN. 17, 2025

Appeal of California Service Center Decision

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

The Petitioner, a describing itself as a brand development agency, seeks to employ the Beneficiary as its "Chief of US and Latam Growth Officer" 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 the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. The matter is now before us on appeal under 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. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, 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.*

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The sole issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in a managerial capacity in the United States. The Petitioner does not claim on appeal that the Beneficiary would be employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary would be employed in a managerial capacity.

"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.

When examining the managerial capacity of a given beneficiary, we will review the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in a managerial capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

A. Duties

To be eligible for the L-1A nonimmigrant visa classification as a manager, the 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 the record does not establish that the offered position meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

If the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial 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). In determining whether a given beneficiary's duties will be primarily managerial, we consider the Petitioner's description of the job duties, the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

The Petitioner indicated that the Beneficiary would "play a pivotal role in shaping and executing the growth strategy for [the foreign employer] across the U.S. and Latam markets," managing its expansion into these regions, its strategic direction, developing new revenue streams, while "ensuring that these efforts are managing efficiently and effectively by the teams under this direction." The Petitioner submitted the following duty description for the Beneficiary as its asserted growth director:

1. **Strategic leadership and Market Advocacy: 20% of his time**
   - As the chief advocate for [the company] in the U.S. and Latam markets, [the Beneficiary] will lead the development and execution of comprehensive growth strategies that align with [the company's] global objectives. He will ensure that the U.S. and Latam divisions are integrated into the broader organizational goals through strategic planning and by fostering strong communication channels with [the company's] executive team.

- [The Beneficiary] will regularly engage with industry leaders, partners, and potential clients to promote [the company's] brand, vision and capabilities, ensuring the company's presence is firmly established and continuously growing in these markets.

2. **Client and Project Management: 20% of his time**
   - [The Beneficiary] will oversee the management and execution of all client projects within the U.S. and Latam markets. Rather than performing the project tasks himself, he will ensure that his teams in these regions, as well as those in Spain supporting these efforts, are effectively managing and executing these projects.
   - He will establish and enforce high standards for client satisfaction ensuring that all client interactions and project deliveries are meticulously managed by his team. [The Beneficiary] will also ensure that up-to-date project and client information is maintained across the organization, facilitating seamless coordination and execution.

3. **Business Development and Revenue Generation: 15% of his time:**
   - [The Beneficiary] will lead the identification, pursuit, and capitalization of growth opportunities within the U.S. and Latam markets. He will direct his team in conducting market research analyzing trends, identifying potential business opportunities.
   - While [the Beneficiary] will be responsible for the strategic direction of sales activities, the execution of these activities, including closing business deals and revenue forecasting, will be managed by his subordinates under his oversight. He will ensure that these efforts contribute positivity to [the company's] financial health in these regions.

4. **Operational Oversight and Resource Management: 20% of his time:**
   - [The Beneficiary] will have full oversight of [the Petitioner's] operations, including the implementation of strategic plans designed to optimize operational efficiency and performance. He will delegate the day-to-day operational tasks to his team, ensuring that they have clear objectives and the necessary resources to meet them.
   - He will manage the Human Resources, Financial, and Physical resources within [the Petitioner], ensuring that all resources are utilized effectively to meet organizational goals. [The Beneficiary] will maintain close supervision of these processes to ensure alignment with the broader company strategy.

5. **Team Building and Leadership: 10% of his time:**
   - [The Beneficiary] will lead the recruitment and development of staff within the U.S. division ensuring that the team reflects [the company's] values and is aligned with the company's long-term goals. He will not be involved in the direct recruitment process but will provide strategic direction and approval for key hires.
   - He will guide and support cross-functional teams ensuring that their work aligns with [the company's] mission and performance expectations. This guidance will be provided through regular meetings, performance reviews, and strategic directives.

6. **Sales and Pipeline Management: 10% of his time:**
   - [The Beneficiary] will oversee the development and management of a robust sales pipeline ensuring that his team consistently identifies and nurtures prospects and opportunities that lead to sustained growth in the U.S. and Latam markets.
   - In collaboration with [company] partners, [the Beneficiary] will ensure that strategic business plans are developed and executed effectively. While he will be responsible for the strategic direction the execution of these plans will be managed by his team.

7. **Financial and Revenue Forecasting: 5% of his time:**
   - [The Beneficiary] will be developing high-level strategies for sales activities and revenue forecasting ensuring that the financial outcomes are accurately predicted and aligned with [the company's] growth objectives.
   - He will strategically plan sales efforts to ensure sustained growth and profitability in these key markets delegating the tactical execution of these plans to his team maintaining oversight of their progress.

The Petitioner submitted a duty description for the Beneficiary and other supporting documentation leaving substantial uncertainty as to whether he would devote a majority of his time to qualifying managerial duties. The Beneficiary's duty description includes several apparent non-qualifying operational tasks indicating his direct involvement in sales activities and the direct provision services to clients, including regularly engaging with potential clients, overseeing *all* [emphasis added] client projects, ensuring that *all* [emphasis added] client interactions and project deliveries are meticulously managed, and ensuring that client information in maintained. Likewise, the Petitioner listed other non-qualifying tasks related to the daily provision of services such as lead identification, closing business deals, developing sales pipelines, and identifying and nurturing prospects. The prevalence of these sales related duties is particularly noteworthy since the Petitioner acknowledged that it would have no employees to perform these sales related duties in the United States as of the date the petition was filed. For instance, since the Petitioner would have no employees, several of the Beneficiary's asserted duties are question as there would be no U.S. and Latin American divisions to direct, "teams in regions" to manage in project delivery and client interactions, teams to direct in market research, strategic direction to provide to sales, or teams to manage in identifying and nurturing prospects.

The Beneficiary's focus on non-qualifying operational tasks is further reflected in submitted supporting documentation, such as him coordinating a solution with a U.S. based client in March 2023, communicating invoicing information in March 2024, and formulating a proposal for a client in the United States in August 2023.[1] Although the Beneficiary performed these tasks in his position abroad, it is reasonable to conclude that he would continue to perform these non-qualifying operational tasks in the United States given his stated duties and since he would be acting in a similar role. The Petitioner also provided breakdowns of how the Beneficiary would interact with his asserted subordinates abroad while in the United States and these reflected he would be tasked with communicating client requirements to foreign based employees, coordinating billing, formulating

[1] The petition was filed on June 17, 2024.

proposals, pitching proposals to clients, addressing new client requests, and adjusting service offerings for clients.

Although we acknowledge that the Petitioner asserted that foreign employees would assist the Beneficiary in the execution of his projects, his duties suggest the Beneficiary's direct involvement in nearly all the operational aspects of the business, and at minimum, they reflect him working alongside operational employees abroad in performing ordinary non-qualifying operational tasks. The Petitioner must resolve inconsistencies and 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). The affected party has the burden of proof to establish eligibility for the requested benefit at the time of filing the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also* Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts.").

Whether the Beneficiary is a managerial employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial. *See* sections 101(a)(44)(A) of the Act. Here, the Petitioner does not credibly document what proportion of the Beneficiary's duties would be managerial functions and what proportion would be non-qualifying. The Beneficiary's duties reflected on the record include substantial duties that are administrative or operational, but the Petitioner does not sufficiently quantify the time he would spend on these duties as opposed to qualifying managerial tasks. For this reason, we cannot determine whether the Beneficiary would primarily perform the duties of a manager under an approved petition. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In contrast to the substantial evidence reflecting the Beneficiary's likely performance of non-qualifying operational duties, the Petitioner provided little detail to substantiate his primary performance his claimed managerial-level tasks listed in his duty description. For example, the Petitioner provided little detail and supporting evidence to substantiate the growth strategies he would implement in the United States, organizational goals he would set, standards for customer satisfaction he would establish and enforce, strategies for sales direction in would put in place, and operational efficiencies he would create. Although we do not expect the Petitioner to articulate and document every managerial task to be performed by the Beneficiary, it is reasonable to expect that it would provide sufficient detail and documentation to corroborate his primary performance of qualifying duties as of the date the petition was filed.

Even though the Beneficiary holds a position with a managerial title within the organization, the fact that he will manage or direct the business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section 101(a)(44)(A) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" managerial in nature. *Id.* The Beneficiary may exercise discretion over some of the Petitioner's day-to-day operations and possess some requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that his actual duties would be primarily managerial in nature.

B. Staffing

If staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, we take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

As previously indicated, the Form I-129, Petition for a Nonimmigrant Worker, and provided tax documentation reflected that the Petitioner had no employees in the United States when the petition was filed. However, the Petitioner indicated that the Beneficiary was supported by employees abroad, including a project manager overseeing a senior brand strategist, a lead creative copy writer, and a lead designer. The submitted organizational chart also showed that the Petitioner planned to hire employees in the United States including an account manager supervising a copywriter and graphic designer. The chart further reflected that the Beneficiary was responsible for overseeing two independent contractor companies providing support to the Petitioner, including human resources and accounting firms.

On appeal, the Petitioner exclusively asserts that the Beneficiary would be employed as a function manager in the United States. The term "function manager" applies generally when a beneficiary is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that "(1) the function is a clearly defined activity; (2) the function is 'essential,' i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations." *See Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

Upon review, the Petitioner did not sufficiently establish that the Beneficiary would be employed as a function manager. More specifically, the Petitioner did not demonstrate that the Beneficiary would be primarily engaged in managing his function as opposed to primarily performing his function. Although we acknowledge that the Petitioner asserted that the Beneficiary would be supported by foreign employees abroad, none of these positions would account for the numerous sales related duties listed in his duty description, such as him regularly engaging with potential clients, overseeing all client projects in the United States, ensuring that all client interactions and project deliveries are meticulously managed, ensuring that client information in maintained, identifying leads, closing business deals, developing sales pipelines, and identifying and nurturing prospects. As of the date the petition was filed, there were no sales representatives or other similar employees to primarily relieve the Beneficiary of these non-qualifying operational tasks. In fact, the Petitioner's organizational chart reflected that it would hire an account manager responsible for managing its projects in the United States daily; and there were no employees to handle the Beneficiary's extensive sales and service-related duties in the United States when the petition was filed.

In addition, the Petitioner further asserted that the Beneficiary would oversee two independent contractor companies, including human resources and accounting firms. However, the Petitioner provided little supporting evidence to substantiate that these contractors would be engaged at a level

that would substantially relieve the Beneficiary from the non-qualifying operational duties reflected in his duty description and in the supporting evidence.

Therefore, it appears more likely than not that the Beneficiary would be primarily engaged in non-qualifying operational duties, handling all the Petitioner's sales activities and being involved in providing services to U.S. clients alongside his colleagues abroad, as was reflected in the submitted documentation showing him coordinating solutions, communicating invoicing information, and formulating proposals in 2023 and 2024. If the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial 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). In sum, the submitted evidence indicates it is more likely than not that the Beneficiary would be primarily performing his asserted function rather than managing it when the petition was filed. Therefore, the provided evidence does not adequately substantiate that the Beneficiary was acting as a function manager when the petition was filed.

For the foregoing reasons, the evidence reflects that the Director was correct in denying the petition as the Petitioner did not sufficiently establish that the Beneficiary would be employed in a managerial capacity in the United States.

ORDER: The appeal is dismissed.