U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36405717

Date: JAN. 22, 2025

Appeal of California Service Center Decision

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

The Petitioner, a retail and e-commerce business, 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 the record did not establish that the Beneficiary has been employed abroad in a managerial or executive or capacity and that the Petitioner would employ the Beneficiary in a managerial or executive capacity in the United States within one year. The matter is now before us on appeal pursuant to 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 their 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 that has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a new office operation no more than one year within the date of approval of the petition to support an executive or managerial position. Therefore, to establish eligibility for L-1A classification as a new office, a petitioner must submit evidence to establish that it has 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).

For purposes of the L-1A nonimmigrant classification, "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, 8 U.S.C. § 1101(a)(44)(A).

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The Director denied the petition, in part, based on a conclusion that the Petitioner did not establish its new office would support the Beneficiary's employment in a managerial capacity within one year.[1]

On appeal, the Petitioner asserts that the Director's analysis of this issue was "flawed," but it does not further address this ground for denial in its statement on the Form I-290B, Notice of Appeal or Motion. The Petitioner indicated on the Form I-290B that it would submit a brief and/or evidence to our office within 30 days of filing the appeal on November 6, 2024. The record reflects that we have not received a supplemental submission from the Petitioner to date and the record will be considered complete as presently constituted.

For the reasons provided below, we conclude the Petitioner has not established, by a preponderance of the evidence, that it would employ the Beneficiary in a managerial capacity within one year.

To establish that a beneficiary will be employed in a managerial capacity, a petitioner must show that they would perform all four of the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If the petitioner establishes that the offered position meets all four elements in the statutory definition, it must then prove that the beneficiary will be *primarily* engaged in managerial duties, as opposed to operational activities alongside the company's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

A petitioner filing for a new office 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 in nature within one year of the petition's approval. Therefore, we evaluate a petitioner's description of the beneficiary's proposed job duties in the context of the new office's business and hiring plans and any other relevant evidence of the company's expected development over that one-year period.

According to the Petitioner's five-year business plan, it intends to engage in the retail and online sale of women's apparel, shoes, and accessories. Specifically, within five years, it plans to operate three

[1] The Petitioner did not claim that the Beneficiary would be employed in an executive capacity, as defined at section 101(a)(44)(B) of the Act.

retail stores in Texas, while also maintaining its own e-commerce platform and an Amazon store. The Petitioner indicates it intends to employ 16 full-time workers within five years. Its projected staffing at the end of the first year of operations, according to the "employee hiring schedule" in the business plan, would include the Beneficiary as general manager and three sales associates who would work at the company's Spring, Texas store location.[2]

The Petitioner indicated that all of the Beneficiary's proposed duties as general manager would fall within the statutory definition of managerial capacity, noting that she would allocate 25 percent of her time to duties related to "managing the organization"; 10 percent of her time to "supervising and controlling the work of other supervisory employees"; 20 percent of her time to exercising authority to hire and fire or recommend other personnel actions for subordinate employees; and 45 percent of her time to tasks that involve "exercising discretion over the day-to-day operations" of the company. *See* section 101(a)(44)(A)(i)-(iv) of the Act.[3]

While we have considered the submitted job description, it evidently does not reflect the duties the Petitioner expects the Beneficiary to perform by the end of its first year of business operations. Rather, it contains multiple references to her expected interactions with and oversight of staff the Petitioner does not intend to hire within that timeframe, including store managers, the shipping/logistics manager, the marketing and social media manager, and other unspecified "managers" and "department heads." As noted, the Petitioner's business plan indicates that the company plans to hire only three retail sales associates during its first year of operations.

Accordingly, the job description, as written, states the duties the Petitioner expects the Beneficiary to perform when the company is fully staffed, several years from the date of filing, and can not be deemed a probative account of the duties she would realistically be expected to perform within one year. Again, the regulations allow for a one-year period for a new office petitioner to develop to the point that it will support a beneficiary in a qualifying managerial position. The Petitioner cannot demonstrate eligibility by claiming that the new office will support a managerial position within a period of several years.

Here, the record is sufficient to show that the Beneficiary's U.S. assignment will involve "managerial authority over the new operation" as required by 8 C.F.R. § 214.2(l)(3)(v)(B). However, based on the submitted job description, and for the additional reasons discussed below, the Petitioner has not demonstrated by a preponderance of the evidence that her actual day-to-day duties will be managerial within one year, or that she would perform all four of the high-level duties set forth in the statutory definition of managerial capacity within that period.

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[2] The business plan projects that the Petitioner will open its second retail location in year three and its third location in year four, with each store ultimately staffed by one store manager and three retail sales associates. The hiring plan indicates the company would also hire a shipping/logistics manager in the third quarter of year two, a marketing and social media manager in year three, a shipping/logistics specialist in year four, and a marketing specialist in year five.

[3] The Petitioner resubmitted the same job description in response to the Director's request for evidence (RFE) but provided a more detailed breakdown by assigning percentages to each of the 34 duties listed within the four stated areas of responsibility, indicating that each task would require between two percent and five percent of her time.

The definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. *Id.* 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." *Id.*

The Petitioner has consistently asserted that the Beneficiary, within one year, will primarily perform duties that fall within the statutory definition of "managerial capacity," and specifically that she will supervise and control the work of subordinate supervisors, managers or professionals as a "personnel manager." *See* section 101(a)(44)(A)(ii) of the Act. The Petitioner's description of the Beneficiary's proposed duties focuses on her oversight of "supervisory employees" and her authority over hiring, firing and other personnel matters.

While the business plan indicates the Petitioner will hire one managerial or supervisory employee (a store manager), in its second year, the record indicates that it intends to hire only retail store associates in its first year of operations. The record does not demonstrate that the retail store associates will have managerial or supervisory authority over other staff or that this job can be deemed a professional position.[4] Therefore, the Petitioner's business plan does not support its claim that the Beneficiary would be supervising and controlling the work of subordinate managers, supervisors or professionals within one year, as required by section 101(a)(44)(A)(ii) of the Act. It has not, in the alternative, articulated a claim that she would be managing an essential function of the organization.

In its initial letter supporting letter, the Petitioner stated that "during the initial months of operation, the US entity will receive support from its Mexican parent company's staff" noting that "this arrangement will continue until all projected positions for the first year have been filled." The Petitioner did not identify which Mexico-based staff would provide support to the U.S. office or list their expected duties or functions, nor did it claim that any staff from the foreign entity would continue to provide support to the U.S. entity beyond the first year. The Petitioner's initial proposed organizational chart did not depict any staff based in Mexico or otherwise indicate the Beneficiary would directly or indirectly supervise any foreign staff. Similarly, the Petitioner's description of the Beneficiary's proposed U.S. duties did not indicate she would be overseeing the parent company's employees in carrying out her responsibilities as its general manager.[5]

In its response to a request for evidence (RFE), the Petitioner repeated its statement that it would receive support from the parent company's staff "during the initial months of operation" and "until all projected positions for the first year have been filled." The Petitioner's response letter included a

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[4] To determine whether a beneficiary manages professional employees, we 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."

[5] The Petitioner indicated she would provide monthly and annual financial reports to the co-owner of the Mexican parent company and meet with the parent company's leadership to strategize on the U.S. company's performance and growth. It indicated these interactions with the parent company would require approximately six percent of her time.

revised U.S. organizational chart showing that the Beneficiary would directly or indirectly supervise ten of its Mexican parent company's employees, including its managing director, the heads of its management, IT/systems, design and editorial departments, and operational staff within these departments.[6] In a separate document, the Petitioner stated that the foreign employees identified on the organizational chart would "support the U.S. entity for the first year, as needed" and described the duties each individual would perform.

While the revised organizational chart submitted in response to the RFE indicated that the Beneficiary would directly or indirectly oversee most of the parent company's employees in carrying out her responsibilities as the Petitioner's general manager, the record does not support a determination that the foreign entity's employees would provide the claimed level of support or that they would otherwise enable the new office to support a managerial position within one year.

First, the Petitioner has consistently stated that the foreign entity's staff will provide support to the new office "during the initial months of operation" and continuing only until "all projected positions for the first year have been filled." The Petitioner has not claimed it would continue to rely on the foreign entity's staff after it fills its three store associate positions by the end of its first year of operations.

Second, the Petitioner's initial proposed U.S. organizational chart did not depict the Beneficiary's direct or indirect supervision of the parent entity's staff. A petitioner may not make material changes to a petition that has already been filed in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). Notably, neither of the job descriptions provided for the Beneficiary's proposed U.S. position indicates that she would provide direct or indirect supervision to the parent company's staff in fulfilling her responsibilities as general manager in the United States, or that she would have any regular interactions with those staff.

Based on these facts, the record does not demonstrate that the Beneficiary would primarily perform the duties of a personnel manager within one year based on her supervision of the foreign entity's managerial or supervisory employees. As already discussed, the Petitioner does not plan to hire any subordinate supervisory or managerial employees in the United States within the first year and has not shown that it would, within that timeframe, develop to the point where the Beneficiary would be responsible for the supervision and control of subordinate managers, supervisors, or professionals, as required under section 101(a)(44)(A)(ii) of the Act.

Finally, we acknowledge that certain duties the Petitioner claims will be assigned to the parent company's staff, such as assistance with the creation of marketing and promotional materials for the U.S. company, could reasonably be performed remotely. However, the Petitioner has not explained, for example, how the parent company's Mexico-based "operations" employee would feasibly "coordinate the daily operations of the physical store in Texas" by "managing inventory, overseeing product delivery, and implementing customer service protocols to ensure a smooth shopping experience." While we do not discount the possibility that foreign staff will provide certain types

[6] This revised organizational chart did not include any of the U.S.-based staff identified on the initial organizational chart for the new office, such as store managers and retail staff, the shipping/logistics manager, or the marketing and social media manager.

support to the Petitioner on an "as needed" basis during the initial year of operations as claimed, the record does not support a determination that the foreign staff would relieve the Beneficiary from involvement in the routine tasks required for the day-to-day operation of a retail store are not persuasive.

Overall, based on the hiring projections documented in the record and the Petitioner's claims that support from the foreign entity would not continue past the first year of operations, the record does not demonstrate that the Beneficiary would perform all four of the high-level duties required by section 101(a)(44)(A)(i)-(iv) of the Act, or that she would be relieved from performing a variety of operational and administrative functions required for the operation of the Petitioner's business within one year. While the Petitioner indicates it will hire retail associates to handle in-store customer transactions within that time frame, the record does not demonstrate that the Beneficiary would be relieved from first-line supervision of these non-professional employees or involvement in other non-managerial functions that would eventually be assigned to other U.S. staff in the future. Moreover, while the Petitioner states the Beneficiary will "oversee" all clothing sourcing and the development of relationships with suppliers, the Petitioner does not indicate its intent to hire any staff with product sourcing and purchasing responsibilities during its first five years of operations. Based on the evidence submitted, she would more likely than not be performing, rather than overseeing, these activities.

Therefore, although the Petitioner states the Beneficiary will "manage all business operations" for the new office, the record does not support a conclusion that she would be relieved from significant involvement in the routine non-managerial functions of the company within one year. Accordingly, the record does not demonstrate that the Beneficiary would, more likely than not, perform primarily managerial duties within that time frame.

Since the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Director's separate determination that the record did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

III. CONCLUSION

For the reasons discussed, the Petitioner has not established by a preponderance of the evidence that it would employ the Beneficiary in a managerial capacity within one year. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.