U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38207152

Date: JUNE 10, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner describes itself as a wholesale business and seeks to employ the Beneficiary temporarily as its Chief Technology Officer (CTO) under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

Service Center Operations (SCOPS) denied the petition concluding that the Petitioner did not establish that the Beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity. 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 because the Petitioner has not established that the Beneficiary will be employed in the United States in a managerial capacity.[1] Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Beneficiary's employment abroad. *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).

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity, or in a position requiring specialized knowledge 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)(1). The beneficiary must also be seeking to enter the United States temporarily to continue rendering his or her services to the same

[1] Despite referring to the Beneficiary's proposed position as "executive managerial," the Petitioner has clarified that its claim rests on the definition of managerial capacity and it does not claim that the Beneficiary would be employed in the United States in an executive capacity.

employer or a subsidiary or affiliate thereof in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(ii).

II. ANALYSIS

The issue to be addressed is whether the Petitioner provided sufficient evidence establishing that the Beneficiary's proposed position of CTO will be in a managerial capacity.

To be eligible for 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 does establish 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 that beneficiary's job duties, the company's organizational structure, the duties of the 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.

At the time of filing, the Petitioner provided the following list of the Beneficiary's proposed duties:

- Provide technical support to the CEO and Chairman in developing business strategies and ensuring alliance with the company's strategic goals.
- Develop and implement Technology Strategy and Planning.
- Lead Project Management and Oversight.
- Design and customize operational systems.
- Oversee Quality Assurance and Testing processes.
- Provide Technical Leadership and manage the technical team.
- Ensure Safety and Compliance across all operations.
- Manage Vendor and Supplier relationships.
- Facilitate Client Interaction and Support.
- Lead System Integration and Software Development.
- Drive Innovation and Research & Development initiatives.
- Oversee Budgeting and Resource Allocation.
- Monitor Market and Technology Trends.
- Manage Risk effectively.
- Maintain thorough Documentation and Reporting practices.

An organizational chart submitted at the time of filing depicts the Beneficiary's proposed position within a 13-person staffing structure headed by a president at the top of hierarchy. The chart shows a chief executive officer as next in the hierarchy, overseeing the Beneficiary and two other positions – an "Accounting and HR" position and a marketing director who also appears to hold the position as

the company's president. The chart further shows the Beneficiary overseeing an operations manager with two subordinates, a product director with one subordinate, and a project director with no subordinates, but no details were provided to explain how the Beneficiary would manage his subordinates. And while these prospective subordinates are listed by name in an employee roster, which includes each employee's date of hire and hourly wage, no information was offered about the employees' their respective job duties.

In a request for evidence (RFE), SCOPS pointed to evidentiary deficiencies and asked the Petitioner to provide evidence establishing how the Beneficiary's proposed position would meet the elements comprising the statutory definition of managerial capacity. SCOPS requested job duty summaries and evidence of wages paid to the Beneficiary's subordinates. Alternatively, the Petitioner was informed that it could provide evidence that the Beneficiary would manage a function rather than personnel by showing that the function to be managed is essential to the organization and that the Beneficiary would primarily manage, rather than perform the non-managerial duties of that function.

In response, the Petitioner provided a new job description listing and expounding on the Beneficiary's 12 "key responsibilities," which appear to include the items listed in the original job description. The Petitioner also resubmitted the original organizational chart and corresponding employee roster, but it did not provide job duty summaries for the Beneficiary's proposed subordinates as requested and thus it did not adequately explain how the Beneficiary would be relieved from having to primarily perform operational tasks while primarily performing duties of a managerial nature.

SCOPS acknowledged the Petitioner's response and submission of additional evidence but determined that the Petitioner did not provide sufficient information about the Beneficiary's subordinates, such as their job duties and qualifications, and it did not adequately discuss their positions in relation to the Beneficiary.

On appeal, the Petitioner states that over 80% of the Beneficiary's time will be spent performing managerial job duties, which will include providing leadership to four managerial subordinates in the design department and integration team. The Petitioner restates the Beneficiary's latest job duty breakdown, arguing that the Beneficiary's job descriptions is "specific, well-defined, and not vague or overly general." The Petitioner also provides an expert opinion and job descriptions for the six positions that were depicted as the Beneficiary's direct and indirect subordinates. For the reasons discussed below, the Petitioner's assertions are not persuasive.

Regarding the Petitioner's submission of subordinate employee job descriptions, because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence in response to the RFE, we will not consider it for the first time on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); *see also* 8 C.F.R. § 103.2(b)(11) (requiring that in response to a request for evidence or notice of intent to deny, all evidence must be submitted together at one time and that submitting only some of the requested evidence will be considered a request for a decision on the record).

And although we have reviewed the expert opinion from a university professor with "expertise and experience as an evaluator of academic credentials, professional experience, positions of employment, and industry norms in Business Administration, Management, and related areas," the record does not show that this individual has the relevant expertise in the statutory definition of managerial capacity pursuant to section 101(a)(44)(A) of the Act. This letter primarily contains bare assertions that align with the Petitioner's eligibility claims while lacking specific examples of how the author attained the knowledge of the statutory definition and its application within the context of the Petitioner's operation and the Beneficiary's proposed position. The textbook or common understanding of business terms will not supersede this statutory definition. Further, while we have discretion to use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r 1988).

We also point to an anomaly in the Petitioner's RFE response letter and a similar version of that letter, which the Petitioner now submits with a new date reflecting its creation in support of the appeal. Both versions of the letter list the name [redacted] in the signature line and indicate that this individual signed in their capacity as the Petitioner's CEO. We note that the corresponding organizational chart, which was included in the RFE response, does not list anyone named [redacted] and while it does show a [redacted] at the top of the organizational hierarchy, that individual is listed as the Petitioner's president and also as its marketing director, but not as its CEO. In fact, the organizational chart lists [redacted] in the position of CEO. This unresolved anomaly gives rise to questions concerning the accuracy and reliability of the information provided in the response letter. The Petitioner must resolve the described discrepancy with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Next, we will address ambiguities we observed in the content of the job description that was included in the RFE response letter discussed above. For example, the job duty breakdown states that the Beneficiary's technical support and leadership role will involve "cross-functional collaboration" which will entail "regular strategy meetings with senior management and departmental leaders." However, the senior management and departmental leaders are not specifically identified. This deficiency is particularly critical, given the newly arising questions about the Petitioner's senior management and the organizational chart's lack of specifically identified departments. To clarify, the organizational chart shows that the Beneficiary would oversee an operations manager, a project director, and a product director, but it is unclear whether these positions constitute "departmental leaders" as the Petitioner did not state that the respective components these three individuals oversee represent departments within the organization. The job description also does not clarify what type of input the Beneficiary would seek through "cross-functional collaboration."

In addition, the Petitioner did not clarify which tasks constitute developing and refining "long-term technology strategies" in the context of the Petitioner's business. The job description contains no examples of technology strategy nor a discussion of underlying subordinates' roles in supporting the Beneficiary within the scope of this vague job duty.

Next, the Petitioner stated that the Beneficiary's operational leadership role would involve "daily operations of the technology and engineering departments." Again, the organizational chart does not specifically identify a technology or an engineering department. Although the chart does include an

"Engineering & After-sales" position, only one employee is listed in that position and according to the Petitioner's payroll documents, the individual who occupied it in September 2024 (when this petition was filed) worked a schedule that is consistent with part-time employment, working no more than 66 hours and as little as 50 hours in a two-week period. As such, the Petitioner appears able to only offer the Beneficiary limited staffing support in the area of technology and engineering, thus leading us to question how the Petitioner would relieve the Beneficiary from having to perform the underlying operational tasks associated with his role in managing and ensuring the completion of technology and engineering projects.

Performing operational duties may also be associated with other responsibilities assigned to the Beneficiary. For instance, client interaction expressly tasks the Beneficiary with the duty of being the client's point of contact, thereby indicating that performing an operational task is central to this responsibility. And while operational tasks are not inherent to the Beneficiary's respective roles in system design and integration and research and development, both roles give rise to questions about the Beneficiary's level of involvement in non-managerial job duties. To clarify, the Beneficiary's job description states that system design and integration, like previously mentioned duties, involves technological solutions and collaboration with other teams to gather requirements. However, the record is unclear about who will execute the IT work that will lead to the technological solutions and with whom the Beneficiary would collaborate. And while the job description states that the Beneficiary's role in research and development will be to "lead efforts" in discovering new technologies and "oversee" the research being done, the organizational chart does not identify any research and development support staff. This ambiguity again leads us to question how the Petitioner would relieve Beneficiary from having to carry out the underlying non-managerial duties associated with leading research and development efforts.

We note that an employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See, e.g.*, sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988). That said, we do not rely exclusively on the Beneficiary's job description to establish whether the Beneficiary's proposed position would be in a managerial capacity.

Accordingly, we turn to the Petitioner's staffing, which we consider within the context of the Beneficiary's assigned duties and nature of the Petitioner's business. We examine the totality of the evidence which includes consideration of the proposed employer's staffing composition to determine whether the Petitioner is adequately staffed to support the Beneficiary in a position that will entail primarily managerial job duties. *See* section 101(a)(44)(A) of the Act. The evidence must substantiate that the Beneficiary's job duties and those of his subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position.

In the present matter, the Petitioner claimed 10 employees at the time of filing and in support of this claim it provided an employee roster listing ten individuals along with their position titles, dates of hire, and hourly wages. However, there is a discrepancy between the employee roster and information found in the Petitioner's third quarterly wage report for 2024 and its September 2024 payroll register.

Namely, neither the wage report nor the payroll register shows that the Petitioner paid wages to ten employees in September 2024 when this petition was filed. *See* 8 C.F.R. § 103.2(b)(1) (requiring that eligibility must be established at the time of filing). Rather, the payroll register lists a total of six employees and this information is consistent with the wage report, which shows that while the Petitioner started the quarter with nine employees in July 2024, it ended up with six employees in September 2024. And neither document shows that the Petitioner had ten employees at the time of filing, as claimed in the petition form.

Of the employees the organizational chart depicts as the Beneficiary's direct subordinates, neither the operations manager (who is shown as overseeing warehouse and logistics) nor the product director (who is shown as overseeing the engineering and after sales position) was listed in the Petitioner's September 2024 payroll register. While both individuals are listed on the Petitioner's quarterly wage report, neither was listed in the September 2024 payroll register, thus indicating that these two positions were not filled at the time of filing. This leads us to further question the Petitioner's ability to employ the Beneficiary in a managerial capacity at the time of filing, as doing so would indicate that the Petitioner had the support staff to relieve the Beneficiary from having to primarily perform non-managerial functions, such as overseeing warehouse and logistics matters or matters concerning engineering and after sales. Given that the individuals assigned to these subordinate positions were not compensated by the Petitioner at the time of filing, it is unclear whether the Petitioner had the necessary support staff for the Beneficiary to manage. *See* section 101(a)(44)(A)(ii) of the Act.

It is also worth noting that the operations component that would be subject to the CTO's supervision does not appear to have been adequately staffed at the time of filing. Namely, the organizational chart submitted at the time of filing listed [redacted] and [redacted] in the positions of warehouse and logistics, respectfully. These two positions are depicted as subordinates of the operations manager, who is directly subordinate to the CTO. However, the Petitioner's September 2024 payroll register does not show any compensation paid to [redacted] nd the individual named in the warehouse position was listed as working 60 hours in a two-week period, thus indicating a schedule that is consistent with part-time employment. *Cf.* 20 C.F.R. § 655.731(c)(5).

As discussed above, the record contains a deficient job description and ambiguities concerning the Petitioner's organizational hierarchy. Therefore, the record does not support the Petitioner's claim that the Beneficiary would perform primarily managerial duties in the course of managing a department or subdivision as the Petitioner's CTO.

III. CONCLUSION

The Petitioner has not established that it will employ the Beneficiary in a managerial capacity in the United States. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.