U.S. Citizenship and Immigration Services

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

In Re: 7605782

Date: MAR. 2, 2020

Appeal of California Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, a medical equipment and supplies distributor, seeks to continue the Beneficiary's temporary employment as its general manager and marketing director under the L-1A nonimmigrant classification for intracompany transferees.[1] 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 that the record did not establish that the Petitioner would employ the Beneficiary in a managerial or executive capacity under an extended petition.

On appeal, the Petitioner asserts that it met its burden to demonstrate that the Beneficiary will be employed in a managerial capacity, specifically as a function manager, and contends that the Director failed to apply the preponderance of the evidence standard to the facts presented.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. 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.*

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period March 2018 until March 2019. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary 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 one year within the date of approval of the petition to support an executive or managerial position.

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

## II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The sole issue to be addressed is whether the Petitioner established that it would employ the Beneficiary in a managerial capacity in the United States. Specifically, the Petitioner claims that it will employ the Beneficiary as a function manager.

"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.

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead 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." *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

When assessing the managerial or executive nature of an offered position, we examine a petitioner's description of the job's duties. *See* 8 C.F.R. § 214.2(l)(3)(ii) (requiring an L-1 petitioner to submit "a detailed description of the services to be performed"). Beyond the required description of the job duties, we examine the company's organizational structure, the duties of a 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 a business.

### A. Job Duties

Based on the definition of managerial capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary will be

*primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the company's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533.

The Petitioner indicates that the Beneficiary will continue to serve as its general manager and marketing director. The Petitioner is a subsidiary of a Chinese medical equipment distribution company and states that it was established in 2017 "to purchase and export medical equipment products from the United States to China," to "identify American medical equipment suppliers, conduct market research, identify American medical technology and products appropriate to the Chinese market, and export medical equipment and devices to deliver to end users in China."

In a supporting letter, the Petitioner described the Beneficiary's duties as follows:

> Marketing strategy and implementation – 65%
> - Manage the implementation of corporate policy and organizational goals and direct personnel on day-to-day business operations with respect to marketing
> - Establish financial and operational strategy and related metrics for the US operations with respect to marketing
> - Establish business strategies and policies in conjunction with the Board of Directors and manage their implementation with respect to marketing
> - Review activity reports and financial statements prepared by subordinates and their staff in the US and China to determine progress and status in attaining objectives and revise objectives in accordance with current conditions
> - Collaborate with executives of the parent company in the area of leadership and direction regarding short- and long-term strategic fiscal plans and the development of same . . .
>
> Marketing budgets and contracts – 10%
> - Management of marketing budget
> - Authority to negotiate, approve and sign business contracts as well as purchase/service agreements, without fiscal limitation, on behalf of the company
>
> Marketing campaign – 10%
> - Manage marketing campaign across a variety of paid and earned channels, including display advertising, conferences, direct mail, etc. while continuously optimizing costs
>
> Delegation of assignments and Personnel authority, including oversight of recruitment, hiring, training, compensation, promotion, promotion bonus and termination of employees – staff management – 15%
>
> - Manage delegation of assignments of the company's marketing department staff in China and as the US team grows to ensure completion of projects efficiently and without delay.

This description is overly broad, as it focuses on the Beneficiary's authority over policy, procedures, strategies and overall marketing operations, without explaining the specific tasks he would be performing on a day-to-day basis within the scope of the Petitioner's business. In fact, many of the duties listed under the "Marketing strategy and implementation" heading simply paraphrased the statutory definition of "executive capacity" at section 101(a)(44)(B) of the Act. The Petitioner did not provide examples of specific policies, goals or strategies for which the Beneficiary would be responsible or provide supporting evidence related to the company's marketing campaigns or activities. Conclusory assertions regarding the Beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *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); *Avyr Assocs., Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Here, the Petitioner did not provide the necessary detail or an adequate explanation of the Beneficiary's proposed activities in the course of his daily routine.

In response to a request for evidence (RFE) in which the Petitioner was instructed to provide a more detailed description of the Beneficiary's duties and the percentage of time he would spend on specific tasks, it stated:

> He will provide overall direction for the company in respect to day-to-day management of marketing (65%) ensuring that there is sufficient infrastructure (both employees and materials). In performing this task, he will establish business objectives for his team – 10%. He will establish financial and operational strategy and related metrics – 5%. He will set standards, responsibilities and procedures for his team to follow – 5%. He will provide feedback on areas where improvement is required – 5%. He will review activity reports and financial statements prepared by subordinates and their staff to determine progress in attaining objectives and revise objectives in accordance with current conditions 5%. His team will create marketing campaigns, promotional plans and gather data on our competitors and market conditions, while he oversees their work – 20%.
>
> On a weekly basis, he will have team meetings to monitor the teams' progress . . . -5%. He will evaluate the team's marketing activities to ensure that our marketing materials are targeting the appropriate audience – 5%. His team will report to him any issues that arise and he will make decisions based on his insight and expertise on how best to guide his team to resolve these issues – 5%.
>
> As part of his management of the essential function of marketing, he is in charge of marketing budgets and contracts (10%). . . .
>
> To ensure completion of marketing projects and marketing campaigns (10%) are completed efficiently, [the Beneficiary] will manage delegation of assignments and set the expectations for his team (15%). He will assess the team's efforts to meet deadlines and reassign job duties to his team as needed.

This description was not more detailed than the one provided at the time of filing and was not responsive to the Director's request that the Petitioner identify the Beneficiary's specific day-to-day

tasks and the amount of time he would be spend on each task. In order to establish that the Beneficiary will be employed as a function manager, the Petitioner must establish that his actual duties are primarily managerial. Simply stating that he will allocate 65% of his time to providing "overall direction for the company in respect to day-to-day management of marketing," is not sufficient.

Neither of the submitted descriptions adequately details how the Beneficiary primarily manages the company's essential marketing function. The latter description does not provide examples of policies, standards and procedures he is expected to implement, issues that have been reported to or resolved by him, or marketing assignments he has delegated, and is not supported by evidence of marketing activities, projects, or campaigns undertaken by the U.S. company under his management. In fact, the Petitioner's tax return indicates that it allocated $275 to "marketing and promotion" expenses in 2018. As noted, the Petitioner indicated that it was established by its parent company, in part, to "identify American medical equipment suppliers, conduct market research, and identify American medical technology and products appropriate to the Chinese market." As discussed further below, the record does not establish who is performing the day-to-day duties associated with these activities.

Reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros.*, 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Here, the Petitioner focuses on the Petitioner's level of authority over marketing activities, but has not provided the necessary detail or an adequate explanation of the actual tasks he performs to manage the function. Further, we note that, while the Petitioner consistently identifies the Beneficiary's title as "general manager and marketing director" of the U.S. company, the position descriptions provided appear to only encompass his marketing role, and the Petitioner did not explain what he does as "general manager" or how he divides his time between these two positions.

The fact that the Beneficiary will manage a component or function of 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. While the Beneficiary may exercise discretion over any marketing activities carried out by the Petitioner and possess the requisite level of authority with respect to discretionary decision-making, the submitted position descriptions alone are insufficient to establish that his actual duties would be primarily managerial in nature.

B. Staffing and Organizational Structure

The Petitioner indicated that it had three employees at the time of filing in March 2019 – a chairman and chief financial officer who is senior to the Beneficiary on the submitted organizational chart, the Beneficiary, and a contracts manager who reports to the Beneficiary.

The Petitioner stated that the contracts manager is responsible for "overseeing, developing and facilitating contracts," reviewing legal documents and import/export agreements, keeping detailed records, maintaining shipping documents, and ensuring that the company's tax returns are filed.

The Petitioner indicates that the Beneficiary also supervises a China-based marketing manager who supervises five marketing specialists, each with their own regional responsibility within China. The Petitioner provided a January 2019 payroll record for its parent company which lists all of these

employees as "marketing department" staff; it does not distinguish the claimed managerial employee from the marketing specialists and all departmental staff earned similar wages.

The Petitioner states that the marketing manager performs duties that appear to overlap with those attributed to the Beneficiary including responsibility for marketing budgets, planning and directing marketing policies and programs for the organization, and developing marketing strategies and plans. In addition, the Petitioner indicates that the marketing specialists monitor and forecast marketing and sales trends for the company's products, implement promotional plans for targeted clients, gather data on competitors and market conditions, and measure the effectiveness of marketing programs in their assigned regions (Beijing, Shanxi and Hubei, Southeast China, Northeast Provinces and Inner Mongolia). The Petitioner maintains that these employees relieve the Beneficiary from performing day-to-day, non-qualifying tasks, allowing him to focus on managerial responsibilities and primarily manage the marketing function.

When staffing levels are considered in determining whether an individual will act as a manager, an officer must also take into account relevant evidence in the record concerning the reasonable needs of the organization as a whole, including any related entities within the "qualifying organization," giving consideration to the organization's overall purpose and stage of development. *See* section 101(a)(44)(C) of the Act. Here, however, the record does not establish that the Beneficiary relies on the marketing staff members based in China to accomplish the non-managerial duties associated with the day-to-day operations of the U.S. subsidiary. The position descriptions for these staff indicate their focus on marketing the foreign entity's products in regional Chinese markets. The position descriptions for the foreign staff do not mention the U.S. subsidiary or the U.S. market, and the Petitioner has not provided evidence of their participation in the U.S. company's operational activities.

The Beneficiary was transferred to the United States to serve as general manager and marketing director of the U.S. subsidiary, thus suggesting that he is responsible for not only marketing, but for the overall operations of the new company, which, as of the date of filing, had one subordinate employee. It is appropriate to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company or a company. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

As noted, the U.S. subsidiary was established "to purchase and export medical equipment products from the United States to China," to "identify American medical equipment suppliers, conduct market research, identify American medical technology and products appropriate to the Chinese market, and export medical equipment and devices to deliver to end users in China." Since the foreign staff are not claimed to be involved in these activities, and the record does not establish that the Beneficiary's one subordinate employee single-handedly performs all administrative and operational tasks, it is reasonable to conclude that the Beneficiary would be required to participate in the Petitioner's day-to-day operational duties.

Performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify a beneficiary as long as those tasks are only incidental to their primary duties. However, a petitioner still has the burden of establishing that a beneficiary will "primarily" perform managerial duties. *See* section 101(a)(44) of the Act. Whether a beneficiary is a "function" manager turns in part

on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial. *See Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016).

On appeal, the Petitioner briefly summarizes the broad position description provided at the time of filing and reiterates that the Beneficiary "will oversee the marketing campaign and will provide overall direction, including establishing the business strategies and policies." Based on this, the Petitioner asserts that "USCIS should be able to conclude that the Beneficiary's employment was managerial and he was not primarily performing the non-qualifying day-to-day duties of the function."

For the reasons discussed, we find that the Petitioner did not meet its burden to clearly describe the duties the Beneficiary would perform to manage the marketing function, did not describe what his role as general manager of the three-person U.S. subsidiary entails, and did not establish that the foreign entity's marketing department relieves him from significant involvement in the day-to-day operations of the U.S. subsidiary, which include market research, purchasing, administrative and other functions which have not been assigned to his one U.S.-based subordinate. Based on these deficiencies, we cannot determine the nature of the Beneficiary's actual day-to-day duties or conclude that such duties would be primarily managerial in nature.

## III. CONCLUSION

The appeal will be dismissed because the Petitioner has not established that it would employ the Beneficiary in a managerial capacity under the extended petition.

**ORDER:** The appeal is dismissed.