U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37077399

Date: MAR. 10, 2025

Appeal of California Service Center Decision

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

The Petitioner, a company asserting that it provides oil and gas engineering services, seeks to extend the Beneficiary as its president 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 on multiple grounds, concluding the Petitioner did not establish that: 1) the Beneficiary's former foreign employer was doing business abroad as defined by the regulations, 2) it was doing business in the United States as defined by the regulations, 3) the Beneficiary was employed abroad fulltime for one continuous year in the three preceding his application for admission, 4) the Beneficiary was employed abroad in a managerial or executive capacity, and 5) 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 as the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. Since this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its appellate arguments regarding the Director's other bases for denying the petition. *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. 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 OR EXECUTIVE CAPACITY

The sole issue we will analyze is whether the Petitioner established that it would employ the Beneficiary in a managerial or executive capacity in the United States.

As a preliminary matter, the Petitioner discusses the concept of res judicia on appeal, asserting that the Director's denial was improper since the Petitioner had nonimmigrant L-1A visas approved on behalf of the Beneficiary based on the same facts.[1] However, each nonimmigrant petition filing is an individual proceeding with a separate record and burden of proof. In determining statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii). Further, a petitioner 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). Therefore, nonimmigrant visa petitions approved years prior have no bearing on the Beneficiary's eligibility when the petition was filed. We are not required to approve applications or petitions where eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). As such, we will review this issue de novo without regard to prior visa approvals, based on the evidence submitted on the record in this proceeding.

The Petitioner does not clarify whether the Beneficiary would be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or executive duties under section 101(a)(44)(B) of the Act. The Petitioner must clearly describe the duties to be performed by the Beneficiary and indicate whether such duties are either in a managerial or executive capacity. The Petitioner must demonstrate that the Beneficiary's responsibilities will meet the requirements of one or the other capacity. While in some instances there may be duties that could qualify as both managerial and executive in nature, it is the petitioner's burden to establish that the beneficiary's duties meet each criterion set forth in the statutory definitions for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the beneficiary will be primarily employed in either a managerial or executive capacity. Therefore, the Petitioner's failure to clearly articulate this in support of the petition, and on appeal, leaves substantial question as to the Beneficiary's eligibility. Regardless, we will analyze both bases for eligibility in this decision.

"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

[1] U.S. Citizenship and Immigration Services (USCIS) records reflect that the Beneficiary had two prior non-immigrant L-1A intracompany transferee visas approved from July 17, 2019, to July 16, 2020, and from July 16, 2020, to July 14, 2022.

day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

"Executive capacity" means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

When examining the managerial or executive 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 or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

A. Duties

To be eligible for L-1A nonimmigrant visa classification as a manager or executive, a petitioner must show that the beneficiary will perform the high-level responsibilities set forth in the statutory definition at 101(a)(44)(A) (i)-(iv) or (B)(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 or executive position.

If a petitioner establishes that the offered position meets all elements set forth in the statutory definition, it must prove that the beneficiary will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside its 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 or executive, 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, established in 2016, indicated that it is a wholly owned subsidiary of oil and gas services company based in Nigeria. The Petitioner stated it was created in the United States for the purpose of "handling services, such as engineering, procurement, manpower and recruitment." The Petitioner explained that it was "working to establish the company" in the [redacted] area and provided a business plan laying out its plans for this purpose.[2] The Petitioner submitted the following duty description for the Beneficiary as its president:

- Create blueprint policies for the company and implements them for the betterment of the employees in the country– 10% of his time

[2] The petition was filed in April 2024.

- Establishing company's plans which include pricing and discount policies, preparing budgets, revenue projections and establishing productivity measure and goals– 10% of his time
- Creating innovative ideas to the business and looks for opportunities to expand and create a goodwill in the market– 10% of his time
- Develop strategies to boost sales and profits of the company and plan the future prospects of the company– 15% of his time
- Reviewing weekly reports from sales, accounts and Business Development Team and providing input on ways to improve and increase sales and overall efficiency– 10% of his time
- Approving and/or signing all company purchase contracts, sales contracts and payroll checks– 10% of his time
- Meeting with sales manager to assess current sales, explore new business markets and suggest ways to increase overall sales– 15% of his time
- Monitor overall department operations and ensure efficient procurement and delivery of goods– 10% of his time
- Review company finances to ensure compliance with set out budgets and review the accounts receivables and payables– 5% of his time
- Social gathering with key customers, government representatives and community organizations– 5% of his time

In denying the petition, the Director concluded the Beneficiary's duties lacked sufficient detail and indicated that the Petitioner did not provide sufficient evidence to substantiate his day-to-day managerial or executive level duties. Notably, the Petitioner does not address this conclusion of the Director on appeal, nor does it discuss the Beneficiary's duties with specificity. As we have noted, analyzing the Beneficiary's duties and confirming that they will be primarily managerial, or executive-level tasks is a critical step in assessing his eligibility for the requested benefit.

Upon review, we agree with the Director that the Petitioner did not sufficiently articulate the Beneficiary's managerial or executive-level duties. The Petitioner did not detail or document the blueprint policies the Beneficiary created, pricing plans or budgets he set, business expansion he directed, or sales strategies he developed. Likewise, the Petitioner did not explain or document purchase or sales contracts he approved, financial decisions he made, or key customers he worked with. In addition, the Beneficiary's duties discuss him coordinating with sales employees, a business development team, and a sales manager. However, the Petitioner indicated in support of the petition, and states on appeal, that it had no employees beyond the Beneficiary when the petition was filed. This lack of detail and documentation is particularly noteworthy since USCIS records reflect that the Beneficiary was admitted into the United States in December 2019 on an approved L-1A nonimmigrant visa, yet there was no supporting documentation to substantiate his performance of any managerial or executive-level tasks more than four years later when the petition was filed. The lack of evidence leaves substantial question as to whether the Beneficiary would primarily perform qualifying managerial or executive-level tasks when the petition was filed. Specifics are clearly an important indication of whether a beneficiary's duties are primarily managerial or executive in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *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

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).

Even though the Beneficiary holds a senior position 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 or executive capacity within the meaning of section 101(a)(44)(A) and 101(a)(44)(B) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" managerial or executive in nature. *Id.* The Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the 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 or executive in nature.

B. Operations and Staffing

Pursuant to section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

In denying the petition, the Director pointed to the Petitioner's organizational chart showing that he had no subordinates and highlighted his asserted tasks coordinating with other subordinate employees. On appeal, the Petitioner asserts that the Director improperly denied the petition only on the basis that the Beneficiary was its sole employee. The Petitioner indicates the Beneficiary entered the United States in December 2019, but that its hiring plans were not effectuated because of the COVID-19 pandemic.

In the petition, the Petitioner indicated that it had only one employee and listed its gross annual and net annual income as "growing entity." The Petitioner submitted an organizational chart reflecting that it projected to hire a general manager supervising a manager– business development, a project manager, and a finance manager. The chart further showed that the manager– business development would supervise a procurement officer, and the project manager would oversee a recruitment coordinator and a design engineer.

The submitted evidence indicates that the Petitioner was not sufficiently operational to support the Beneficiary in a managerial or executive capacity when the petition was filed in April 2024. On appeal, the Petitioner submits a request for evidence (RFE) response it submitted in 2017, related to another L-1A nonimmigrant visa petition, including a business plan it also provided in support of the current petition. It is also noteworthy that the Petitioner already filed a new office petition[3] that was

[3] 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 his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.* The petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the

approved on behalf of the Beneficiary, and he entered pursuant to this nonimmigrant visa in December 2019, more than four years prior to the date this petition was filed. However, there is little evidence to indicate the Petitioner acted substantially on these business plans during this time, including hiring its projected staff. Although the Petitioner submitted a 2023 IRS Form 1120, U.S. Corporation Tax Return, reflecting it earned approximately $150,000 during that year, it is not clear how this revenue was generated as it provides no supporting evidence to support any transactions of goods or services nor explanations as to the goods and services it provided in the United States. For instance, the 2023 IRS Form 1120 also reflects that the company spent approximately $51,000 on "material and equipment," however; there is little evidence to support these asserted operations. In fact, it provided a business plan dating back to 2017 reflecting wholly prospective operations and vaguely asserted that it would provide services, such as procurement, engineering design, manpower supply, and recruitment services. However, there is little evidence to corroborate that the Petitioner ever provided any of these services in the United States, and through its own admission, it employed no staff to provide them when the petition was filed. 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. at 582, 591-92. Although we acknowledge the disruption caused by the COVID-19 pandemic to businesses, the statutory and regulatory requirements nonetheless apply, and the Petitioner must demonstrate that it was operating sufficiently when the petition was filed to support the Beneficiary in a qualifying capacity where he would be primarily relieved from performing non-qualifying operational tasks. Here, the Petitioner has not met this burden.

The statutory 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. 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.* If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*).

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).

First, the Beneficiary cannot qualify as a personnel manager under the regulations without subordinates. Further, the Petitioner does not specifically articulate how the Beneficiary would qualify

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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).

as a function manager. The Petitioner did not describe the function the Beneficiary would manage, or how he would primarily manage a function rather perform it, a particularly questionable discrepancy since it had no employees to perform the non-qualifying operational tasks of the business when the petition was filed. Therefore, the Petitioner did not sufficiently demonstrate that the Beneficiary would be employed in a managerial capacity.

The statutory definition of the term "executive capacity" focuses on a person's elevated position. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of an organization or major component or function thereof. Section 101(a)(44)(B) of the Act. To show that a beneficiary will "direct the management" of an organization or a major component or function of that organization, a petitioner must show how the organization, major component, or function is managed and demonstrate that the beneficiary primarily focuses on its broad goals and policies, rather than the day-to-day operations of such. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the organization, major component, or function as the owner or sole managerial employee. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

The Petitioner's statements and the supporting evidence leave substantial uncertainty as to whether it was sufficiently operational to support him in a qualifying executive capacity when the petition was filed in April 2024. On appeal, the Petitioner acknowledges that it had no employees but contends that the Beneficiary could nevertheless qualify as an executive as its sole employee. Regardless of this assertion, the submitted evidence and statements of the Petitioner reflect that it had limited operations as of the time the petition was filed leaving uncertainty as to whether it could have supported the Beneficiary in an executive capacity. For example, the Petitioner had no employees to provide its asserted oil and gas services when the petition was filed and there is no evidence that it provided any services in the United States since the Beneficiary's entry as a non-immigrant more than four years ago. The lack of subordinates leaves substantial question as to who performs the non-qualifying operational tasks of the business, if any, and there is little detail and no supporting documentation to substantiate the Beneficiary's primary performance of qualifying executive-level tasks during his lengthy stay in the United States. Therefore, it is doubtful given the Petitioner's apparent operations when the petition was filed, the submitted supporting documentation, and the nature of the business, that the Beneficiary would have acted in an elevated executive-level capacity where he would primarily focus on broad goals and policies rather than day-to-day operations.

For the foregoing reasons, the Petitioner has not sufficiently established that the Beneficiary would be employed in an executive capacity.

ORDER: The appeal is dismissed.