U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37918187

Date: MAY 15, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an importer and distributor of building materials, seeks to extend the Beneficiary's temporary employment as its managing partner and president under the L-1A nonimmigrant classification for intracompany transferees.[1] *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 field denied the petition, concluding the record did not establish that the Beneficiary would be employed in a managerial or executive capacity under an extended petition. The matter is now before us on appeal. 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, 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 a one-year period ending on September 9, 2024. 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 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.

"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.

"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, 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) and (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 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 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 indicated that it was a warehousing and distribution extension of its parent company based in Canada, a company selling Polyvinyl Chloride (PVC) building materials in the United States to "general builders, developers, applicators, and end-users nationwide." The Petitioner stated that the Beneficiary would oversee the expansion of his foreign employer to the United States. The Petitioner submitted the following duty description for the Beneficiary in support of the petition for its first year of operation:

- Creating a strategic sales plan and monitoring its implementation– 30%
- Establishing a strategy for time efficiency and cost reduction– 12%
- Reviewing and analyzing labor, costs, budgetary requirements, and performance data to measure productivity and goal achievement to determine areas of cost reduction and program involvement– 8%
- Determining staff requirements, hiring employees, introducing [Petitioner] policies and procedures– 10%
- Staying alert to new trends in the industry– 5%
- Reviewing and analyzing sales and activity reports, potential sales, and performance data to measure productivity and goal achievement to determine areas of cost reduction– 20%
- Establishing and communicating goals and objectives– 5%
- Overseeing inter-departmental cooperation– 5%
- Reviewing and analyzing sales and activity reports, potential sales, and performance data to measure productivity and goal achievement to determine areas of cost reduction.

SCOPS later issued a request for evidence (RFE) stating that the Beneficiary's duties did not sufficiently describe the tasks he performed during the first year within the context of its operations and organizational structure. Therefore, the field requested that the Petitioner provide a breakdown of the duties he would perform under an extended petition and how they would be executive or managerial in nature. SCOPS noted that the Petitioner submitted apparent operational duties and asked for a more detailed breakdown of the daily tasks he would perform.

In response, the Petitioner provided the following duty description during his first year:

Strategic oversight

- Monitoring revenues and profitability to align services with market demand.
- Establishing and achieving financial objectives by setting budgets, preparing operational reports, and analyzing variances.
- Designing and implementing long-term strategic business plans to support organizational growth.

Operational and logistical leadership

- Enhancing operational efficiencies through the optimization of inventory management systems.
- Overseeing GMROII (Gross Margin Return on Inventory Investment) reporting to ensure optimal inventory performance.
- Negotiating and managing domestic freight contracts to streamline shipping and delivery operations.
- Supervising inventory flow, ensuring alignment between supply and demand while minimizing costs.

Supplier and Partner Relationships

- Managing the relationship with the Company's primary supplier in Portugal, leveraging his fluency in Portuguese to maintain effective communication and collaboration.
- Strengthening partnerships with suppliers and vendors to ensure quality, consistency, and timely fulfillment of business needs.
- Facilitating the negotiation of favorable terms for goods and services to support financial objectives.

Personnel and Organizational Management

- Supervising recruitment, training, and staff development to ensure a skilled and motivated workforce.
- Overseeing inter-departmental collaboration and ensuring all team members align with the Company's goals.
- Making executive decisions on personnel matters, including hiring, dismissals, and role adjustments.

Continuous Professional Development

- Staying informed about industry trends and innovations by attending workshops, trade shows, and other professional events.

In denying the petition, SCOPS indicated that they requested a detailed description of the Beneficiary's duties during the first year and those he would perform under an extended petition. The field further stated that the Petitioner did not provide sufficient description of the Beneficiary's duties and noted the description reflected several apparent non-qualifying operational tasks. SCOPS also explained that the new duty description did not specify the percentage of time he would spend on each of his daily tasks, as requested.

On appeal, the Petitioner emphasizes that, as an executive, the Petitioner was tasked with formulating and implementing high level strategies, while overseeing the launch of the foreign employer's U.S. operations. The Petitioner stated that the Beneficiary made strategic decisions regarding diversifying its product offerings to meet customer needs, shaped corporate culture, supervised recruitment and training, optimized its supply chain, set brand strategy, and held final authority over the budget, approving major expenditures, investments, and financial decisions. With respect to his claimed managerial authority, the Petitioner asserts that the Beneficiary would oversee subordinate managers and departments, hold personnel authority, oversee major projects, and direct company operations.

As discussed by the field, the Petitioner submitted a duty description in response to the RFE indicating his likely involvement in the non-qualifying operational tasks of the new company, such as managing inventory flow, negotiating freight contracts, coordinating with the company's primary supplier in Portugal, ensuring the timely fulfillment of business needs, and attending workshops, trade shows, and other professional events. SCOPS indicated that these duties were particularly questionable since the Petitioner did not specify the time he devoted to each task, making it difficult to discern whether the Beneficiary was primarily performing qualifying managerial or executive-level duties. On appeal, the Petitioner does not remedy this deficiency but provides additional generic managerial and executive-level duties. It is also noteworthy that the Petitioner had the opportunity to remedy this deficiency in response to the RFE, but did not do so.

Whether the Beneficiary is a managerial or executive employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the Petitioner does not document what proportion of the Beneficiary's duties were managerial or executive-level duties at the end of the one-year new office period and what proportion were non-qualifying operational tasks. The Petitioner submitted evidence indicating that the Beneficiary's duties likely included several administrative or operational tasks, but it did not sufficiently quantify the time he would spend on these duties as compared to qualifying managerial or executive-level duties. For this reason, we cannot determine whether the Beneficiary was primarily performing the duties of a manager or executive at the end of the one-year new office petition period. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Further, the Petitioner did not sufficiently articulate or document the managerial or executive-level tasks he was performing at the end of the one-year new office period in September 2024. As discussed by the Petitioner, the Beneficiary was tasked with setting up its operations in the United States, but it provided little detail and supporting documentation to substantiate that he had transitioned away from the non-qualifying operational tasks inherent to setting up an office to qualifying managerial or executive-level duties. For instance, the Petitioner did not specify or document the budgets he set, the strategic business plans he implemented, operational efficiencies he put in place, or contracts he negotiated. Likewise, the Petitioner did not sufficiently detail or document the partnerships with suppliers and vendors he fostered or the personnel decisions he made. In fact, on appeal, the Petitioner provides another set of generic managerial or executive-level duties that could apply to any manager or executive working in any type of business. The Petitioner did not specify or support the strategic decisions he made in diversifying product offerings, supply chain decisions he made, brand strategies he put in place, budgetary decisions he made, or major expenditures, investments, and financial decisions he made. 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).

In sum, the Petitioner's statements and the submitted evidence suggest that the Beneficiary was likely involved in a majority of the day-to-day operational tasks of the business at the end of the one-year new office petition, leaving uncertainty as to whether it was sufficiently operational to support him in a qualifying managerial or executive capacity at that time. An applicant or petitioner must establish that he or she remains eligible for the benefit sought from the time of filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1); *Matter of Kazemi*, 19 I&N Dec. 49, 51 (BIA 1984) ("We have

long held that an application for admission to the United States is a continuing application and admissibility is determined on the basis of the law and the facts existing at the time the application is finally considered.").

Even though the Beneficiary holds a senior position within the organization, the fact that he will manage or direct a 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 (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. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If a business does not have the necessary staffing after one year to sufficiently relieve the beneficiary from performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

The Petitioner made conflicting statements on the record as to its staffing leaving substantial uncertainty as to whether it was sufficiently operational to support the Beneficiary in a managerial or executive capacity at the end of the one-year new office petition. In the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner indicated that it had eleven employees when the petition was filed in November 2024. In a support letter provided with the petition, the Petitioner indicated that it had hired an operations manager as well as "two warehouse managers, an administrative assistant, an office manager, and a regional sales representative," or a total of seven employees including the Beneficiary. A projected organizational chart included in a submitted business plan reflected that the Petitioner had two managing partners (one of which being the Beneficiary) overseeing an operations manager. The operations manager was shown to supervise the remainder of the operational employees discussed. In response to the RFE, the Petitioner stated that "the company has increased to 5 employees working under and reporting to the Beneficiary," including "a Warehouse Manager who reports to the Beneficiary and who manages warehouse personnel." However, an organizational chart provided with the RFE reflected that the Petitioner had four subordinates, a marketing coordinator, two regional business development managers, and a warehouse manager overseeing one warehouse coordinator. The Petitioner also submitted a 2024 IRS Form 941, Employer's Quarterly Federal Tax Return from the third quarter of 2024, coinciding with September 2024, and reflecting that it had only three employees.

The Petitioner provided assertions and evidence indicating that it had a range of eleven to only three employees, leaving question as to its actual staffing levels in September 2024, the conclusion of its

one-year new office period. Therefore, the Petitioner did not sufficiently establish its organizational chart in September 2024 to demonstrate that he was acting in a managerial or executive capacity at this time. The Petitioner must resolve discrepancies 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). Again, an applicant or petitioner must establish that he or she remains eligible for the benefit sought from the time of filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1); *Matter of Kazemi*, 19 I&N Dec. at 49, 51. Again, if a business does not have the necessary staffing after one year to sufficiently relieve the beneficiary from performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)

The Petitioner claims on appeal that it sufficiently demonstrated that the Beneficiary qualifies as a personnel manager based on his supervision of subordinate managers, including the referenced warehouse manager, regional business development managers, and marketing coordinator. 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*). Since the Petitioner did not specifically assert that the Beneficiary would be employed as a function manager and the submitted evidence indicated that he would oversee subordinate staff, we decline to analyze whether he would qualify as a function manager within one year.

The Petitioner did not sufficiently establish that the Beneficiary would qualify as a personnel manager under an extended petition. As we have discussed, the Petitioner provided tax documentation from the end of the one-year new office period in September 2024 indicating that it still only had three employees at that time, leaving uncertainty as to its assertions regarding the company's operations and the Beneficiary's asserted supervision of the regional business development managers and marketing coordinator. The Petitioner provided no supporting documentation to substantiate that he was primarily delegating duties to subordinate managers or professionals when the petition was filed. The Petitioner also did not provide supporting evidence to substantiate his personnel actions and authority. The evidence indicates it is more likely than not that the Petitioner was not sufficiently operational and staffed to support the Beneficiary as a manager of subordinate supervisors and professionals at the end of the one-year new office period.

The Petitioner further asserts that the Beneficiary would qualify as an executive under an approved extension. 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 submitted evidence and statements of the Petitioner reflect that it likely had limited operations at the end of the one-year new office period leaving substantial uncertainty as to whether it could have supported the Beneficiary in an executive capacity at this time. For instance, as noted, the Petitioner provided tax documentation reflecting that it had hired only three employees at the time the one-year new office period ended. There is also no supporting evidence showing the Beneficiary's direction of subordinates, and as discussed, there is little documentation to support his performance of qualifying executive-level duties. In fact, the supporting documentation suggests that he was likely involved in most of the operational aspects the Petitioner when the one-year new office period ended. The Petitioner submitted few examples and little supporting documentation to substantiate that he was primarily focused on the broad goals and policies of the company, rather than its day-to-day operations in September 2024.

For the foregoing reasons, the Petitioner has not sufficiently established that the Beneficiary would be employed in a managerial or executive capacity under an extended petition.

ORDER: The appeal is dismissed.