U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

April 14, 2016 **PM-602-0131**

Policy Memorandum

SUBJECT: *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016)

This policy memorandum (PM) designates the attached decision of the Administrative Appeals Office (AAO) in *Matter of Z-A-, Inc.* as an Adopted Decision. Accordingly, this adopted decision establishes policy guidance that applies to and binds all USCIS employees. USCIS personnel are directed to follow the reasoning in this decision in similar cases.

Matter of Z-A-, Inc. clarifies that, when determining whether the beneficiary of an L-1A nonimmigrant classification will primarily manage an essential function, USCIS officers must weigh all relevant factors including, as pertinent in the instant case, evidence of the beneficiary's role within the wider qualifying international organization.

Use
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Contact Information
Questions or suggestions regarding this PM should be addressed through appropriate directorate channels to the AAO.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

ADOPTED DECISION

MATTER OF Z-A-, INC.

ADMINISTRATIVE APPEALS OFFICE
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
U.S. DEPARTMENT OF HOMELAND SECURITY

April 14, 2016[1]

(1) While an L-1A function manager may use his or her business expertise to perform some operational or administrative tasks, he or she primarily must manage an essential function.

(2) To determine whether a beneficiary's job duties will be primarily managerial in nature, an adjudicating officer must consider the totality of the record and weigh all relevant factors, including: the nature and scope of the petitioner's business; the petitioner's organizational structure, staffing levels, and the beneficiary's position within the petitioner's organization; the scope of the beneficiary's authority; the work performed by other staff within the petitioner's organization, including whether those employees relieve the beneficiary from performing operational and administrative duties; and any other factors that will contribute to understanding a beneficiary's actual duties and role in the business.

(3) 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.

FOR THE PETITIONER: Roy Watson, Esquire, Bedford, Massachusetts

The Petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, to extend the Beneficiary's stay in nonimmigrant status as an L-1A intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L) (2012), and 8 C.F.R. §§ 214.1(c)(1) and 214.2(l)(14)-(15). At the time the new office extension petition was filed, the Petitioner employed the L-1A nonimmigrant Beneficiary as its Vice President and Chief Operating Officer.

[1] On September 13, 2013, we issued this decision as a non-precedent. We have reopened this decision on our own motion under 8 C.F.R. § 103.5(a)(5)(i) for the purpose of making revisions in preparation for U.S. Citizenship and Immigration Services designating it as an Adopted Decision.

The Director, California Service Center, denied the petition requesting an extension of the Beneficiary's stay in L-1A status, finding the Petitioner failed to establish it would employ the Beneficiary in a managerial capacity, and certified her decision to the Administrative Appeals Office (AAO) for review. 8 C.F.R. § 103.4. We withdraw the Director's initial decision and approve the petition.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Petitioner is a U.S. subsidiary established in December 2011. The Petitioner's Japanese parent company is a publicly-traded firm with over $900 million in sales. The parent company owns a research and development laboratory, seven factories, and nine subsidiaries located in Japan and five other countries. The Petitioner imports, markets, and distributes packaging solutions designed and manufactured by its parent company for customers in the medical, pharmaceutical, and food industries.

The Beneficiary is the Vice President and Chief Operating Officer of the Petitioner. He was selected to head the Petitioner's United States operations based on his previous overseas management experience. He reports to the General Manager of the parent company's International Department, who in turn reports to the President and Chief Executive Officer of the parent company. The Beneficiary's duties include: directing and managing the Petitioner's financial, legal, trade, administrative, and sales activities; establishing financial and budgetary plans and goals; reviewing and monitoring sales activities performed by the Petitioner's sales manager; liaising with the parent company; and interacting with customers and outside service providers.

With regard to its staffing levels, the Petitioner employs a sales manager and an administrative specialist at the U.S. office. In addition, the Petitioner regularly retains outside professional service providers. The record substantiates that eight staff members within the parent company's headquarters office in Japan also exclusively support the Beneficiary's work. The Petitioner closely coordinates and interacts with its parent company's International Department, which performs sales, production planning, export, and distribution activities. The Petitioner established that the aforementioned foreign staff includes three sales employees, a shipping and invoicing specialist, and four engineers involved in research, development, and production.

The Director denied the petition, concluding that the Petitioner did not establish that it would employ the Beneficiary in a qualifying managerial capacity as defined under section 101(a)(44)(A) of the Act. The Director determined that, because the Petitioner does not have an "organizational structure" sufficient to support the Beneficiary in a qualifying managerial or executive position, the Beneficiary would primarily perform sales duties. The Director's analysis of the company's structure took into account the two U.S. payroll employees, but not the duties performed by the eight foreign staff located in Japan.

In its brief submitted on certification, the Petitioner asserts that the Director mischaracterized the nature of the Beneficiary's responsibilities and disregarded his placement within the corporate group's organizational hierarchy. The Petitioner contends the evidence establishes that the Beneficiary primarily manages the essential function of market development in the Americas, a role

which reasonably requires him to rely on services from the foreign staff members whose duties directly support the U.S. subsidiary. The Petitioner emphasizes that the Beneficiary influences decision-making at the highest level of the parent company with respect to U.S. market development and expansion, and that his responsibilities do not primarily involve day-to-day sales, marketing, and other non-managerial functions.

II. APPLICABLE LAW

Section 101(a)(15)(L) of the Act describes the L-1 nonimmigrant classification, in pertinent part, as follows:

> [A]n alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof *in a capacity that is managerial*, executive, or involves specialized knowledge. . . .

(emphasis added). This case presents a "managerial capacity" scenario. The Act defines "managerial capacity" as follows:

> The term "managerial capacity" means an assignment within an organization in which the employee primarily—
>
> (i) manages the organization, or a department, subdivision, function, or component of the organization;
>
> (ii) 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;
>
> (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
>
> (iv) 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; *see also* 8 C.F.R. § 214.2(l)(1)(ii)(B) (defining "managerial capacity").

Finally, section 101(a)(44)(C) of the Act provides:

> If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the [Secretary of Homeland Security][2] shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

III. ANALYSIS

The central issue here is whether the Petitioner established that the Beneficiary will be employed in a qualifying "managerial capacity" as defined in the Act and Department of Homeland Security regulations. Section 101(a)(44)(A) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B). As part of that inquiry, we must examine whether the Petitioner established that the Beneficiary will primarily manage an essential function within the organization.[3] Our focus today, however, is not what constitutes such an essential function, but rather whether U.S. Citizenship and Immigration Services, when analyzing whether the Beneficiary will primarily manage the function, must consider evidence presented by the Petitioner of personnel employed by another related entity within the qualifying organization who perform day-to-day non-managerial tasks for the petitioning entity.

A. Managerial Capacity

The definition of "managerial capacity" in section 101(a)(44)(A)(ii) of the Act and the implementing regulation allow for both "personnel managers" and "function managers." Personnel managers must primarily supervise and control the work of other supervisory, professional, or managerial employees, whereas function managers must primarily manage an essential function within the organization.

When examining the managerial capacity of a beneficiary, we look first to the petitioner's description of the job duties. A petitioner who claims that the beneficiary qualifies as a function manager must identify the essential function and describe in detail the "services" or job duties to be performed in managing that function. *See* 8 C.F.R. § 214.2(l)(3)(ii).

After examining the petitioner's description of the job duties and services to be performed by the beneficiary, the next step is to determine whether those duties will be primarily managerial in nature. In doing so, we must consider the totality of the record and weigh all relevant factors, including: the nature and scope of the petitioner's business; the petitioner's organizational structure, staffing levels, and the beneficiary's position within the petitioner's organization; the scope of the beneficiary's authority; the work performed by other staff within the petitioner's

[2] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

[3] The Petitioner does not assert that the Beneficiary qualifies as a personnel manager.

organization, including whether those employees relieve the beneficiary from performing operational and administrative duties; and any other factors that will contribute to understanding the beneficiary's actual duties and role in the business.

Ultimately, we must determine whether the petitioner has demonstrated that the beneficiary will primarily *manage*, as opposed to *perform*, the essential function. While an L-1A function manager may use his or her business expertise to perform some operational or administrative tasks, he or she must primarily manage an essential function. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988) ("[T]he [L-1A] employee's duties must be primarily at the managerial or executive level. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity."); *see also Brazil Quality Stones, Inc. v. Chertoff*, 531 F.3d 1063, 1070-71 (9th Cir. 2008) (explaining that the petitioner bore the burden of demonstrating the beneficiary "was primarily engaged in overseeing essential functions of [the] business rather than performing them himself"); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003) (determining that the former INS reasonably concluded that the L-1A position was "not primarily managerial" because the record failed to establish that the alien was "not merely performing the functions of the company"); *IKEA US, Inc. v. U.S. Dep't of Justice INS*, 48 F. Supp. 2d 22, 24-25 (D.D.C. 1999) (sustaining agency's determination that a beneficiary did not qualify as a function manager where the petitioner failed to document what proportion of the beneficiary's duties would be managerial functions) (citing *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991)).

Finally, when staffing levels are considered in determining whether an individual will act as a manager, we 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,"[4] giving consideration to the organization's overall purpose and stage of development. *See* section 101(a)(44)(C) of the Act. Given that Congress created this visa classification to "eliminate problems . . . faced by American companies having offices abroad in transferring key personnel freely within the organization," it is reasonable for a petitioner to assert that the organizational needs include those of its related foreign components. *See generally* H.R. Rep. No. 91-851, § 1(b), at 5 (1970), *as reprinted in* 1970 U.S.C.C.A.N. 2750, 2754. To support this type of claim, the petitioner bears the burden of submitting probative evidence to establish the reasonable staffing needs of the organization and how those needs are material to whether the beneficiary will act as a manager. An adjudicating officer in turn must assess all relevant evidence in the record concerning the beneficiary's position within the wider "qualifying organization" in determining whether the petitioner has satisfied that burden.

B. The Application of Law to Facts

Upon examination of the detailed position description and the totality of the evidence, the Petitioner has established that the Beneficiary's responsibilities will primarily consist of managerial duties associated with development of the United States market for the Petitioner's international organization. Specifically, the Beneficiary will manage the implementation of all policies and strategies and establish goals pertaining to the import, sales, and marketing of the parent company's

[4] See generally 8 C.F.R. § 214.2(l)(1)(ii)(G) for the definition of "qualifying organization."

specialized products into the market. The record here substantiates the Petitioner's claim that the Beneficiary manages an essential function, as contemplated by sections 101(a)(44)(A)(i) and (ii) of the Act. *See also* 8 C.F.R. § 214.2(l)(1)(ii)(B)(1)-(2).[5] Further, the record demonstrates that, as a member of the senior management team for the Americas region, the Beneficiary functions at a senior level within the organizational hierarchy and with respect to the function managed. *See* section 101(a)(44)(A)(iii) of the Act; *see also* 8 C.F.R. § 214.2(l)(1)(ii)(B)(3). Finally, the Beneficiary has significant discretionary authority over the day-to-day activities related to development of the United States market. *See* section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(4).

The Director's decision focused on the size of the Petitioner and the small number of employees working for the Petitioner in the United States. The Director, however, did not address the Petitioner's substantial evidence relating to the support provided by the overseas staff located in Japan. Specifically, while the Director considered staffing levels to determine whether the Beneficiary acts in a managerial capacity, the Director did not evaluate relevant evidence in the record concerning the reasonable needs of the organization as a whole, consistent with its overall purpose and stage of development, as required by section 101(a)(44)(C) of the Act. *Cf. Matter of Leacheng Int'l, Inc.*, 26 I&N Dec. 532, 535 (AAO 2015) (taking into consideration the organization as a whole for purposes of satisfying the "doing business" requirement for the conceptually similar immigrant classification for multinational managers and executives authorized under section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C) (2012)).

The evidence establishes that the United States Petitioner, established for 16 months at the time of filing, works closely with its Japanese parent company's International Department, which employs technical, sales, and administrative staff who are dedicated exclusively to supporting the growth of the group's business in the Americas. The record amply substantiates the existence of the foreign staff and the nature of and need for the services they provide to the Petitioner and the organization as a whole. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (clarifying that going on record without supporting evidence does not suffice to meet the burden of proof). Notwithstanding the small number of staff in the United States, the Petitioner has provided evidence that it achieved revenues of nearly $600,000 in the previous eight months.

The Beneficiary reports to the General Manager of the parent company's International Department as part of the wider qualifying international organization. Eight employees in Japan are required to support the day-to-day operational needs of the Petitioner by performing administrative and other duties related to production planning, technical support, research and development, sales, logistics, and distribution for the U.S. market. That a petitioner may have only a few employees directly on its payroll, although a relevant consideration in the determination of whether a beneficiary qualifies as an L-1A manager, does not necessarily compel a conclusion that the beneficiary primarily performs day-to-day operational duties. *See Brazil Quality Stones*, 531 F.3d at 1070 ("[A]n organization's small size, standing alone, cannot support a finding that its employee is not acting in

[5] Although the record demonstrates that market development is an essential function in this matter, our decision should not be read to imply that this function is necessarily essential to all businesses. As with all factual determinations, we will assess essentiality case-by-case based on the record at hand.

a managerial capacity, but size is nevertheless a relevant 'factor in assessing whether [its] operations are substantial enough to support a manager.'") (quoting *Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006)); *see also* section 101(a)(44)(C) of the Act ("An individual shall not be considered to be acting in a managerial or executive capacity . . . merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.").

Here, the record shows that the Beneficiary, in his role as Vice President, will continue to rely on the support of the eight staff members in Japan and two employees in the United States to accomplish non-managerial duties, and that the purpose of his transfer is to oversee the short-term and long-term expansion of the Petitioner's presence in what is still a new market. Given the overall purpose of the organization and the organization's stage of development, the Petitioner has established a reasonable need for a senior-level employee to manage the essential function of developing its brands and presence in the United States, notwithstanding that the Petitioner employs directly only two other employees in the United States.

While the Beneficiary may be required to perform some operational or administrative tasks from time to time, the Petitioner has established by a preponderance of the evidence that the Beneficiary will primarily manage an essential function, while day-to-day, non-managerial tasks will be performed by a combined staff of 10 employees of the Petitioner and its parent company, located in the United States and Japan, respectively.

IV. CONCLUSION

It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). The Petitioner has sustained that burden.

ORDER: The Director's initial decision is withdrawn and the petition is approved.

Cite as *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016)