



**U.S. Citizenship
and Immigration
Services**

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

In Re: 33491048

Date: SEP. 05, 2024

Appeal of California Service Center Decision

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

The Petitioner, a manufacturer and seller of leather and textile goods, seeks to temporarily employ the Beneficiary as its chief executive officer (CEO) 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, concluding record did not establish that the Beneficiary was employed abroad in a managerial or executive capacity and that she would be employed in the same 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 was employed abroad in a managerial or executive capacity. 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 basis 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. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. 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 also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. FOREIGN EMPLOYMENT IN A MANAGERIAL CAPACITY

In a letter submitted in response to the Director's request evidence (RFE), the Petitioner stated that the Beneficiary was employed in a "senior executive position" as the foreign employer's chief marketing officer and referred to her "typical executive duties" as well her direction of management and establishment of goals and policies. As such, the Director analyzed whether the Beneficiary was employed abroad as an executive. Now on appeal, the Petitioner states that "it is only claiming to have employed the Beneficiary in a managerial position abroad." As such, the sole issue we will analyze is whether the Petitioner established that the Beneficiary was employed in a managerial capacity abroad.

"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.

When examining the asserted foreign managerial capacity of a given beneficiary, we will review the petitioner's description of the job duties abroad. The petitioner's description of the foreign job duties must clearly describe the duties performed by the beneficiary and indicate whether such duties were in a managerial 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, the Petitioner must show that the Beneficiary performed the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A) of the Act. If the record does not establish that the foreign position meets all four of these elements, we cannot conclude that it was a qualifying managerial position.

If the Petitioner establishes that the foreign position meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary was *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside other foreign employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's foreign duties were primarily managerial, we consider the Petitioner's description of the job duties abroad, the foreign company's organizational structure, the duties of a beneficiary's subordinate employees abroad, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the foreign business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in the business abroad.

The Petitioner indicated that it is a “fair-trade registered, social enterprise committed to providing holistic, living wage employment in...India through the sale of hand-to-market leather and textile goods in the United States.” The Petitioner stated that it operated a manufacturing department in India and that the Beneficiary worked for an affiliate in the United Kingdom with limited operations. Although the Beneficiary was located abroad, the submitted evidence reflected that she primarily performed tasks for the Petitioner and its manufacturing department in India. The Petitioner explained the Beneficiary’s day-to-day tasks abroad as follows:

Direct and oversee marketing campaign planning and strategy– 30% of her time

- The Beneficiary oversees marketing campaign strategy which includes refining, messaging, setting up creative direction, setting campaign objectives, defining target audiences and providing feedback and suggestions for improvement.
- The Beneficiary is responsible for approving creative assets and copywriting to ensure content aligns with the Petitioner’s brand identity and campaign messaging.

Team management– 20% of her time

- The Beneficiary manages team, outside agencies and contractors to ensure marketing and sales strategies are being implemented. She will address any issues or concerns and ensure all are aligned and working toward set goals and tasks.

Direct and establish CRM strategy– 20% of her time

- The Beneficiary set CRM strategy with the goal of fostering strong relationships with the Petitioner’s network of wholesale customers. This strategy is broken down into tasks that are delegated to the sales and CRM manager.
- The Beneficiary hired an outside contractor to build the Petitioner’s CRM system in 2023. This was created using Air Table to store all customer data and to segment customers into groups.
- The Beneficiary set communication strategy for each of these groups and the CRM manager is responsible for implementing. This typically includes emailing and messaging store with various sales messages.

Direct and oversee sales strategy to bring in new leads– 10% of her time

- The Beneficiary oversees sales strategy and supported by the CRM manager who is responsible for researching leads, emailing leads using set templates approved by the Beneficiary and managing active leads until these convert to sales.

Review key metrics and analytics– 5% of her time

- The Beneficiary reviews key data such as website traffic, social media engagement, email campaign performance and sales data used to create and refine marketing strategy through identifying trends, anomalies and areas for improvement.

Direct and oversee influencer marketing strategy– 5% of her time

The Beneficiary sets the Petitioner's influence marketing strategy and is supported by the warehouse manager on the day-to-day duties of messaging prospective influencers, managing existing relationships and sending PR packages.

Manage marketing budget— 5% of her time

The Petitioner submitted supporting documentation indicating that the Beneficiary was substantially involved in performing non-qualifying operational duties while employed abroad.¹ For instance, the Petitioner submitted the Beneficiary's foreign employment contract from June 2022 as chief marketing officer reflecting that she was engaged to "provide services" to her "client," including developing relationships with content creators, working on trend forecasting, collection briefs, and mood boards, and identifying "pop-ups" at tradeshow. In response to the RFE, the Petitioner further indicated that the Beneficiary was tasked with attending tradeshow, networking with clients, establishing vendors, and connecting with media vendors while employed abroad.

Further, supporting documentation reflected the Beneficiary's direct involvement of all operational aspects of these sales related duties while she was employed abroad. For example, submitted supporting documentation reflects her paying import duties and handling the shipment of goods in April, September, and October 2023, creating "buysheet" projections for the company during 2023 and 2024, attending several tradeshow throughout 2023, and making accounting payments to her own independent company throughout her engagement abroad. Likewise, the Petitioner provided evidence showing the Beneficiary booking her flights and hotels to attend tradeshow, processing several handbag orders and taking specifications from clients in February 2024, and purchasing materials for a display booth at a tradeshow in December 2023. In addition, quarterly tasks lists indicate the Beneficiary's responsibility for issuing purchase orders for the supply of goods in India during 2023, while invoices and emails show her arranging for and paying for a photographer in April and June 2023.

On appeal, the Petitioner provides additional evidence reflecting her likely performance of non-qualifying operational duties abroad, including her sending specifications and arranging for the return of sample handbags from a photographer in March and May 2023, providing information on product designs in January 2023, coordinating with an information technology professional on a purchasing system in June 2023, and arranging for samples, their shipment, and wooden blocks for a display in December 2023. In sum, the submitted evidence reflects that the Beneficiary was primarily involved in the day-to-day operational tasks of the business while employed abroad, despite the Petitioner's contradictory assertion on appeal that she had "almost zero role in the day-to-day functions that are administrative." The affected party 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) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts."). The Petitioner must resolve inconsistencies and ambiguities in

¹ The Petitioner indicated that the Beneficiary began employment with her foreign employer as chief marketing officer in October 2022 and the petition was filed on January 9, 2024.

the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Whether the Beneficiary is a managerial employee turns on whether the Petitioner has sustained its burden of proving that their duties are “primarily” managerial. *See* sections 101(a)(44)(A) of the Act. Here, the Petitioner does not document what proportion of the Beneficiary’s foreign duties were managerial functions and what proportion were non-qualifying operational tasks. The Petitioner submitted evidence indicating that the Beneficiary’s duties abroad likely included many administrative or operational tasks, but it did not sufficiently quantify the time she spent on these duties as compared to qualifying managerial duties. For this reason, we cannot determine whether the Beneficiary primarily performed the duties of a manager abroad. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). In contrast, although the Petitioner asserts that the Beneficiary was primarily relieved from performing non-qualifying operational tasks by claimed subordinates and contractors within the company’s greater organization, it submits little supporting evidence to substantiate this contention.

Even though the Beneficiary held a senior position within the organization, the fact that she managed or directed the business abroad 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. By statute, eligibility for this classification requires that the duties of a foreign position be “primarily” managerial in nature. *Id.* The Beneficiary may have exercised discretion over the foreign employer’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 foreign duties were primarily managerial.

B. Operations and Staffing

The Petitioner submitted a foreign organizational chart indicating that she acted as the chief marketing officer supervising a sales and CRM manager and a warehouse manager. Despite this organizational chart reflecting that she had two subordinates, the Petitioner now states that it did not “claim that the Beneficiary is supervising or has supervised or is directing or has directed a requisite number of employees.” As discussed, the Petitioner also previously asserted that the Beneficiary was employed in an executive capacity abroad, but now contends on appeal that she was employed as a function manager. Therefore, we observe that the Petitioner’s shifting assertions leave question as to the Beneficiary’s claimed role, regardless we will analyze whether the Beneficiary qualified as a function manager abroad.

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).

On appeal, the Petitioner asserts that the Beneficiary had “complete control of all things marketing, including hiring and firing employees, creating the marketing budget, and entering into professional services agreements with contractors to execute the marketing strategies.” However, the Petitioner did not sufficiently establish that the Beneficiary was acted as a function manager abroad. Despite having discretionary authority over marketing operations within the company, the Petitioner provided little supporting documentation to corroborate the Beneficiary’s being relieved her performing the operational tasks of her claimed function or primarily managing her function. In fact, as we have discussed, the Petitioner submitted substantial documentation reflecting her direct performance of numerous non-qualifying operational tasks abroad related to all phases of the company’s marketing, including coordinating with potential clients and vendors, attending tradeshow, paying import duties and handling the shipment of goods, creating “buysheet” projections for the foreign employer’s CEO, booking travel, processing handbag orders, among other operational tasks.

In sum, the Petitioner provided little supporting documentation to substantiate that the Beneficiary was primarily directing and managing her asserted function abroad rather than performing it, and at the very least, the provided evidence reflects her performance of ordinary operational activities alongside her foreign colleagues. *See Family Inc. v. USCIS*, 469 F.3d at 1313, 1316 (9th Cir. 2006). Therefore, the preponderance of the evidence reflects that the Beneficiary was more likely engaged in non-qualifying operational duties abroad. Therefore, the Petitioner did not sufficiently establish that she was primarily engaged as a function manager abroad. *See Matter of G- Inc.*, Adopted Decision 2017-05.

For the foregoing reasons, the Petitioner has not sufficiently established that the Beneficiary was employed in a managerial capacity abroad.

ORDER: The appeal is dismissed.