



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

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

In Re: 33687639

Date: SEP. 06, 2024

Appeal of California Service Center Decision

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

The Petitioner, a company trading in jewelry and gemstones, seeks to extend the temporary employment of the Beneficiary as a business development manager under the L-1A nonimmigrant classification for intracompany transferees.<sup>1</sup> 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 the record did not establish that 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.

## 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.*

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<sup>1</sup> The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for a one-year period ending on January 3, 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 CAPACITY

The sole issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in a managerial capacity in the United States under an extended petition. The Petitioner does not claim on appeal that the Beneficiary would be employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary would be employed in a managerial capacity.

“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 managerial 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 capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

### A. Duties

To be eligible for the L-1A nonimmigrant visa classification as a manager, 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)(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 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 duties, as opposed to ordinary operational activities alongside the Petitioner's 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, 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 it was established in 2020 and specialized in the wholesale trade of jewelry and gemstones, more specifically, distributing products imported from its foreign affiliate based in Hong Kong. The Petitioner stated that its business was “anchored in providing wholesale buyers of diamonds (under 1 carat) and color stones (under 5 carat) access to top-tier stones at competitive prices.” The Petitioner explained that it solidified its position in the market using the Beneficiary’s nearly “17 years of experience in sales and marketing,” noting that “his established relationships with numerous U.S. customers uniquely qualify him to spearhead the expansion into the U.S. market.” The Petitioner submitted the following duty description for the Beneficiary as its asserted business development manager:

**1. Management of Business Development activities at the Petitioner: 40% of his time**

- Continue to coordinate the business development activities to ensure unity in Sales and Marketing, pricing, and distribution. The Beneficiary will continue to be responsible for customer relationship management, develop strong partnerships with existing suppliers, while seeking out additional vendors for new products.
- Continue to be responsible for managing the entire sales cycle following market trend, understanding customer needs and leveraging industry knowledge to find and close sales opportunities.
- Work in conjunction with a team of Sales Managers to provide guidance and mentorship with respect to identifying new customers and vendors and closing on sales opportunities.
- He will continue to be involved with comprehensive competition analysis to establish price points and saleability parameters and develop market strategies for new products.
- He will work with his professional team of sales managers to engage in enhanced marketing efforts to develop and implement comprehensive marketing campaigns.
- The Beneficiary will continue to attend and participate in industry specific tradeshows and will continue to travel to international markets to conduct field research, attend meetings with local customers, and lead, guide, and negotiate with suppliers for the best prices.
- Continue to lead new product development efforts in conjunction with suppliers.
- Use his subject matter expertise of quality control norms and procedures of colored gemstones.
- Provide supervision to all verification procedures conducted at the Petitioner to ensure that product matches customer orders and specifications.
- Continue to inspect loose diamonds, gemstones, and jewelry products to ensure they meet company standards.
- Responsible for overseeing inventory management, whereby he will ensure the timely and accurate input of all stones through appropriate systems.

**2. Financial Management and Budgeting: 30% of his time**

- Take a more strategic role in financial planning and budgeting, ensuring that the Petitioner operates with financial prudence while pursuing aggressive growth plans.
- Continue to be responsible for making key financial decisions, such as determining best prices points for products after assessing consumer demand and managing movement of goods.

- Set up payment terms for vendors and retailers.
- Lead, guide, and negotiate with suppliers for the best prices.
- Effectively manage the annual sales and marketing budget with assistance from the bookkeeper and the external accounting firm.
- Establish strategies and tactics to achieve annual sales budget.
- Guide the creation and implementation of all advertising, media, and promotional activities

### **3. Managing Personnel: 30% of his time:**

- Manage and oversee the bookkeeper and sales manager he hired during the previous year.
- Over the next three years hire additional personnel, including a sales and marketing manager, an additional sales manager, and a secretary.
- Help and enable the process of new vendor selection and quality control norms for company merchandise.
- Maintain authority over independent contractors.
- Exercise personnel authority over employees.
- Continue to exercise leadership managing all product marketing and merchandising strategies to encourage profitability and the implementation of business level initiatives through actionable short-term goals.

The Petitioner submitted a duty description for the Beneficiary and other supporting documentation leaving substantial uncertainty as to whether he would devote a majority of his time to qualifying managerial duties under an extended petition. The Beneficiary's duty description includes several apparent non-qualifying operational tasks indicating his direct involvement in the operation of its wholesale jewelry business including seeking out additional vendors for new products, understanding customer needs and leveraging his industry knowledge to find and close sales opportunities, attending and participating in industry specific tradeshows, traveling to international markets to conduct field research, attending meetings with local customers, and leading, guiding, and negotiating with suppliers for the best prices. Likewise, the Petitioner listed other non-qualifying tasks related to the daily provision of goods and services such as providing supervision to *all* [emphasis added] verification procedures to ensure that products match customer orders and specifications, inspecting loose diamonds, gemstones, and jewelry products to ensure they meet company standards, ensuring the timely and accurate input of all stones through appropriate systems, and setting payment terms for vendors and retailers. These duties suggest the Petitioner's direct involvement in nearly all the operational aspects of the business, and at minimum, they reflect him working alongside operational employees within the business in performing ordinary non-qualifying operational tasks.

The Beneficiary's focus on non-qualifying operational tasks is further reflected in submitted supporting documentation, including him establishing relationships with all 15 of the Petitioner's wholesalers, acquiring all 19 new clients of the company, numerous invoices reflecting his direct involvement in the shipment of gemstones from the foreign employer throughout 2023 and as late as November 2023, and checks reflecting his payment of supplier invoices from June through October 2023. Similarly, the Petitioner provided documentation showing his email listed on all company invoices from January through November 2023, his name listed on all rent invoices from April through October 2023, and badges from throughout 2023 naming him as a "buyer" at tradeshows as late as

September 2023. The Petitioner also submitted evidence reflecting the Beneficiary arranging and paying for a booth at a tradeshow in September 2023, photos of him working at this booth, and screenshots indicating that he handled the development of 77 lab grown diamonds through a contractor. The record further includes evidence of him coordinating with clients on the quality and delivery of goods during October, November, and December 2023.

In addition, the Petitioner provided an expert opinion letter from an associate professor at the [redacted] also discussing several apparent non-qualifying operational tasks such as the Beneficiary actively gaining new contacts at trade events, facilitating sales efforts, identifying new sales opportunities, providing proactive compliant resolution, scheduling sales appointments, identifying additional suppliers for diamonds and gemstones, and conducting visual and physical inspections to ensure alignment with buyer orders. The Petitioner asserts on appeal that the Beneficiary would delegate a majority of these non-qualifying operational tasks to his subordinate bookkeeper and sales manager. However, the Petitioner provided no supporting evidence to substantiate his delegation of non-qualifying tasks to these subordinates or other asserted contractors, in contrast to the substantial documentation reflecting his performance of seemingly all the day-to-day operational tasks of the business. Again, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside its other employees. *See Family Inc. v. USCIS*, 469 F.3d at 1313.

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 credibly document what proportion of the Beneficiary’s duties would be managerial functions and what proportion would be non-qualifying. The Beneficiary’s duties reflected on the record are largely administrative or operational, but the Petitioner does not sufficiently quantify the time he would spend on these duties as opposed to qualifying managerial tasks. For this reason, we cannot determine whether the Beneficiary would primarily perform the duties of a manager under an approved petition. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In contrast to the substantial documentation reflecting the Beneficiary’s performance of non-qualifying operational duties, the Petitioner provided little supporting evidence to substantiate his primary performance his claimed managerial-level tasks listed in his duty description. For example, the Petitioner provided little supporting evidence to substantiate the comprehensive marketing campaigns he implemented, strategic decisions he made with respect to financial planning and budgeting, key financial decisions he made, or strategies he formulated to achieve annual sales budgets. Although we do not expect the Petitioner to articulate and document every managerial task to be performed by the Beneficiary, it is reasonable to expect that it would provide sufficient detail and documentation to corroborate his primary performance of qualifying duties as of the date the petition was filed.

Here, the initial new office petition filed on behalf of the Beneficiary was approved for one year through January 3, 2024. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the intended U.S. operation one year within the date of approval of the petition to support a managerial position. There is no provision in the regulations allowing for an extension of this one-year period. If the 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 for an extension. It is

noteworthy that when the appeal was filed in May 2024, the Petitioner provided no additional supporting evidence to substantiate the Beneficiary's primary performance of managerial duties or his delegation of non-qualifying tasks to his asserted subordinates and contractors. 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.").

Even though the Beneficiary holds a position with a managerial title 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 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 position be "primarily" managerial in nature. *Id.* The Beneficiary may exercise discretion over some of the Petitioner's day-to-day operations and possess some 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 in nature.

## B. Staffing

If staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, we take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

The Petitioner submitted an organizational chart reflecting that he oversaw a bookkeeper, hired in October 2023, and a sales manager beginning his employment with the company in November 2023. The Petitioner asserted that the Beneficiary qualified as a personnel manager based on his supervision of professional subordinates. 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).<sup>2</sup>

However, regardless of whether the positions subordinate to the Beneficiary qualify as professional according to the regulations, the Petitioner did not establish that he was primarily acting as a personnel

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<sup>2</sup> To determine whether a beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

manager and mainly delegating non-qualifying tasks to his claimed professional subordinates when the petition was filed in December 2023. As we have discussed at length in this decision, the Petitioner submitted substantial documentation indicating his responsibility for performing a wide array of non-operational duties related to all aspects of the business, including securing clients and suppliers, ordering jewelry and gemstones from abroad, invoicing clients, acquiring clients, inspecting products for quality and compliance with customer specifications, among numerous examples. As noted, there is little evidence to reflect, as of the date the petition was filed, that the Beneficiary was primarily delegating these non-qualifying tasks to his subordinates and acting primarily as a personnel manager.

For instance, the Petitioner stated that the bookkeeper would only perform “limited clerical tasks,” leaving question as to who would perform these non-qualifying tasks and suggesting that the Beneficiary would continue to perform many of the same non-qualifying duties he was already shown to perform. Likewise, the Petitioner indicated that the asserted sales manager had yet to attend any of the various tradeshows the Beneficiary attended as a “buyer,” suggesting he was still performing these operational responsibilities. The Petitioner also submitted documentation reflecting that the Beneficiary was wholly responsible for its supply chain acquired from the foreign employer and that he would remain responsible for inspecting the quality of these goods, duties not reflected in the duties of the bookkeeper and sales manager. In sum, there is little evidence to support a conclusion that the Beneficiary was acting as a personnel manager overseeing the bookkeeper and sales manager and primarily delegating his non-qualifying tasks to these subordinates; for this reason, the Petitioner did not sufficiently establish that the Beneficiary was employed as a personnel manager when the petition was filed. Further, since the record has not been supplemented with additional evidence on appeal, the Petitioner has also not established that the Beneficiary was employed as a personnel manager when the appeal was filed. Again, 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. at 45, 49.

On appeal, the Petitioner emphasizes that the Beneficiary could also qualify as a function manager, stating that he would manage business development, an asserted essential function within the organization. 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).

The Petitioner has not sufficiently demonstrated that the Beneficiary was acting as a function manager as of the date the petition was filed. First, it is not clear that the Beneficiary’s role is a clearly defined function within the company, considering that he wholly owns the Petitioner and has apparent full authority over the entire organization, including the foreign employer. Regardless, as we have indicated at length in this decision, the Petitioner provided abundant evidence reflecting his direct performance of non-qualifying operational duties covering nearly every aspect of the business, from

paying rent, acquiring clients, arranging for its supply of diamonds and gemstones, amongst several others. In contrast, there is little supporting evidence to reflect that the Beneficiary was primarily relieved from these responsibilities and mainly managing a specific essential function within the organization. The submitted evidence indicates it is more likely than not that the Beneficiary was primarily performing his asserted function rather than managing it, even if the Petitioner established that he was overseeing a clearly defined activity within the organization. Therefore, the provided evidence does not adequately substantiate that the Beneficiary was acting as a function manager when the petition was filed.

For the foregoing reasons, the evidence reflects that the Director was correct in denying the petition as the Petitioner did not sufficiently establish that the Beneficiary would be employed in a managerial capacity in the United States under an extended petition.

**ORDER:** The appeal is dismissed.