



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

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

In Re: 32892638

Date: SEP. 13, 2024

Appeal of California Service Center Decision

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

The Petitioner, a restaurant, seeks to temporarily employ the Beneficiary as its president under the L-1A nonimmigrant classification for intracompany transferees. Section 101(a)(15)(L) of the Act, 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 that the Petitioner did not establish that the Beneficiary would be employed in the United States in a managerial capacity. 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 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 their 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 them to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

## II. ANALYSIS

The sole issue we will address is whether the Petitioner established that the Beneficiary will be employed in the United States in a managerial capacity. The Petitioner does not claim that the Beneficiary will be employed in an executive 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.

To be eligible for 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 the Beneficiary’s duties are primarily managerial, we consider the description of the Beneficiary’s job duties, the Petitioner’s organizational structure, the duties of the Beneficiary’s subordinate employees, the presence of other employees to relieve the Beneficiary from performing operational duties, the nature of the Petitioner’s business, and any other factors that will contribute to understanding the Beneficiary’s actual duties and role with the petitioning organization. Accordingly, we will discuss evidence regarding the Beneficiary’s job duties along with evidence of the nature of the Petitioner’s business, its staffing levels, and its organizational structure.

#### A. Duties

The Petitioner, a hot pot restaurant established in 2021, intends to temporarily employ the Beneficiary as its president. The Petitioner stated that the Beneficiary “will maintain direct and indirect managerial authority” over the company’s vice president, general manager, and store manager, and described her duties as follows:

- Overseeing the corporate budget and spending, and working with CPA to supervise fiscal control, cash flow management (50%);
- Directing corporate strategic planning and overseeing all business development (10%);
- Decision making on major company operational matters, including hiring, firing, and promotion of employees (20%);
- Reporting to [the majority shareholder of the company] on all important corporate matters and the current financial status of his investment in [the Petitioner], projections for future growth, and corporate goal setting. (20%).

The Petitioner also submitted an organizational chart, demonstrating that the U.S. entity has 14 employees, and provided job descriptions for its vice president, general manager, and store manager.

In response to the Director's request for evidence (RFE), the Petitioner provided additional details regarding the Beneficiary's claimed duties and asserted that more than 50% of her duties would constitute managerial tasks. Specifically, the Petitioner stated:

[The Beneficiary] will perform her managerial duties as President by setting the budget and formulating the strategic plan. She will do with advice from the [vice president] and input from the [general manager]. The [general manager] determines the steps to be taken to meet the budget and execute on the strategic plan, and ensures all subordinate employees know their respective to-dos to accomplish all tasks needed. The store manager is responsible for supervising and monitoring the restaurant staff on the day-to-day tasks and will closely update [the general manager] and seek guidance whenever needed. The [general manager] reports to [the Beneficiary] on the implementation status, and [the Beneficiary] provides guidance and makes decisions to resolve any issues that have arisen. The process is the same for dealing with operational issues that require [the Beneficiary's] input and decision. All of this is done by means of regular meetings and reports. [The Beneficiary] will proactively respond to the meetings and reports, make decisions, and provide guidance. [The Beneficiary] will have discretion to supervise and make judgment calls on all routine corporate matters, including but not limited to personnel related decisions and be the liaison for communication between the minority share owner and majority share owner on major corporate decisions that exceed her discretion limit, e.g., certain corporate spending above limit and new commercial lease for expansion plan or significant legal matters.

The Petitioner also provided updated position descriptions for its vice president, general manager, and store manager.

In denying the petition, the Director determined that the Petitioner had not submitted sufficient evidence to establish that the Beneficiary would be engaged in primarily managerial duties in the United States. In addition, as discussed further below, the Director emphasized that the Petitioner did not adequately demonstrate that its organizational structure and its staffing levels would support the Beneficiary in a managerial position.

On appeal, the Petitioner asserts that it has established, by a preponderance of the evidence, that more than half of the Beneficiary's time will be devoted exclusively to managerial duties. The Petitioner further asserts that the provided duty descriptions were sufficient and the Director's determination to the contrary was erroneous.

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 provided a generic duty description including few credible details regarding the actual managerial tasks the Beneficiary would perform. The Petitioner also did not submit any supporting documentation to substantiate the Beneficiary's performance of managerial-level duties or her primary delegation of duties to her asserted subordinates. For example, the Petitioner did not detail or document the budget she set, the personnel management procedures she would implement, or how

she would formulate the Petitioner's strategic plan. Similarly, the Petitioner did not credibly describe the accounting procedures and policies the Beneficiary would manage, such as how she would supervise fiscal control and cash flow management. Likewise, the record does not indicate that directing corporate strategic planning, meeting the budget, and cash flow management are activities that the Beneficiary would perform in the daily or weekly course of the Petitioner's operation. In other words, the list does not offer meaningful content that would further our understanding of the Beneficiary's daily or weekly activities and her managerial role within the organization.

Despite claiming that the Beneficiary is primarily engaged in managerial tasks, the Petitioner does not offer evidence that furthers our understanding of the Beneficiary's proposed managerial job duties; instead, it offers a list of broadly stated job duties. The Petitioner makes general claims about the Beneficiary's responsibilities but does not identify specific business goals that the Beneficiary will set, nor does the Petitioner establish a need for setting goals and policies on a daily or weekly basis within the Petitioner's restaurant operations. Further, other than conveying a sense of the Beneficiary's discretionary authority by stating that the Beneficiary would spend at least half of her time "overseeing the corporate budget and spending," "working with CPA to supervise fiscal control," and "cash flow management," the Petitioner does not elaborate on the specific actions this general set of duties would entail within the scope of the Petitioner's business. In fact, it is noteworthy that there are few specific references to the Petitioner's business and industry in the Beneficiary's duty description. 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).

Although the Petitioner asserts on appeal that it adequately explained how the Beneficiary would be engaged primarily in managerial tasks, we disagree. The Petitioner's supporting evidence includes a deficient job description that lacks critical information about the specific activities that would be part of the Beneficiary's routine in the daily or weekly course of the Petitioner's operation. The Beneficiary's stated job duties are so general that they could be attributed to virtually any senior management position within any company that sells products or services.

We note that the Petitioner refers to several of our non-precedent decisions concerning the weight afforded to job duty descriptions and the amount of time a beneficiary should devote to qualifying managerial and executive tasks. These decisions, however, were not published as precedents and therefore do not bind U.S. Citizenship and Immigration Services officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Moreover, non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

While we acknowledge that the Beneficiary is the Petitioner's most senior employee, the fact that she 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) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" managerial or executive in nature. *Id.* While 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, the position descriptions alone are insufficient to establish that her actual duties would be primarily managerial in nature.

## B. Staffing

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

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). As the Petitioner does not assert that the Beneficiary would act as a function manager, we will only analyze whether she would qualify as a personnel manager as claimed.

The Petitioner provided an organizational chart listing each employee by name and position title. The chart depicts the Beneficiary at the top of the hierarchy, directly overseeing the vice president, who in turn directly oversees the general manager. The chart further indicates that the general manager directly oversees the store manager, who supervises 11 subordinate workers including an office manager, cooks, waitstaff, and dishwashers.

The record, however, does not establish that the Beneficiary would supervise and control the work of other supervisory, professional, or management employees. The organizational chart indicates that the vice president, the Beneficiary’s sole direct subordinate employee, would oversee the general manager. But the Petitioner’s description of the role of the vice president is vague, as the Petitioner indicates that the vice president currently oversees the management of the organization and will ultimately step into an advisory role once the Beneficiary commences her employment as president.

We acknowledge the Petitioner’s claim that the vice president will transition to a function manager when he assumes his advisory role, therefore demonstrating that the Beneficiary is overseeing a managerial employee. We note, however, that the Petitioner must establish that the Beneficiary will primarily perform in a managerial capacity when the petition is filed. The Petitioner cannot establish the Beneficiary’s managerial capacity based on future developments, such as changes to the associated duties and responsibilities of personnel and restructuring of the organizational hierarchy. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).<sup>1</sup>

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<sup>1</sup> The term “function manager” applies generally when an individual does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an “essential function” within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The petitioner must clearly describe the duties to be performed in managing the essential function, must demonstrate that “(1) the function is a clearly defined activity; (2) the function is ‘essential,’ i.e., core to

Moreover, given the vaguely stated duties of the vice president, we cannot determine whether the vice president's position is supervisory in nature. Aside from the vice president's resume, which briefly describes his duties as "day-to-day operations, financial supervision, employee hiring, reporting to president," the Petitioner provides no specific details regarding the duties he performs. In addition, there is no specific assertion that the vice president will directly supervise or manage the work of the general manager or any other employee despite his depiction at a higher tier within the organizational chart.

In the alternative, the Petitioner did not establish that the Beneficiary would qualify as a personnel manager based on her supervision of professional subordinates. 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." Therefore, we must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity.

Although the Petitioner did not explicitly assert that the Beneficiary qualifies as a personnel manager by virtue of her supervision of professional employees and asserts on appeal that the Director misinterpreted facts and misapplied the law by evaluating this issue, we nevertheless will review this question as it provides an alternative means for the Beneficiary to qualify as a personnel manager in light of the evidentiary deficiencies noted above. Upon review, however, the Petitioner has not provided supporting documentation to substantiate that the vice president or any of the Beneficiary's subordinates hold bachelor's degrees, that the Beneficiary has personnel authority over employees with such degrees, or that the subordinate positions require a bachelor's degree in order to perform the duties of the position. Therefore, the Petitioner has not demonstrated that the Beneficiary would qualify as a personnel manager based on her supervision of professional subordinates.

On appeal, the Petitioner again emphasizes that once the Beneficiary assumes her role as president, the stated organizational hierarchy will change, and she will instead directly oversee the general manager rather than the vice president. At the time of filing, however, the Petitioner claimed that the Beneficiary would directly oversee the vice president, and the organizational chart implied that the vice president would oversee the subordinate general manager. Again, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

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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." *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017). The Director determined that the Petitioner did not sufficiently demonstrate that the vice president will act as a function manager, and we agree. Even if we considered the Petitioner's proposed change of employment for the vice president, the Petitioner did not clearly define the function or sufficiently establish that the vice president would have senior level discretionary authority over it.

As discussed above, the Petitioner has not demonstrated that the vice president's position is managerial, supervisory, or professional in nature. While we acknowledge the several layers of subordinates depicted below the Beneficiary and the fact that the Beneficiary may in fact indirectly oversee such positions, the Director determined that the Petitioner did not provide corroborating evidence to demonstrate that the lower tier positions such as the general manager and store manager would be acting in managerial or supervisory roles, and we agree with that determination.<sup>2</sup> In fact, we note that the Petitioner specifically states that the store manager will act as a first-line supervisor. In sum, given the unresolved discrepancies in the Petitioner's stated organizational hierarchy and the questions regarding who exactly the Beneficiary will oversee,<sup>3</sup> the evidence does not show that the Beneficiary supervises or controls the work of supervisory, managerial, or professional employees as required to meet the second prong of managerial capacity. Section 101(a)(44)(A)(ii) of the Act.

### III. CONCLUSION

For the foregoing reasons, the Petitioner has not established that the Beneficiary will be employed in a managerial capacity.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> While we acknowledge the supplemental position descriptions submitted on appeal, we will not consider this evidence for the first time on appeal because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence. See 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

<sup>3</sup> The Petitioner must resolve this inconsistency 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).