



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

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

In Re: 33836628

Date: SEP. 18, 2024

Appeal of California Service Center Decision

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

The Petitioner, a company owning and operating a clothing store, seeks to temporarily employ the Beneficiary as the vice president of its new office¹ under the L-1A nonimmigrant classification for intracompany transferees. 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 on multiple grounds, concluding the record did not establish that the Beneficiary was employed abroad for one continuous year in the three preceding the date the petition was filed and that she was employed with the foreign employer in a managerial or executive capacity. The Petitioner later filed a motion to reopen that was denied. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Since this issue is dispositive, we decline to reach and hereby reserve its arguments with respect to the Director's other ground for denial. *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. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, 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

¹ The term "new office" refers to an organization which has been doing business in the United States 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 no more than one year within the date of approval of the petition to support an executive or managerial position.

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 submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(I)(3)(v).

II. EMPLOYMENT WITH THE FOREIGN EMPLOYER IN A MANGERIAL OR EXECUTIVE CAPACITY

The sole issue we will analyze is whether the Petitioner established that the Beneficiary was employed in a managerial or executive capacity with the foreign employer.

In denying the petition and the Petitioner's later motion, the Director emphasized the Petitioner did not submit sufficient evidence to establish that the Beneficiary was abroad during her time of asserted foreign employment from August 2019 to August 2022. The Director indicated that U.S. Citizenship and Immigration Services (USCIS) records reflected that the Beneficiary arrived in the United States pursuant to a B1 nonimmigrant visa on October 18, 2013, and never departed the United States. The Director further pointed to the lack of entry and exit stamps, or other similar supporting evidence, to substantiate that the Beneficiary was outside the United States working for the foreign employer as claimed and not still in the United States.

On appeal, the Petitioner asserts that the Director refuses to consider provided evidence, including the Beneficiary's pay records abroad, documentation of her educational credentials, a foreign organizational chart, and a "detailed job description." The Petitioner contends that although the Beneficiary entered the United States in 2013, she returned to India "on or before April 17, 2014." The Petitioner asserts it has no evidence to support the Beneficiary's return to India in 2014, stating that U.S. Customs and Border Protection (CBP) only keeps records for five years.

To qualify for L-1A nonimmigrant classification, a beneficiary must have been employed abroad by the qualifying foreign employer for one continuous year out of the preceding three years. The one-year foreign employment requirement is only satisfied by the time a beneficiary spends physically outside the United States working full-time for the petitioner or a qualifying organization. A petitioner cannot use any time that the beneficiary spent in the United States to meet the one-year foreign employment requirement, even if the qualifying foreign entity paid the beneficiary and continued to employ the beneficiary while the beneficiary was in the United States. Furthermore, the continuous year of foreign employment must be qualifying; that is, the petitioner must demonstrate that the beneficiary worked abroad during that period in a managerial, executive, or specialized knowledge capacity.²

Upon review, we agree with the Director that the Petitioner did not submit sufficient evidence to

² *See generally* 2 USCIS Policy Manual L.6(G)(1), <https://www.uscis.gov/policy-manual>.

substantiate the Beneficiary's employment in a managerial or executive capacity abroad. As discussed by the Director, USCIS records reflected that the Beneficiary entered the United States in 2013 and there is no record of her departure. When presented with this discrepancy leaving material question as to her claimed foreign employment from August 2019 to August 2022, the Petitioner has not submitted definitive evidence to overcome this derogatory information. For instance, although the Petitioner provided foreign paystubs, a foreign organizational chart, and foreign duties, this evidence does little to substantiate the Beneficiary's presence abroad during the time of her claimed foreign employment.

Regardless, even if the Petitioner sufficiently established the Beneficiary's presence abroad during her claimed foreign employment, it also did not demonstrate that the Beneficiary was employed abroad in a managerial or 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.

"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 asserted foreign managerial or executive 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 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 performed the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A) and (B) 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 and executive-level 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 or executive 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 or executive, 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 stated the Beneficiary acted as the vice president of the foreign employer and submitted the following duty description for this asserted qualifying employment:

20% of time is spent:

- Establishing relationships with bank officers and negotiating lines of credit necessary for the growth and development of the business.
- Develop and prospect for new business relationships and customers, while strengthening current relationships through on-going contact and customer service.

30% of time is spent:

- Maintaining and or establishing all business registration, licensing and permits;
- Analyzing promotional expenses, operating expenses, administrative cost and equipment;
- Oversee delivery of monthly financial statements, prepare quarterly personnel financial, provide monthly consolidated reporting for the company, forecast short and long term liquidity needs, and manage external audits.

30% of time is spent:

- Analyzing the management of financial development, account planning, trade funds management, and a plan for the completion of all administrative support elements;
- Analyzing the market and conducting a break-even analysis, a preliminary financial projection to show the amount of revenue necessary to cover expenses;
- Staying updated on all trends in the industry and marketing development while gathering market intelligence in a timely manner.

20% of time spent:

- Coordinating the entire operation of the management staff during scheduled hours;
- Recruiting, training and motivating management staff;
- Meet management productivity standards and committed sales goals.

Later, in response to the request for evidence (RFE), the Petitioner stated the following with respect to the Beneficiary's employment abroad:

I provided evidence of the beneficiary's executive control of the foreign company serving as Vice President in the business. I also detailed the importance of her role as the Financial Controller of the business. Your officer neglects to comprehend that the beneficiary is responsible for filing the appropriate financial reports with their respective Indian authorities. It is vital that your officer understands that any successful business must prepare financial reports such as financial statement which include[s]

Balance Sheet, Profit and Loss Statement, Cash Flow, employment reports, tax reports, sales reports, etc. The Controller is responsible for creating and maintaining these financial reports. These tasks are far beyond the duties of a manager or supervisor. The beneficiary has the discretionary authority to hire, promote, and or dismiss any subordinate employee at will.

The Petitioner submitted a generic duty description for the Beneficiary's role abroad that could apply to any manager or executive acting in any position or type of business. The foreign duty description vaguely discussed a variety of general executive-level tasks without providing meaningful detail as to her actual day-to-day tasks within the foreign business. The Petitioner provided few specifics and no supporting documentation to substantiate her performance of qualifying managerial or executive-level duties abroad such as banks she developed relationships with, lines of credit she established, business relationships and customers she developed, financial development she managed, plans she coordinated for all administrative support elements, or hiring and firing decisions he made. Specifics are clearly an important indication of whether a beneficiary's foreign duties involve managerial or executive-level duties, 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).

Despite asserting that the Beneficiary was fully responsible for managing the finances and accounting of the company, the Petitioner provided no supporting documentation to corroborate her performance of these duties or her claimed direction of subordinate personnel. Therefore, the Petitioner has not sufficiently established that the Beneficiary primarily performed managerial or executive tasks abroad. In fact, the Petitioner assertions in response to the RFE suggest that the Beneficiary was responsible for all aspects of the company's accounting, including apparent non-qualifying operational tasks such as maintaining and establishing all business registrations, licensing, and permits, and completing all financial reports and filing them with Indian government authorities. The Petitioner provided no supporting documentation reflecting the Beneficiary delegating these non-qualifying operational tasks to her subordinates abroad.

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 credibly document what proportion of the Beneficiary's foreign duties were managerial or executive functions and what proportion would be non-qualifying. The Beneficiary's duties reflect administrative or operational tasks, but the Petitioner does not sufficiently quantify the time she spent on these duties as opposed to qualifying managerial or executive-level duties. For this reason, we cannot determine whether the Beneficiary primarily performed the duties of a manager or executive while employed abroad. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Even though the Beneficiary holds a position with a managerial or executive title within the foreign organization, the fact that she managed or directed a portion of the foreign 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 have exercised discretion over some of the foreign employer's day-to-day operations and possessed some requisite level of authority with respect to

discretionary decision-making; however, the foreign position description is not alone sufficient to establish that his actual duties were be primarily managerial or executive in nature abroad.

B. Staffing

The Petitioner submitted a foreign organizational chart reflecting that the Beneficiary supervised an accounting manager and a sales manager. The accounting manager was shown to oversee an assistant accountant, while the chart also reflected that the sales manager supervised a marketing employee. The marketing employee was in turn shown to supervise two sales employees. As a preliminary matter, we observe that the Petitioner has not clearly articulated whether the Beneficiary qualified as a manager or executive abroad.³ Regardless, we will briefly discuss both.

The Petitioner provided a foreign organizational chart reflecting that the Beneficiary supervised subordinate managers abroad. 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).⁴

The Petitioner has not sufficiently established that the Beneficiary was employed as a personnel manager abroad. As we have discussed, the Petitioner’s statements and the Beneficiary’s foreign duty description in indicate that she was responsible for all operational aspects of the foreign employer’s financial function. The Petitioner also provided no supporting evidence to demonstrate that the Beneficiary primarily delegated these tasks to his claimed subordinate managers and their asserted subordinates. Likewise, the Petitioner provided no documentation to substantiate that the Beneficiary exercised personnel authority over her claimed subordinate managers. As such, without sufficient supporting evidence, we cannot conclude that the Beneficiary was employed as a personnel manager abroad.

For similar reasons, the Petitioner has not established that the Beneficiary was employed as an executive abroad. 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”

³ A petitioner claiming that a beneficiary will perform as a “hybrid” manager/executive will not meet its burden of proof unless it has demonstrated that the beneficiary will primarily engage in either managerial or executive capacity duties. See section 101(a)(44)(A)-(B) of the Act. While in some instances there may be duties that could qualify as both managerial and executive in nature, it is the petitioner’s burden to establish that the beneficiary’s duties meet each criteria set forth in the statutory definition for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the beneficiary will be primarily employed in either a managerial or executive capacity.

⁴ Since the Petitioner does not explicitly assert that the Beneficiary was employed as a function manager abroad, we decline to analyze whether she qualifies on this basis.

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.*

Again, the Petitioner submitted a generic duty description for the Beneficiary that does not sufficiently demonstrate she was primarily engaged in setting the broad goals and policies of the foreign employer rather than being primarily engaged in its day-to-day operations. For example, the Petitioner does not specifically articulate or document any goals or policies established by the Beneficiary abroad. In fact, the Petitioner’s assertions regarding her day-to-day tasks abroad indicate her involvement in nearly every financial aspect of the company and it has submitted no supporting documentation to substantiate her performance of executive-level duties nor evidence of her primarily delegating non-qualifying tasks to her subordinates. The Petitioner further has not submitted sufficient evidence to corroborate the foreign employer’s claimed organizational structure to establish that the Beneficiary acted in an elevated position within the foreign employer. As such, the Petitioner did not establish that the Beneficiary was employed abroad in an executive capacity.

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 was employed in a managerial or executive capacity abroad.

ORDER: The appeal is dismissed.