



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

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

In Re: 25316251

Date: MAR. 2, 2023

Appeal of California Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, an installer of pipe and fiber optic cable, seeks to temporarily employ the Beneficiary as the general manager 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 an employer to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity for the employer or its affiliate or subsidiary.

The Director of the California Service Center denied the petition, concluding that the record did not establish that the new office would support a managerial or executive position within one year after approval of the petition. 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 qualify for the L-1A nonimmigrant visa classification in a petition involving a new office, a beneficiary must have worked for a qualifying organization in a managerial or executive capacity for one continuous year during the three years preceding their application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). The beneficiary must seek to enter the United States temporarily to continue rendering 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(l)(3)(v).

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).

II. ANALYSIS

A petitioner seeking to employ a beneficiary as a manager or executive of a new office must establish that the new office will support an executive or managerial position within one year of approval of the petition. The Petitioner must establish the proposed nature of the office, describing its scope, organizational structure, and financial goals; the size of the United States investment and the foreign entity's financial ability to remunerate the beneficiary and to commence doing business in the United States; and the foreign entity's organizational structure. 8 C.F.R. § 214.2(l)(3)(v)(C).

The "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of a beneficiary in a primarily managerial or executive position. Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. *See generally* 8 C.F.R. § 214.2(l)(3)(v).

The Director concluded that the Petitioner did not establish that its new office will support a managerial or executive position within one year after approval of the petition. The Director based this conclusion on incomplete staffing evidence and on the Beneficiary's proposed job description.

The Petitioner's business plan indicates that "[t]he Company has already hired seven employees," specifically an administrative assistant and a field supervisor with authority over a locator technician, a machine operator, and three operations assistants. The Petitioner asserted that the seven individuals below the Beneficiary "are all currently employed as subcontractors. If the subject petition is approved, the US Entity will be able to hire additional staff as full employees." The Director concluded that the Petitioner had not established that "these subcontractors provide continuous, rather than occasional and incidental, services to the petitioning entity." This conclusion, by itself, does not necessarily support denial of the petition. In a new office petition, the Petitioner need not establish that it has already fully commenced operations, only that it will be able to do so within a year after the approval of the petition.

Of greater consequence is the Director's conclusion that the Petitioner had not established that the Beneficiary's position would qualify as either managerial or executive within one year after approval of the petition. The Petitioner asserted that the Beneficiary's position qualifies as both managerial and executive, but the record does not support either characterization.

"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, 8 U.S.C. § 1101(a)(44)(A).

“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.

Discretionary authority over a company is not sufficient. A petitioner must show that the beneficiary will be *primarily* engaged in managerial or executive 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 denying the petition, the Director stated:

[T]he fact that the beneficiary owns and manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity. Even if you establish that these individuals have been or will be hired, the evidence is not sufficient to show how they will relieve the beneficiary from performing operational and administrative tasks. . . . You have not provided sufficient evidence to demonstrate that the organization will be sufficiently staffed to relieve the beneficiary from performing necessary tasks in sales, sourcing, marketing, budgeting and other day-to-day operational tasks required by the business enterprise. . . . You have not established that the beneficiary will be primarily performing managerial or executive duties within the first year of operation.

On appeal, the Petitioner states:

The position of General Manager is a position that holds managerial capacity where [the Beneficiary] will be tasked with managing the organization, supervising and controlling the work of others, hiring and firing personnel as needed, and exercising discretion over the day-to-day operations of the company. 8 CFR 214.2(l)(1)(ii)(B). As a majority shareholder of [the petitioning company, the Beneficiary] will also serve in an Executive capacity since he has the ability to make decisions of wide latitude without much oversight. 8 CFR 214.2(l)(1)(ii)(C).

We agree with the Director’s determination, and conclude that the Petitioner’s statements on appeal do not resolve the issue. A job description in the Petitioner’s business plan provides few details about the Beneficiary’s proposed duties during the company’s first year of operations. For the most part, the listed items amount to general responsibilities rather than specific duties. Examples include the following:

- Managing the Company’s operations, evaluating performance, and recommending improvements;
- Set and supervise all processes of the Company; and
- Establishing enduring relationships with the Company’s main stakeholders, including clients and suppliers in the U.S. and abroad, to increase brand awareness.

The generic responsibilities listed in the job description show the level of the Beneficiary's authority over the company, but provide little information about the specific tasks he would perform. Specifics are an important indication of whether a beneficiary's duties are primarily executive or managerial 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). The actual duties themselves reveal the true nature of the employment. *Id.*

Furthermore, the anticipated personnel structure during the first year consists of two individuals who would report directly to the Beneficiary, one of whom would supervise a small crew. The Petitioner did not establish that the Beneficiary's oversight over this staff would occupy enough time to make his job primarily managerial, or would entail a degree of organizational complexity sufficient to require primarily executive authority. The business plan in the record forecasts future growth after the first year of operations, but the new office provisions limit consideration to the first year of operations.

The Petitioner has not provided enough information to establish that the new office will support a primarily managerial or executive position within one year after approval of the petition. Because the Petitioner has not met its burden of proof, we will dismiss the appeal.

ORDER: The appeal is dismissed.