



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

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

In Re: 29180880

Date: NOV. 7, 2023

Appeal of California Service Center Decision

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

The Petitioner, a dental laboratory, seeks to continue temporarily employing the Beneficiary as its chief executive and general manager. The company requests extension of his L-1A nonimmigrant petition as an intracompany transferee who would work in a managerial or executive capacity. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the extension petition and dismissed the Petitioner's following combined motions to reopen and reconsider. The Director concluded that the company did not demonstrate its proposed employment of the Beneficiary in the claimed executive capacity. On appeal, the Petitioner contends that the Director disregarded evidence in its motion to reopen and should have deferred to the approval of the company's prior L-1A petition for the Beneficiary.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the Director considered the company's evidence, appropriately declined to defer to the prior L-1A approval, and properly dismissed the motions. We will therefore dismiss the appeal.

I. LAW

An L-1A petitioner must demonstrate that - for at least one continuous year in the three years before a beneficiary's initial U.S. admission in nonimmigrant status - the petitioner or its parent, branch, subsidiary, or affiliate employed the noncitizen abroad in a capacity that was managerial, executive, or involved specialized knowledge. 8 C.F.R. § 214.2(l)(3)(i), (iii), (iv). An L-1A petitioner must also establish that a beneficiary's education, training, and employment qualify them for a proposed U.S. job in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(ii), (iv). Although an L-1 extension petition need not include supporting documentation, a director may request it. 8 C.F.R. § 214.2(l)(14)(i).

II. ANALYSIS

The record shows that the petitioning limited liability company formed in the United States in [REDACTED] 2019 and initially petitioned for the Beneficiary in L-1A status in May 2019. The Beneficiary, a Liberian native and Lebanese citizen, had worked as general manager of the Petitioner's affiliated dental laboratory in Lebanon since 1995. The Beneficiary wholly owns both the U.S. and Lebanese businesses, which make dental prostheses, apparatuses, and devices.

The Petitioner filed the first petition as a "new office," an organization that had been doing business in the United States for less than one year. *See* 8 C.F.R. § 214.2(l)(1)(ii)(F) (defining the term new office). Because the business was a new office, the petition could not be approved for more than one year. 8 C.F.R. § 214.2(l)(7)(i)(A)(3). Accordingly, the Director approved the Petitioner's first petition from August 6, 2019 to August 5, 2020.

In July 2020, the Petitioner filed its second L-1A petition for the Beneficiary, seeking to extend his status in the offered job of chief executive and general manager. *See* 8 C.F.R. § 214.2(l)(14)(ii). The petitioner indicated that the company would employ the Beneficiary in an executive capacity, and the Director ultimately approved the filing from August 6, 2020 to August 5, 2022. *See* 8 C.F.R. § 214.2(l)(15)(ii) (limiting the validity period of an individual L-1 extension petition to two years).

In August 2022, the Petitioner filed this petition, seeking to extend the Beneficiary's L-1A status for an additional two years. The company states that he would remain working in the same job in an executive capacity.¹ The company claims to employ three workers and generate annual revenues of about \$210,000.

In February 2023, the Director denied this petition, concluding that the Petitioner did not demonstrate the claimed executive nature of the offered job. The Director found that the company's job-duty descriptions lacked details sufficient to demonstrate the Beneficiary's proposed performance of executive tasks, as opposed to daily operational duties. The Director also found insufficient evidence that the company's staffing and organizational structure would elevate the Beneficiary to a position beyond a first-line supervisor of non-professional employees.

In May 2023, the Petitioner moved to reopen and reconsider the petition. The company submitted new evidence and contended that the Director should have deferred to the approval of the prior L-1A petition for the Beneficiary. The Director ultimately dismissed the motions, finding the new evidence insufficient and declining to defer to the prior L-1 approval.

A. The Motion to Reopen's New Evidence

The term "executive capacity" means work primarily involving:

¹ In its motions, the Petitioner, for the first time, claimed the Beneficiary would also work in a managerial capacity. *See* section 101(a)(44)(A) of the Act. Because this petition initially omitted that assertion, we - like the Director - will not consider the managerial nature of the proposed work. *See* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to establish eligibility "at the time of filing the benefit request"); *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998) (barring a petitioner from making material changes to a petition after its filing).

- Directing the management of an organization or a major component or function of it;
- Establishing the goals and policies of the organization, component, or function;
- Exercising wide latitude in discretionary decision-making; and
- Receiving only general supervision or direction from higher-level executives, a board of directors, or an organization's stockholders.

Section 101(a)(44)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(C).

Thus, an L-1A executive must hold an elevated position within an organization. A beneficiary must have the ability to “direct the management” and “establish the goals and policies” of an organization or a major component or function of it. Section 101(a)(44)(B) of the Act. A petitioner must show how the organization, component, or function is managed and demonstrate that the beneficiary would “primarily” focus on its management, goals, and policies, rather than on its daily operations. *Id.*

When considering the executive nature of a proposed job, U.S. Citizenship and Immigration Services (USCIS) first examines the job's duties. *See* 8 C.F.R. § 214.2(l)(3)(ii) (requiring “a detailed description of the services to be performed”); *see also 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.”) The Agency then considers the record's totality and weighs all relevant factors, including: the nature and scope of a petitioner's business; its organizational structure, staffing levels, and a beneficiary's position within the organization; the scope of a beneficiary's authority; a petitioner's employment of others who could relieve a beneficiary from performing operational and administrative duties; the duties of a beneficiary's proposed subordinates; and other factors affecting a beneficiary's business role. *Matter of Z-A-, Inc.*, Adopted Decision 2016-02, **4-5 (AAO Apr. 14, 2016).

The Petitioner's motion to reopen included: a letter from the Beneficiary stating additional information about his proposed job duties; an updated company organizational chart and a “forecasted” organizational chart for October 2023; samples of company sales and quality reports prepared by staff members; and job descriptions and additional information about the company's employees. On appeal, the Petitioner asserts that the Director did not “completely consider” the new evidence.

The Director, however, discussed the new materials in her decision. She considered the Beneficiary's expanded description of his job duties but found that “the description still does not demonstrate how and why the beneficiary will primarily perform qualifying executive duties as opposed to the everyday ground level functions of running your business.”

The Director also found the new reports and information about the Petitioner's staff insufficient because they do not demonstrate the qualifications of the Beneficiary's subordinates as personnel or function managers. The Director therefore concluded that the materials do not establish that, as a proposed executive, he would primarily direct the organization's management. *See* section 101(a)(44)(B)(i) of the Act (defining the term “executive capacity” to include primarily “direct[ing] the management of the organization or a major component or function of the organization”). The Director further noted that the motion's organizational charts do not indicate that the Beneficiary's subordinates would manage or supervise others.

Thus, contrary to the Petitioner's assertion, the record shows the Director's consideration of the company's new evidence on motion. The company does not detail any materials that it believes the Director overlooked, nor does it specifically challenge her findings regarding the new evidence. The Petitioner therefore has not shown the Director's improper disregard of the motion's evidence.

B. Deferral to the Prior L-1A Approval

When adjudicating a nonimmigrant petition involving the same parties and underlying facts, USCIS generally defers to its approval of a prior filing. *See generally* 2 *USCIS Policy Manual* A.(4)(B)(1), www.uscis.gov/policy-manual. “[D]eviation from a previous approval carries important consequences and implicates predictability and consistency concerns.” *Id.*

But, while an extension petition follows an approval, a petitioner still bears the burden of proof. *Matter of Chawathe*, 25 I&N Dec. at 375-76. If a petitioner has not demonstrated eligibility, USCIS need not extend a petition based solely on the prior grant. *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). USCIS should not defer to prior approvals if:

- They involved material errors;
- Circumstances or eligibility requirements materially changed; or
- New material information adversely impacts a petitioner's or beneficiary's eligibility.

See generally 2 *USCIS Policy Manual* A.(4)(B)(1), www.uscis.gov/policy-manual.

In this petition's initial denial decision, the Director explained why she was not deferring to the approval of the Petitioner's prior L-1A petition for the Beneficiary. The Director stated that USCIS erroneously approved the prior petition because job-duty descriptions and evidence of the company's organizational structure did not demonstrate the Beneficiary's proposed work in an executive capacity. For similar reasons, the Director also found that this petition does not demonstrate the claimed executive nature of the offered job. In her decision on the Petitioner's motions, the Director again explained her lack of deference to the prior L-1A approval before responding to the company's additional evidence and arguments on motion.

On appeal, the Petitioner disputes the Director's finding that USCIS materially erred in approving the company's prior L-1A extension petition for the Beneficiary. The company contends that, in adjudicating the prior petition, USCIS “acted reasonably and derived reasonable interpretations of the evidence.” The Petitioner states: “It is counterproductive and destroys the predictability of the law if a [USCIS] officer with more restrictive interpretations can simply overturn reasonable prior decision making on a whim.”

The record, however, does not support deference to the prior L-1A approval. The Director clearly reviewed the prior approval and outlined the basis of its error. In response to a request for additional evidence (RFE) on the prior approved petition, the Petitioner stated that the Beneficiary would spend the following percentages of his time on the following duties:

- 50% of his time will be spent on marketing the lab and the services it provides. He will visit new dentists to explain the lab services, show the lab capabilities, and understand

the dentists' specific needs. He will also be attending trade shows and conferences to learn about new products and services to bring the knowledge back and implement in the lab.

- 20% of his time will be spent managing the lab finances, payroll, accounts payable and receivable, and investments in new equipment. He will also be processing all the tax payments due to the federal and state agencies.
- 15% of his time will be spent interviewing and hiring new employees, training the new hires, and ensuring the existing employees are correctly following procedures. This will ensure that exceptional quality products are produced. In training, [the Beneficiary] will show them how to fabricate various dental appliances.
- 15% of his time will be spent visiting dentists to obtain feedback from them on the quality of his products. He will also present existing customers with any new services he develops. If the dentists express concerns about quality, [he] will discuss these concerns with his employees, develop corrective measures, and train the employees to address the concerns. He will establish procedures to ensure these concerns are permanently addressed.
- [The Beneficiary] will have the authority to sign all contracts related to the business with dentists, suppliers, and employees. As well he has the authority to deal and sign the necessary contracts for real property transactions, as well as contracts with banks, other financial institutions and any other necessary contracts that shall be signed with third-parties.

As the Director found, most of the described duties do not reflect executive-level tasks involving directing the company's management or establishing its goals and policies. *See* section 101(a)(44)(B)(i), (ii) of the Act (defining the term "executive capacity"). Rather, most of the duties involve operational tasks. *See Matter of Church Scientology Int'l*, 19 I&N Dec. at 604 ("An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity.") Also, based on the percentages of time the Beneficiary would spend on these tasks, he would not "primarily" perform executive duties as the Act requires.

As the Director further found, the Petitioner's prior extension petition also did not demonstrate that the Beneficiary's two subordinates at that time worked as managers or executives. Thus, contrary to the definition of executive capacity, the record did not establish that he would "direct the management" of the organization. *See 2 USCIS Policy Manual* L.(6)(D) ("An executive directs the management of the organization, major component, or essential function of a given organization by controlling the work of managerial or lower-level executive employees.") Because the Petitioner did not demonstrate that the Beneficiary would work in the claimed executive capacity, USCIS materially erred in approving the petition.

The Petitioner contends that a "different interpretation of the same facts, one in which reasonable minds could come to different conclusions, is not a material error." We agree that reasonable people can sometimes disagree. But not in this case. Without additional evidence or explanation, a reasonable person could not have found that the Petitioner's prior petition established the Beneficiary's proposed U.S. work in an executive capacity. Contrary to the statutory definition of "executive capacity," the petition lacked sufficient evidence that the Beneficiary would direct the company's management or

establish its goals and policies. Based on his proposed duties, his position within the organization, the nature and scope of the Petitioner's business, its organizational structure, staffing levels, and the duties of his proposed subordinates, the record simply did not support the claimed executive nature of his proposed work.² The Director's RFE informed the Petitioner of the deficiencies in the prior petition and afforded the company an opportunity to respond. *See generally 2 USCIS Policy Manual A.(4)(B)(1)*. The Director therefore correctly found that USCIS materially erred in approving the prior L-1A extension petition for the Beneficiary and properly declined to defer to the approval.

III. CONCLUSION

The Petitioner has not demonstrated that the Director disregarded evidence in the company's motion to reopen or erred in declining to defer to the company's prior L-1A extension approval for the Beneficiary.

ORDER: The appeal is dismissed.

² USCIS may not base an executive capacity finding solely on the number of employees a beneficiary would supervise. Section 101(a)(44)(C) of the Act. In reviewing the Petitioner's prior L-1A extension petition for the Beneficiary, the Director referred to the company's number of employees. But she also considered other factors, including: the proposed job's duties; the company's organizational structure; and the duties of the Beneficiary's proposed subordinates. The Director therefore complied with section 101(a)(44)(C) of the Act.