



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

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

In Re: 29077914

Date: NOV. 8, 2023

Appeal of California Service Center Decision

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

The Petitioner - a buyer, renovator, and reseller of homes - seeks to continue temporarily employing the Beneficiary as its chief executive officer (CEO). The company requests an extension of his classification under the L-1A nonimmigrant visa category as an intracompany transferee who would work in a “managerial 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 petition. The Director concluded that the Petitioner did not demonstrate its proposed employment of the Beneficiary in the claimed managerial capacity. On appeal, the company contends that the Director did not properly consider the Beneficiary as a “function manager” and should have deferred to the approval of its prior L-1A petition for him.

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 company has not established that, by the petition’s filing, the Beneficiary primarily managed the claimed function. We will therefore dismiss the appeal.

## **I. LAW**

An intracompany transferee is a noncitizen who - for at least one continuous year in the three years before their initial U.S. admission in nonimmigrant status - worked abroad and seeks to enter the country to temporarily work for a branch, parent, affiliate, or subsidiary of their foreign employer in a capacity that is managerial, executive, or involves specialized knowledge. Section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(A). If a U.S. petitioner seeks to employ them in a managerial or executive capacity, they seek L-1A classification. U.S. Citizenship and Immigration Services (USCIS), “Instructions for Petition for Nonimmigrant Worker,” 16, [www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf](https://www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf). If the proposed U.S. work involves specialized knowledge, they seek L-1B classification. *Id.*; *see also* 8 C.F.R. § 103.2(a)(1) (incorporating form instructions into the regulations).

## II. ANALYSIS

The record shows that the Beneficiary, an Iranian native and Canadian citizen, began working as the CEO of the Petitioner's affiliate in Canada in 2009. The petitioning U.S. limited liability company formed in [ ] 2022 and, about seven months later, initially petitioned for him to work in this country in L-1A status. The foreign company operates the same type of business as the Petitioner. The Beneficiary wholly owns both entities.

At the time of the initial L-1A petition's filing, the Petitioner had been doing business in the United States for less than one year. For L-1 purposes, the company was therefore a "new office," *see* 8 C.F.R. § 214.2(l)(1)(ii)(F), and had to demonstrate that, within one year of the petition's approval, the business would support a managerial or executive position. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). USCIS approved the Petitioner's initial petition, which was valid from September 2022 to September 2023. *See* 8 C.F.R. § 214.2(l)(7)(i)(A)(3) (limiting the validity of an L-1A new office petition to one year).

In May 2023, the Petitioner filed this petition, seeking to extend the Beneficiary's L-1A status for an additional two years. *See* 8 C.F.R. § 214.2(l)(15)(ii) (limiting the validity of L-1 extension petitions to two years). A petitioner seeking to extend an L-1A new office petition must:

- Demonstrate that the U.S. and foreign entities remain "qualifying organizations;"
- Establish that the U.S. entity has been "doing business" for the prior year;
- Describe the beneficiary's duties for the prior year and those they would perform under the extended petition;
- Describe the staffing of the U.S. operation, including the number of employees and their types of positions, along with evidence of the wages they would be paid when the beneficiary works in a managerial or executive capacity; and
- Submit evidence of the U.S. operation's financial status.

8 C.F.R. § 214.2(l)(14)(ii)(A-E).

The Director denied this L-1A new office extension petition, finding that the Petitioner did not demonstrate that it would employ the Beneficiary in the claimed managerial capacity.

### A. Deferral to the Approval of the Prior L-1A Petition

On appeal, the Petitioner contends that there have been no material changes to the Beneficiary's position since he began working for the U.S. company in 2022. The company therefore argues for the first time that, when considering the claimed managerial nature of the proposed job, the Director should have deferred to the approval of the company's prior L-1A petition for the Beneficiary.

USCIS generally defers to prior nonimmigrant visa petition approvals involving the same parties and underlying facts. *See generally* 2 *USCIS Policy Manual* A.(4)(B)(1), [www.uscis.gov/policy-manual](https://www.uscis.gov/policy-manual). But USCIS should not follow prior approvals if: they involved material errors; circumstances or eligibility requirements have changed; or new material information adversely affects eligibility. *Id.*

Here, the eligibility requirements have changed. In its initial L-1A new office petition, the Petitioner did not have to demonstrate that the Beneficiary would immediately work in the claimed managerial capacity. Rather, as previously indicated, the company had to establish only that “[t]he intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.” 8 C.F.R. § 214.2(l)(3)(v)(C). In contrast, this L-1A new office extension petition requires the Petitioner to demonstrate that - by the petition’s filing - the company would employ the Beneficiary in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D) (requiring that a beneficiary “will be employed in a managerial or executive capacity”); *see also* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to demonstrate eligibility “at the time of filing the benefit request”).

Because the eligibility requirements of the Petitioner’s prior and current L-1A petitions for the Beneficiary differ, the record does not warrant deferral to the prior approval. We therefore decline to follow the prior decision. We will next determine whether the evidence demonstrates the claimed managerial nature of the proposed U.S. work.

#### B. The Nature of the Proposed U.S. Work

The term “managerial capacity” means work “primarily” involving:

- Managing an organization or a department, subdivision, function, or component of it;
- Supervising and controlling the work of other supervisory, professional, or managerial employees, or managing an essential function with the organization, department, or subdivision;
- If another employee or employees are directly supervised, having authority to hire and fire them or to recommend those and other personnel actions, or, if no employee is directly supervised, functioning at a senior level within the organizational hierarchy or with respect to the managed function; and
- Exercising discretion over the daily operations of the activity or function for which the employee has authority.

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

As the statutory definition indicates, managerial capacity may include either a “personnel manager” or a “function manager.” Personnel managers must primarily supervise and control the work of other supervisory, professional, or managerial employees. Section 101(a)(44)(A)(ii) of the Act; *Matter of Z-A-, Inc.*, Adopted Decision 2016-02, \*4 (AAO Apr. 14, 2016). In contrast, function managers must primarily manage an “essential function” within the organization. *Id.*

The Petitioner contends that it would employ the Beneficiary as a function manager. The company states that he has and would continue to manage the business’s renovation function by supervising independent contractors and subcontractors renovating homes that the company bought. *See Matter of Z-A-*, Adopted Decision 2016-02 at \*\*5-6 (recognizing that, under section 101(a)(44)(C) of the Act, a petitioner’s reasonable staffing needs may include reliance on the work of non-employees).

To establish a beneficiary's proposed employment in a managerial capacity as a function manager, a petitioner must demonstrate that:

- the function is a clearly defined activity;
- the function is "essential," i.e., "core" to the organization;
- the beneficiary would primarily manage - as opposed to perform - the function;
- the beneficiary would act at a senior level within the organizational hierarchy or with respect to the managed function; and
- the beneficiary would exercise discretion over the function's daily operations.

*Matter of G- Inc.*, Adopted Decision 2017-05, \*4 (AAO Nov. 8, 2017).<sup>1</sup>

The Director's analysis of the Beneficiary's qualifications as a function manager contained contradictions. For example, noting the Petitioner's hiring of an administrative assistant/receptionist, the Director found that the company "did not provide any evidence demonstrating that this subordinate qualifies as a professional, manager, or supervisor, as contemplated by the regulations." As previously discussed, however, only a personnel manager must primarily supervise and control the work of other supervisory, professional, or managerial employees. *See* section 101(a)(44)(A)(ii) of the Act; *Matter of Z-A-*, Adopted Decision 2016-02 at \*4. The Petitioner contends that the Beneficiary is a function manager, which lacks such requirements.

A preponderance of the evidence demonstrates that the renovation function that the Beneficiary would manage is clearly defined and essential to the Petitioner's business. The company has also established that he would act at a senior level within the organizational hierarchy and exercise discretion over the function's daily operations.

The Petitioner, however, has not demonstrated that, by the petition's filing, the Beneficiary primarily managed its renovation function, as opposed to performing operational tasks. The company states that he has and would continue to spend about 55% of his time managing the function, including: hiring contractors and subcontractors; overseeing their work; buying the materials for their use; overseeing their progress; and resolving unforeseen issues. But the record indicates that the Petitioner did not begin employing its administrative assistant/receptionist until two weeks after the petition's filing on May 8, 2023. *See* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to establish eligibility "at the time of filing the benefit request"). The Beneficiary's stated duties do not include her tasks, which reportedly involve: answering telephone calls, emails, and inquiries; scheduling appointments; coordinating meetings; ordering office supplies; greeting office visitors; creating project binders; mailing checks; and paying online bills. Thus, the company has not explained who performed the duties of the administrative assistance/receptionist at the time of the petition's filing. Because the Beneficiary was then the Petitioner's only employee and in the absence of other evidence, we presume that he performed the other position's administrative tasks at that time. Thus, because of the additional nonmanagerial tasks that the Beneficiary apparently performed, the company has not demonstrated that, by the petition's filing, he "primarily" managed the renovation function.

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<sup>1</sup> Unlike this matter, *G-* involved an immigrant visa petition for a multinational executive or manager. *See* section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). But "[t]he statutory definition for 'managerial capacity' found at [section] 101(a)(44)(A) of the Act applies to both multinational managers and L-1A managers; therefore, the following analysis applies equally to both classifications." *Matter of G-*, Adopted Decision 2017-05 at \*2 n.6.

### C. Doing Business the Prior Year

Although unaddressed by the Director, the Petitioner also has not demonstrated that it was “doing business” the year before this petition’s filing. *See* 8 C.F.R. § 214.2(l)(14)(ii)(B). The term “doing business” means “the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.” 8 C.F.R. § 214.2(l)(1)(ii)(H).

The Petitioner submitted documentation indicating that, before the petition’s filing in May 2023, it bought, renovated, and sold two properties in the United States. The documents indicate that the company bought one property in April 2022 and sold it in December 2022. The record shows that the company bought the other property in November 2022 and sold it in April 2023. The record, however, lacks sufficient evidence that these two renovation projects kept the Petitioner engaged in “regular, systematic, and continuous” business the year before the petition’s filing.

Also, the Petitioner’s financial information for 2022 casts doubt on the renovation project the company purportedly completed that year. Public records show that the company bought the property for \$225,000 in April 2022 and sold it for \$361,971 in December 2022, generating an apparent income of \$136,971. *See* Denton CAD [Central Appraisal District], “Property Search,” <https://propaccess.trueautomation.com/clientdb/?cid=19>. But, as shown on Schedule C, Profit or Loss from Business, to the Beneficiary’s 2022 IRS Form 1040, U.S. Individual Tax Return, the company reported “0” income that year. The Schedule C reflects only business expenses, reporting an annual loss of \$201,850. The record does not explain why, in addition to the business’s expenses, the Beneficiary did not also report the company’s apparent income in 2022. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies). The Beneficiary’s tax return therefore also casts doubt on the Petitioner’s claimed business operations in 2022.

The Director did not notify the Petitioner of this evidentiary deficiency or provide the company with an opportunity to respond. Thus, in any future filings in this matter, the company must explain the evidentiary discrepancies discussed above and provide additional independent objective evidence that it was “doing business” the year before the petition’s filing.

### III. CONCLUSION

The Petitioner has not demonstrated that, by the petition’s filing, the Beneficiary primarily managed the company’s renovation function. We will therefore affirm the petition’s denial.

**ORDER:** The appeal is dismissed.