



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

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

In Re: 28819825

Date: OCT. 19, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, describing itself as a jewelry import and distribution company, seeks to temporarily employ the Beneficiary as the president and 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 Director of the Texas Service Center denied the petition on multiple grounds, concluding the record did not establish that: 1) the Beneficiary was employed abroad in a managerial or executive capacity, and 2) the Beneficiary would be employed in a managerial or executive capacity within one year of an approval of the petition.

On appeal, the Petitioner asserts that it submitted a sufficiently detailed foreign duty description and evidence to establish that the Beneficiary supervised subordinate managers abroad. The Petitioner further contends that it has provided a detailed description of the Beneficiary's proposed U.S. duties as well as hiring plans that demonstrate that he would be employed in a managerial capacity in the United States.

Upon *de novo* review, we will dismiss the appeal, as the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity within one year of an approval of the petition. 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).

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.

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 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(l)(3)(v).

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY WITHIN ONE YEAR

The sole issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in a managerial capacity in the United States within one year of an approval of the petition. The Petitioner does not claim on appeal that the Beneficiary would be employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary would be employed in a managerial 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.

A. Duties

The Petitioner stated that it was established in the United States to sell and distribute fine jewelry manufactured by its parent company based in Thailand. The Petitioner indicated that the Beneficiary would be employed as the company's president and general manager, indicating he would “manage people, establish policies, oversee operational function of business units, and ensure continual improvement in five key areas (customer service, employee relations, sales/marketing appearance, and profit/financial control).” The Petitioner further listed the Beneficiary's duties as follows:

- Daily meetings with personnel to review and approve findings and recommendations; provide general instruction on organizational directives and goals; and direct the implementation of new policies. 40% of his time.

- Engage in high-level negotiations with vendors/suppliers dealing directly with the executives or general managers of those organizations. The President and General Manager would then instruct his subordinate personnel to finalize details of the deal and to draft the written agreement/contract. 15% of his time.
- Engage with customers, particularly on potential major purchases, to negotiate contents of the purchase, dealing with the high-level executives and managers of customer organizations. The Beneficiary would then instruct his subordinate staff to finalize the details of the agreement and to draft written purchase order and contract. 15% of his time.
- Review staffing recommendations from subordinate-personnel (including hiring and firing recommendations). Make final decisions on both the hiring and firing of staff personnel. [The Beneficiary] would then instruct his subordinate staff to implement his decisions, including the retention of personnel, the discipline of staff, the hiring of new employees, and the termination of personnel employment. 10% of his time.
- Develop policies and goals for the organization based on general instructions from the corporate director. In doing so, [the Beneficiary] takes into consideration the complex interplay of the various moving parts of the organization, such as supply chain considerations vendor/supplier quality and pricing, customer demand, market trends, and staffing concerns (utilizing the reports and recommendations supplied by his subordinate managers). 20% of his time.

The Petitioner submitted a duty description for the Beneficiary that does not credibly demonstrate he would primarily perform managerial-level tasks within the first year. The Petitioner did not sufficiently detail the managerial duties the Beneficiary would perform during the first year, including the managerial-level tasks he would complete during this time to successfully launch the new business operation. For instance, the Petitioner did not specify the policies he would establish or the “continual improvement” he would ensure in customer service, employee relations issues he would handle, or sales and marketing he would direct. Likewise, the Petitioner did not detail the day-to-day tasks inherent in directing the implementation of new policies, nor did it specify the vendors or suppliers he would negotiate with, the major purchases he would complete, the supply chain issues he would handle, or staffing issues he would resolve.

The duty description the Petitioner provided for the Beneficiary is generic, vaguely referring to tasks that could apply to any manager working in any business or industry and it makes no reference to its specific business or how it would be launched during the first year. The duty description does not sufficiently articulate the Beneficiary’s daily tasks both during and at the end of the first year. The Petitioner also did not sufficiently indicate how the Beneficiary would be primarily relieved from performing non-qualifying operational tasks within one year. Although we do not expect to the Petitioner to detail every managerial-level task of the Beneficiary during the first year, the lack of this detail leaves substantial uncertainty as to whether he would primarily perform managerial-level duties within the first year. Specifics are clearly an important indication of whether a beneficiary’s duties would be primarily 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).

B. Business Plan and Projected Staffing

In the case of a new office petition, we review the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the intended managerial capacity. A petitioner has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial in nature within one year of the petition's approval. Accordingly, we consider the totality of the evidence in analyzing whether the proposed managerial position is plausible based on a petitioner's anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

The Petitioner indicated in response to the Director's request for evidence (RFE) that it currently employed an assistant and a jewelry maker. The Petitioner further projected that it planned on hiring a marketer, a setter, and a salesman. The Petitioner stated that as the business grew and developed, the Beneficiary would hire new staff to relieve him from performing non-managerial tasks. The Petitioner indicated that it planned on hiring these new personnel "over the next five years (or more quickly, if the growth of our company will allow such early hirings)."

As discussed, the Petitioner must demonstrate that the Beneficiary would act in a managerial capacity in the United States within one year. 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). Since the Petitioner did not specifically assert that the Beneficiary would be employed as a function manager and submitted evidence indicating that he would oversee subordinate staff, we decline to analyze whether he would qualify as a function manager within one year.

The Petitioner has not sufficiently established that the Beneficiary would be employed as a personnel manager within one year of an approval of the petition. First, the Petitioner's asserted hiring plans do not clearly indicate that he would have personnel authority over subordinate supervisors or managers within one year. For instance, the Petitioner listed several employees it planned to hire "within the first five years." As such, it is not clear what personnel the Petitioner would employ within one year of commencing operations. Further, most of the Petitioner's proposed personnel in the United States are operational level employees with no apparent supervisory responsibilities, including an assistant, a jewelry maker, a setter, and a salesman. In addition, the marketer was asserted as being tasked with identifying opportunities, establishing brand positioning, and implementing new product management based on the Beneficiary's instructions. Although the duty description briefly stated that the marketer would "manage competitive comparison resource papers and lead staff to engage in competitive discoveries," this duty description does not clearly establish that the marketer would act as a supervisor or manager subordinate to the Beneficiary overseeing other staff. Further, the Petitioner did not submit

an organizational chart to illustrate how he would act as more than a first line supervisor within the first year of operation. Therefore, not only has the Petitioner not provided detailed plans as to what its staffing would be within the first year, its staffing plans during its first five years of operation do not clearly reflect that the Beneficiary would oversee subordinate supervisors or managers as necessary to qualify him as a personnel manager.

In the alternative, a petitioner may establish a beneficiary as a personnel manager by establishing that they would have personnel authority over subordinate professionals, in this case, within the first year of operations. 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 Petitioner has not demonstrated that the Beneficiary would have personnel authority over professional subordinates within one year. The Petitioner did not articulate any educational requirements for its proposed positions subordinate to the Beneficiary. Further, as discussed, most of the positions it plans to hire within the first five years are operational positions, not appearing to require a bachelor’s degree to perform, including the proposed assistant, jewelry maker, and setter. Beyond this, the Petitioner did not articulate that a bachelor’s degree was required to perform the positions of salesman and marketer, nor did it set forth specific plans to hire subordinates to the Beneficiary requiring bachelor’s degrees to perform the duties of their positions. For this additional reason, the Petitioner did not substantiate that the Beneficiary would likely have personnel authority over subordinate professionals within its first year of operations. Therefore, the Petitioner did not sufficiently establish, as required, that the Beneficiary would be employed as a personnel manager within one year of an approval of the petition.

When a new business is established and commences operations, the regulations recognize that a designated manager responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the managerial-level and that often the full range of managerial responsibility cannot be performed. To qualify for the L-1 nonimmigrant classification during the first year of operations, the regulations require a petitioner to disclose the proposed nature of the business and the size of the U.S. investment and establish that the proposed enterprise will support a managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager who will primarily perform qualifying managerial duties.

The Petitioner has not sufficiently established that it would develop sufficiently within one year to support the Beneficiary in a managerial capacity. The Petitioner articulated that it had already hired two employees, an assistant and a jewelry maker, and otherwise set forth plans to hire three other employees. However, the Petitioner provided no specific timeline as to when these subordinates would be hired to sufficiently establish its staffing within the first year. In fact, as noted, the Petitioner

only expressed an intention to hire additional employees within the first five years if its operations allowed. Therefore, it is not clear based on the submitted evidence whether the Petitioner would be sufficiently staffed to relieve the Beneficiary from primarily performing non-qualifying operational duties within the first year.

In addition, the Petitioner has not demonstrated the size of the U.S. investment as required by the regulations. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(2). The Petitioner vaguely indicated that it planned on shipping \$20,000 in inventory from the foreign employer to the new U.S. operation. However, beyond this, it did not discuss how this \$20,000 in inventory would be sufficient to launch the business effectively during the first year and support the Beneficiary in a managerial capacity. The Petitioner did not assert any other financial investment in the new U.S. venture on the record, as required to establish it would develop sufficiently within the first year. There is little evidence to support a conclusion that the Petitioner would generate revenue during the first year and commence doing business sufficient to develop an organizational structure to support the Beneficiary in a managerial role where he would be primarily relieved from performing non-qualifying operational tasks.

For the foregoing reasons, the Petitioner has not established that the Beneficiary would act in a managerial capacity within one year of an approval of the petition.

ORDER: The appeal is dismissed.