



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

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

In Re: 19199815

Date: SEP. 26, 2023

Appeal of California Service Center Decision

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

The Petitioner, a manufacturer of personal and household products, seeks to extend the Beneficiary's temporary employment as its vice president under the L-1A nonimmigrant classification for intracompany transferees. *See* 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, concluding that the record did not establish that the Petitioner would employ the Beneficiary in a managerial capacity. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

## **I. LAW**

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. 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.*

"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.

## II. ANALYSIS

In denying the petition, the Director concluded the Petitioner did not establish it would employ the Beneficiary in a managerial capacity. The Director concluded that the Petitioner did not provide a sufficiently detailed description of the Beneficiary's job duties and did not submit sufficient evidence in support of its claim that he has the required authority over personnel actions.

On appeal, the Petitioner submits additional evidence intended to document the Beneficiary's authority over personnel actions. Further, it contends that the previously submitted evidence was sufficient to establish eligibility for the benefit sought by a preponderance of the evidence. The Petitioner, citing *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016), maintains that the Director did not review and consider all relevant evidence in evaluating whether the Beneficiary would primarily perform duties in a managerial capacity.<sup>1</sup>

While we do not agree with the Petitioner's assertion that the record as presently constituted establishes eligibility for the benefit sought, we conclude that the Director did not provide the Petitioner with adequate notice of evidentiary deficiencies that are material to the issue on appeal, particularly relating to the company's staffing and structure. Further, because the Director's analysis was primarily limited to a discussion of the Beneficiary's job duties, we agree that the denial was not based on a review of all relevant evidence. Accordingly, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision consistent with the following discussion.

The Petitioner is a manufacturing company that claimed 33 employees at the time of filing in June 2020. In a supporting letter, the company stated that the Beneficiary, as vice president, reports to the company's president and "directly manages the R&D Department, the Production Department and Quality Control Department, and the subordinate managers of the departments who in turn supervise many individual department employees." The Petitioner provided a description of the Beneficiary's duties indicating the percentage of time he would allocate to nine different areas of responsibility. The description was consistent with the Petitioner's claim he would oversee the company's research and development and production departments, and we disagree with the Director's determination that the position description included operational, administrative, and other non-managerial functions. However, as discussed below, there are inconsistencies and other evidentiary deficiencies in the record with respect to the company's staffing and structure which prohibit a determination that the description represents the Beneficiary's actual duties within the context of the Petitioner's business as of the date of filing.

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<sup>1</sup> In *Matter of Z-A-*, we emphasized that USCIS must review the totality of the evidence when examining whether a given beneficiary would be employed in a managerial or executive capacity, including the job description, the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other evidence contributing to understanding a beneficiary's actual duties and role in a business.

The initial evidence included two organizational charts, one for the entire company and one specific to the Beneficiary's position. The company-wide chart identifies the Beneficiary as one of two vice presidents reporting to the company president and shows that each vice president oversees three departments.<sup>2</sup> However, it does not identify the job titles of subordinate staff or the number of staff in each department. This chart shows that the Beneficiary oversees: (1) the R&D Department (which includes both product formulation/engineering and product packaging functions, such as graphic design, bottle design, product planning and copywriting); (2) the production department (which includes bottle production, preparation, filling and packaging, bar soap, transshipment, and equipment); and (3) the quality control (QC) department, which is further broken down into EQC, IQC, PQC, and OQC divisions and a QC Lab. The chart specific to the Beneficiary's position indicates that he would supervise an R&D manager, a production manager, and a quality control manager. Although this chart identifies his direct subordinates by name, it also lacked information regarding the number and types of staff employed in each department.

The initial evidence included copies of the Petitioner's IRS Forms W-2, Wage and Tax Statement, for 2019, and the company's 2020 payroll records through mid-June. The payroll evidence confirms the employment of the individuals identified as the R&D manager and the quality control manager as of June 2020, but does not show that the company employed the claimed production manager in 2019 or 2020.<sup>3</sup> Therefore, the Petitioner did not establish that the production manager position was filled at the time of filing. We also note that the Beneficiary, the R&D manager and the quality control department manager are all identified in the Petitioner's payroll records as employees of the R&D department as of June 2020, and all earned similar wages, which raises questions regarding the hierarchy depicted on the organizational chart.

Further, the evidence provided on appeal introduces additional discrepancies to the record. To corroborate the Beneficiary's authority over personnel actions for his direct subordinates, the Petitioner has submitted annual appraisals he ostensibly completed for the production department manager, R&D department manager, and QC department manager on January 15, 2020, and leave requests he approved for them in 2019. However, other evidence in the record shows that all three department managers were hired after January 2020.<sup>4</sup> The Petitioner also submits leave requests ostensibly approved by the production manager for his own subordinates during the first half of 2020, but these documents raise similar credibility concerns because most of them pre-date the production manager's start date with the company, and some of the employees, according to the payroll evidence, did not work in the production department as indicated on the request forms. These discrepancies, if unresolved, could result in a determination that this evidence was created subsequent to the filing of the petition and does not reflect past personnel actions taken by the Beneficiary and his subordinate, as claimed.

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<sup>2</sup> The other vice president was depicted as overseeing domestic and international sales and marketing departments, and an accounting department that handles accounting administration, personnel, purchasing and logistics functions.

<sup>3</sup> In response to the Director's request for evidence, the Petitioner stated that it had a new production manager, identified as F-R-Z. The Petitioner's payroll records show that F-R-Z received his initial salary payment from the company in May 2020. The Petitioner did not state when this individual assumed the production manager position.

<sup>4</sup> The three managers for whom the Petitioner provided performance appraisals were first paid by the company between March 2020 and May 2020, according to the submitted payroll records for the first half of that year. None of them received an IRS Form W-2 for 2019.

In addition, although not addressed in the Director's decision, we note that the Petitioner submitted inconsistent position descriptions for the Beneficiary's claimed direct subordinates. At the time of filing, it provided descriptions for the department managers that significantly overlapped with the Beneficiary's own duties, indicating that these employees develop departmental goals and objectives, direct and oversee department activities, formulate department policies, and perform other higher-level tasks. The position descriptions provided in response to the RFE described supervisory positions with significantly less discretionary authority. The Petitioner provided no explanation for the significant changes to the position descriptions.

The Petitioner must resolve the inconsistencies addressed above with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*; see also *Matter of O-M-O-*, 28 I&N Dec. 191, 197 (BIA 2021) ("by submitting fabricated evidence, the appellant compromised the integrity of his entire claim") (cleaned up).

Finally, the record contains insufficient evidence documenting the staffing levels of the Petitioner's six departments and the positions filled by lower-level staff. As noted, the Petitioner stated that the Beneficiary oversees three departments, while another vice president supervises the remaining three departments in the company. Given that the Petitioner indicates that it had 33 employees at the time of filing, the staffing composition of the various departments is relevant to evaluating the Petitioner's claim that each department has sufficient lower-level staff to support the claimed management hierarchy, and to relieve the higher-level employees from significant involvement in non-managerial functions. For example, the organizational chart implies that the R&D department supports multiple staff engaged in packaging and graphic design, product planning, copywriting, product engineering and product formulation. As noted, the company's June 2020 payroll records indicated that the department was staffed by the Beneficiary, the claimed R&D manager, the claimed quality control manager, and only one other employee. The R&D department does not appear on the payroll summary for February 2021, which suggests that there may have been a change in structure that the Petitioner did not disclose when responding to the Director's request for evidence.

As the matter will be remanded, the Director should review the evidence of record, including the Petitioner's appeal, and may request additional evidence related to the Beneficiary's proposed U.S. assignment, including evidence to corroborate the Petitioner's claimed staffing levels and its employment of the personnel who would directly and indirectly report to the Beneficiary. The Petitioner should also be provided an opportunity to address the inconsistencies addressed above. Any evidence the Petitioner submits must establish eligibility from the date of filing through adjudication of the petition. See 8 C.F.R. § 103.2(b)(1).

### III. CONCLUSION

Considering the deficiencies noted above, many of which were not addressed in the Director's decision, we find it appropriate to remand the matter to the Director to reevaluate the submitted evidence and determine whether the Beneficiary would be employed in the United States in a managerial capacity. The Director should request additional evidence pertaining to the Beneficiary's

U.S. employment and any other relevant evidence deemed warranted, and allow the Petitioner a reasonable opportunity to respond, prior to issuing a new decision.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.