



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

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

In Re: 26053931

Date: SEPT. 26, 2023

Appeal of California Service Center Decision

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

The Petitioner, an information technology (IT) consulting service, seeks to temporarily employ the Beneficiary as its head of immigration and shared services 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 Beneficiary will be employed in the United States in a managerial or executive 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 sustain the appeal.

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.*¹ The petitioner must also establish that the beneficiary’s prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

¹ Our decision in this matter is limited to the question of whether the Petitioner and the Beneficiary have met all the requirements for the classification sought. It is not a finding that the Beneficiary is admissible into the United States. The visa petition procedure is not the forum for determining substantive questions of admissibility under the immigration laws. *Matter of O-*, 8 I&N Dec. 295, 297-98 (BIA 1959).

II. ANALYSIS

The Director determined that the Petitioner did not establish that it will employ the Beneficiary in a managerial or executive capacity in the United States. The Petitioner specifies that the position will be managerial, rather than executive, and therefore we need not consider the requirements for an executive 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.

To show that a beneficiary is eligible for L-1A nonimmigrant visa classification as a manager, a petitioner must show that the beneficiary will perform all four of the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A) of the Act. If a petitioner establishes that the offered position meets all four elements set forth in the statutory definition, the petitioner must then prove that the beneficiary will be *primarily* engaged in managerial 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 determining whether the beneficiary’s duties will be primarily managerial, we consider the description of the job duties, the company’s organizational structure, the duties of the 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 factors that will contribute to understanding the beneficiary’s actual duties and role in the business.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, we must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

Accordingly, we will discuss evidence regarding the Beneficiary’s job duties along with evidence of the nature of the Petitioner’s business and its staffing levels.

The Petitioner sought to qualify the Beneficiary as a function manager. The Director concluded that the Petitioner did not establish that the Beneficiary’s area of responsibility is an essential function, and the Petitioner did not document the presence of subordinate employees in the United States to support the Beneficiary’s work. As explained below, we do not agree with these conclusions.

The term “function manager” applies generally when a beneficiary’s managerial capacity derives not from supervising or controlling a subordinate staff of professionals, managers, or supervisors, but instead from primarily managing an “essential function” within the organization. *See* section 101(a)(44)(A)(ii) of the Act. If a petitioner claims that a beneficiary will manage an essential function,

it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that:

(1) the function is a clearly defined activity; (2) the function is “essential,” i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function’s day-to-day operations.

Matter of G- Inc., Adopted Decision 2017-05 (AAO Nov. 8, 2017).

In a statement submitted with the petition, the Petitioner stated:

As Head of Immigration and Shared Services, [the Beneficiary] will manage the Immigration and Shared Services function for our organization in the United States. This is an *essential* function for our business as it will ensure the successful facilitation of immigration and related services for our quickly growing population of foreign national employees working in the United States and around the world. In this senior managerial role, [the Beneficiary] will direct the overall operations and exercise sole discretion over the day-to-day operations . . . of this function. Further . . . , he will hold a senior-level position within our organizational hierarchy in the United States, reporting directly to the company’s Chief Executive Officer.

The Petitioner indicated that the Beneficiary’s U.S. position would involve the same duties he already performs abroad as head of global mobility, and additional responsibilities to be delegated to a “U.S. immigration team” which “will initially be comprised [of] four (4) Immigration Assistants that will perform the day-to-day tasks of the Immigration and Shared Services function.” The Petitioner has consistently stated that it has not yet hired the immigration assistants; rather, if the petition is approved, then one of the Beneficiary’s first actions would be to hire employees to fill the new positions. Here, however, the immigration assistants would not be the Beneficiary’s only support staff. Rather, the Petitioner has documented the ongoing employment of existing staff abroad, working in the global mobility function that the Beneficiary would continue to oversee. *See Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016). This ongoing work would entail function management during the limited period of time that the Beneficiary would spend setting up the immigration and shared services function in the United States.

The Petitioner’s foreign parent company indicated that the Beneficiary “[m]anages a team of seven (7) immigration and I-9 specialists responsible for carrying out the day-to-day operations of the Global Mobility function.” Those specialists are responsible for travel arrangements, immigration paperwork, and other operational tasks related to the international movement of personnel. Even in the initial absence of U.S.-based immigration assistants, the existing global mobility team would continue to support the Beneficiary’s work as it has been doing.

On appeal, the Petitioner cites *Matter of Z-A-, Inc.*, which allows for consideration of the work of employees outside the United States if their work entirely supports the beneficiary’s work. We agree with the Petitioner that the reasoning behind *Z-A-* applies here.

We also conclude that the Petitioner has sufficiently described the global mobility and immigration and shared services function to establish, by a preponderance of evidence, that they amount to essential functions. The Petitioner is part of a larger organization, and the nature of the Petitioner's business requires the temporary dispatching of many of those workers to a variety of locations, often across international borders. The coordination of this activity appears to be highly important to the operation of the business.

The Director concluded that the Beneficiary would be "primarily assisting in the performance of the day-to-day non-supervisory duties of the IT consulting services business." The Director did not cite to specific information or evidence in the record to support this conclusion. The Director also concluded that the Beneficiary's job description lacked detail, but the Petitioner elaborated upon the Beneficiary's intended duties in response to a request for evidence. The Petitioner also submitted samples of the Beneficiary's past work product, relating to tasks he performed abroad but will continue to perform in the United States.

The Petitioner's evidence is sufficient to meet the "preponderance of the evidence" threshold of proof in this matter.

III. CONCLUSION

For the reasons discussed above, we conclude that the Petitioner has established, by a preponderance of the evidence, that it will employ the Beneficiary as a function manager in the United States.

ORDER: The appeal is sustained.