



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

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

In Re: 29321656

Date: JAN. 5, 2024

Appeal of California Service Center Decision

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

The Petitioner, a retail franchisor, seeks to temporarily employ the Beneficiary as its country merchandise manager 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: (1) the Beneficiary will be employed in the United States in a managerial or executive capacity; and (2) the Beneficiary has been employed abroad 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 dismiss 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.* 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).

II. ANALYSIS

The Beneficiary began working for the Petitioner's parent company in China in May 2019, first as a commodity operations specialist, then as country merchandise supervisor–India starting in April 2021, with a promotion to country merchandise manager–India effective June 2022.¹ The Beneficiary entered the United States in June 2022 as a B-1 nonimmigrant visitor for business. He was still in the United States in B-1 status when the Petitioner filed the petition in December 2022. The Director denied the petition in June 2023, and the Petitioner filed the present appeal in July 2023.

The Petitioner did not claim that it seeks to employ the Beneficiary in an executive capacity. The Director determined that the Petitioner did not establish that it will employ the Beneficiary in the United States 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.

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.

The Director's decision revolved around the requirement that a manager primarily supervise and control the work of supervisory, managerial, or professional employees. *See* section 101(a)(44)(A)(ii) of the Act; *see also* 8 C.F.R. § 214.2(l)(1)(ii)(B)(2).

The Petitioner stated that the Beneficiary would “[m]anage the Category Supervisor in the United States, while also recruiting and hiring merchandising professionals to work under the Category Supervisor.”

An organizational chart submitted with the petition showed that the category supervisor would be the Beneficiary's only immediate subordinate. The chart showed two unidentified and unspecified

¹ The record indicates that the Beneficiary performed his duties in China rather than in India.

employees subordinate to the category supervisor. An accompanying job description indicated that the category supervisor would “[s]upervise market research analysts.”

The Director issued a request for evidence (RFE), asking for more information about the Beneficiary’s intended subordinate employees. The Director also requested wage and tax documentation from late 2022, corresponding to the petition’s December 2022 filing date.

In response, the Petitioner stated: “the organizational chart that was provided with the original petition is now outdated” because the company “is very rapidly expanding in the United States, and we already have additional team members that [the Beneficiary] will be managing.” The Petitioner added that the Beneficiary “will also continue to manage some team members who are physically located in China.”

The Petitioner submitted an updated organizational chart, showing seven positions subordinate to the Beneficiary’s intended position. Payroll records and other documents show hiring or promotion dates for most, but not all, of the subordinates shown on the updated chart:

- Country Merchandise Manager (the Beneficiary’s intended position)
 - Category Supervisor, promoted to position January 2022
 - Merchandise Analyst, to be hired
 - Assistant Buyer, hired October 2021
 - Merchandise Supervisor, not on 2022 U.S. payroll records
 - Inventory Coordinator #1, not on 2022 U.S. payroll records
 - Inventory Coordinator #2, hired March 2023
 - Inventory Control Analyst Assistant, hired *circa* December 2022

The Petitioner submitted job descriptions for the subordinate positions, including a substantially revised job description for the category supervisor. The category supervisor’s new job description does not refer to management or supervision of subordinates.

The Director denied the petition, stating that recent material changes to the subordinate structure cannot show that the petition was approvable at the time of filing in December 2022. The Director also noted that the Petitioner had not established that it employs some of the newly claimed subordinates. Although the initial submission indicated that the category supervisor would supervise market research analysts, the Petitioner’s response to the RFE does not show that it employed any market research analysts at the time of filing. In the absence of such employees, it appears that the category supervisor would have performed the duties of the vacant positions, and would not have had supervisory responsibilities at the time of filing.²

On appeal, the Petitioner states that the Director’s “incorrect understanding of this fast-paced and rapidly expanding business . . . led to a wrongful categorization of ‘inconsistencies’ in the Petition that do not exist.” The issue, however, is not that the company grows and changes over time. Rather, the key issue is that a petitioner must meet all eligibility requirements at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). Material changes after the filing date cannot retroactively establish eligibility or remedy deficiencies in the initial filing. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998).

² Elsewhere in the record, the Petitioner stated that employees frequently performed the duties of other vacant positions.

While the Petitioner has provided a description of the Beneficiary's intended duties, information about subordinate staff and their duties is necessary to establish that the Beneficiary's duties will be primarily managerial, rather than lower-level tasks. When the Director sought to address this issue by requesting more information and evidence about the company's structure and staffing, the Petitioner did not submit evidence that related to the subordinate structure as it existed at the time of filing in December 2022. Instead, the Petitioner submitted materials showing changes that occurred several months after the filing date. These materials cannot show that the petition was already approvable when filed.

With respect to the changes in structure and staffing that occurred in 2023, U.S. Citizenship and Immigration Services records show that the Petitioner filed a new petition in August 2023, with receipt number [REDACTED] again seeking to classify the Beneficiary as an L-1A nonimmigrant. That petition's later filing date permitted the Director to consider changes to the Petitioner's structure that occurred after December 2022. The Director approved the later petition in December 2023, granting the Beneficiary L-1A status from January 2, 2024 to January 1, 2027.

We will dismiss the appeal because the Petitioner has not overcome the Director's conclusions regarding the proposed employment in the United States. This determination is sufficient to decide the outcome of the appeal. Therefore, we reserve argument on the other stated ground for denial, concerning the Beneficiary's previous employment abroad. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).

ORDER: The appeal is dismissed.