



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

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

In Re: 22722804

Date: OCT. 18, 2022

Appeal of Texas Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, describing itself as an insurance broker, seeks to temporarily employ the Beneficiary as the chief executive officer of its new office¹ in the United States 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 concluding the record did not establish that the Beneficiary was employed abroad in a managerial or executive capacity or that he would be employed in a managerial or executive capacity in the United States within one year of the date the petition was filed.

On appeal, the Petitioner points to the Beneficiary's professional subordinates abroad and contends it submitted sufficient evidence to establish that the Beneficiary was employed in a managerial or executive capacity abroad. Likewise, the Petitioner asserts the Beneficiary would be employed in a managerial or executive capacity within one year of the petition's approval.

Upon *de novo* review, we will dismiss the appeal, as the Petitioner did not establish that the Beneficiary was employed in a managerial or executive capacity abroad for one continuous year in the three preceding the date the petition was filed. 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 whether the Beneficiary would be employed in a managerial or executive capacity within one year of the date the petition was filed. *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 their 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. MANAGERIAL OR EXECUTIVE CAPACITY WITH THE FOREIGN EMPLOYER

The sole issue we will address is whether the Petitioner established that the Beneficiary is employed abroad in a managerial or executive capacity. As a preliminary matter, the Petitioner does not clearly articulate whether the Beneficiary is employed in a managerial or executive capacity abroad. A petitioner claiming that a beneficiary will perform as a "hybrid" manager/executive will not meet its burden of proof unless it has demonstrated that the beneficiary will primarily engage in either managerial or executive capacity duties. *See* section 101(a)(44)(A)-(B) of the Act. While in some instances there may be duties that could qualify as both managerial and executive in nature, it is the petitioner's burden to establish that the beneficiary's duties meet each criteria set forth in the statutory definition for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the beneficiary will be primarily employed in either a managerial or 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.

The statute defines an "executive capacity" as an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

A. Duties

To be eligible for L-1A nonimmigrant visa classification as a manager or executive, the Petitioner must show that the Beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If the record does not establish that the offered position meets all four of these elements, we cannot conclude that it is a qualifying managerial or executive position.

If the Petitioner establishes that the foreign position meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary was *primarily* engaged in managerial or executive duties abroad, 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 a given beneficiary's foreign duties were primarily managerial or executive, we consider the description of the Beneficiary's foreign job duties, the foreign employer's organizational structure, the duties of a beneficiary's subordinate employees abroad, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the foreign business, and any other factors that will contribute to understanding a beneficiary's actual duties and role with the foreign employer.

In a support letter, the Petitioner indicated that the foreign employer provides clients with "insurance policies that fully protect [client] equity" and noted that it "has emerged as a leader in the insurance industry in [redacted], Brazil." The Petitioner stated that the Beneficiary has been employed as the financial and marketing director of the foreign employer since 2011, his time in the United States aside, and submitted the following duties related to his employment abroad:

Marketing and Strategy (50%):

- Directing and approving service strategies, price policies, and special offers;
- Directing, designing, and implementing strategic plans;
- Implementing guidelines, policies, and processes necessary to create an effective and efficient Financial and Marketing Department;
- Designing effective administrative strategies toward achievement of corporate objectives;
- Develop and modify sales strategies and tactics accordingly;
- Providing feedback to company leadership;
- Developing sales programs such as directing canvassing events for potential customers;
- Formulating plans to extend business with established customer accounts;
- Identifying and developing contact for promotional campaigns and industry programs;
- Directing, motivating, and monitoring the mobilization and collaboration of departmental teams to advance organizational goals;
- Ensuring product and service training for all products and services;
- Defining sales or project management process and identify improvements where and when required; and
- Setting up a strategy for time efficiency and cost reduction.

Leadership (15%):

- Providing leadership through effective communication of company vision and employment development while comparing sales or administrative policy;
- Determining staff requirements, hiring personnel, overseeing training of new personnel, and monitoring personnel activities; and
- Developing, implementing, and monitoring training plans for the sales and administrative department.

Directing Relationships with Insurance Companies and Customers (10%):

- Establishing and monitoring Financial and Marketing Department infrastructure and systems;
- Managing key customer relationships and participating in closing strategic opportunities;
- Providing administrative supervision through field visits, observation, and measurement of project management results;

Finance (25%):

- Preparing budgets and submitting estimates for departmental costs as part of client maintenance and market expansion;
- Reviewing and analyzing financial reports, potential sales, and performance data to measure productivity and goals achievement and to determine areas in need of cost reduction; and
- Providing departmental management, budget control, and incentive reward compensation programs.

Later, in response to the Director's request for evidence (RFE), the Petitioner submitted a statement from the Beneficiary reflecting additional duties and responsibilities. For instance, the Beneficiary stated he was responsible for "strategy and marketing management, leadership, financial activities, relationship[s] with insurance companies and customers, development of new business platform[s], and brand positioning." The Beneficiary also indicated that his "primary responsibility" was to "decide how many policies or upgrades should be sold each period, then oversee the team's progress to ensure they meet those goals." In addition, the Beneficiary explained that he was tasked with "setting and meeting [foreign employer] sales goals," "leading training sessions," "mediating disputes with customers," "providing satisfactory solutions," searching for and interviewing potential candidates and onboarding them, "increasing business for the agency," and "develop[ing] people creating the platform."

The Petitioner filed the current petition on August 11, 2021. Therefore, the Petitioner must demonstrate that the Beneficiary was employed abroad in a managerial or executive capacity for one continuous year in the three years preceding the date the petition was filed, or from August 11, 2018, to August 11, 2021. U.S. Citizenship and Immigration Service (USCIS) records reflect that an L-1A intracompany transferee visa was approved on behalf of the Beneficiary on March 1, 2019, for the period February 28, 2019, to November 1, 2021, but later revoked on March 3, 2021. The Petitioner further stated that the Beneficiary returned to Brazil in June 2019 prior to the revocation of his L-1A nonimmigrant visa. Prior to returning to Brazil in June 2019, the Beneficiary was employed with the Petitioner in the United States; and therefore, could not have been employed in a managerial or

executive capacity abroad. Therefore, the focus of our analysis here is whether the Petitioner established that the Beneficiary was employed abroad in a managerial or executive capacity after his return to Brazil in June 2019 until the time the petition was filed in August 2021.

However, the Petitioner provided little supporting evidence to substantiate that the Beneficiary was employed in a managerial or executive capacity abroad during the three-year qualifying period prior to the date the petition was filed. For instance, the Petitioner provides little detail or supporting documentation to substantiate the service strategies the Beneficiary put in place, the guidelines, policies or processes he established, or the “sales programs” he developed during this time. Likewise, the Petitioner did not specify or document the plans the Beneficiary formulated, promotional campaigns he developed, or the product and service training he led. In addition, the Petitioner did not provide examples or document the cost reductions he ordered, sales or administrative policies he put in place, or the financial and marketing infrastructure he implemented. In fact, the Petitioner did not provide evidence related to the Beneficiary’s claimed qualifying employment abroad from June 2019 to August 2021, but instead submitted emails dating from 2016 and 2017 and an expert opinion discussing his foreign employment during 2017. Specifics are clearly an important indication of whether a beneficiary’s duties are primarily managerial or executive 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).

Further, discrepancies in the provided duty description that leave question as to the credibility of the Beneficiary claimed foreign duties. For example, the Petitioner discusses the Beneficiary’s oversight of the “financial and marketing department,” but the submitted foreign organizational chart showed that he only supervised two employees abroad, neither who was focused on financial or marketing tasks. This leaves uncertainty as to who, other than the Beneficiary, performed the non-qualifying operational duties related to finance and marketing. Likewise, the duty description mentioned the Beneficiary’s direction of “departmental teams,” but again, the foreign organizational reflected that he only oversaw two employees, so it is not clear what departmental teams he directed. The Petitioner must resolve discrepancies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In contrast, to the extent the Petitioner submitted documentation related to the Beneficiary’s foreign employment following his return to Brazil in June 2019, this evidence reflected his performance of non-qualifying operational duties for the Petitioner and foreign employer. For instance, the Petitioner submitted a screen shot of a social media post made by the Beneficiary in September 2019 as well as evidence indicating that he created Petitioner and foreign employer social media pages during this time. Similarly, the Petitioner submitted applications provided to insurance providers in October 2019 listing the Beneficiary as the company’s accounting and customer service contact and as its “resident agent.” The Petitioner also provided an email from November 2019 showing the Beneficiary setting up automatic payments with a telecommunications provider and renewing its telephone, cable, and internet services. In comparison, there is no supporting documentation to substantiate the Beneficiary’s performance of qualifying managerial or executive-level duties for the foreign employer in the three years preceding the date the petition was filed.

Whether the Beneficiary is a managerial or executive employee abroad turns on whether the Petitioner has sustained its burden of proving that their duties are “primarily” managerial or executive. *See*

sections 101(a)(44)(A) and (B) of the Act. Here, the Petitioner does not document what proportion of the Beneficiary's duties were managerial or executive functions and what proportion would be non-qualifying. The Petitioner submits evidence indicating that the Beneficiary's foreign duties included administrative or operational tasks, but it did not quantify the time he spent on these different duties. For this reason, we cannot determine whether the Beneficiary was primarily performing the duties of a manager or an executive abroad. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Even though the Beneficiary holds a senior position within the foreign employer, the fact that he manages or directs a portion of the business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a foreign position be "primarily" managerial or executive in nature. *Id.* The Beneficiary may exercise discretion over the foreign employer's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that his actual duties abroad are primarily managerial or executive in nature.

B. Staffing

If staffing levels are used as a factor in determining whether an individual was acting in a managerial or executive capacity, the reasonable needs of the organization are taken into account in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act. The Petitioner submitted a foreign organizational chart reflecting that the Beneficiary oversaw an employee devoted to "CSR Renewals" and an administrative assistant abroad.

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).

First, the Beneficiary could not qualify as a personnel manager abroad based on the oversight of subordinate supervisors or managers as the provided foreign organizational chart reflected that he only oversaw two employees, neither of which had subordinates of their own. However, on appeal, the Petitioner emphasizes that the Beneficiary supervised professional subordinates, more specifically, it indicates that the subordinate "renewals coordinator" position requires a bachelor's degree. 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 possession of a bachelor’s degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity. As discussed, the provided organizational chart indicated that the Beneficiary supervised only two employees, a “CSR renewals/renewals coordinator” employee and an administrative assistant. The Petitioner contends only that the renewals coordinator position was a professional position as defined by the regulations.

However, the Petitioner did not indicate how the performance of the duties of the renewals coordinator position require a bachelor’s degree, nor did it provided a comprehensive and detailed duty description for this subordinate. In fact, the Petitioner submitted a resume for the lone renewals coordinator reflecting that he worked as an administrative assistant and that he was tasked with managing “issues related with send[ing] policies by email,” managing “CRM system SICS,” “print[ing] labels,” and “sending letters.” The Petitioner provides no other duty description for this position to demonstrate that it was a professional position requiring a bachelor’s degree. Further, the administrative duties listed in this resume for the renewals coordinator leave substantial uncertainty whether this is was professional position. The Petitioner also did not submit documentation to substantiate that the renewals coordinator held a bachelor’s degree; in fact, the resume of this employee indicated that he only had a high school level degree. Lastly, the Petitioner provided no supporting documentation to substantiate that the Beneficiary was responsible for personnel actions with respect to the renewals coordinator, or any other employees abroad. Therefore, the Petitioner did not sufficiently establish that the Beneficiary acted as a personnel manager abroad.

On appeal, the Petitioner also asserts that the Beneficiary qualified as a function manager abroad. The term “function manager” applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for 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).

The Petitioner did not sufficiently demonstrate that the Beneficiary acted as a function manager abroad. The Petitioner states on appeal that the Beneficiary has been responsible for “strategy and marketing management, leadership, financial activities, relationship[s] with insurance companies and customers, development of new business platform[s], and brand positioning.” Therefore, the Beneficiary’s responsibilities abroad appear to be wide ranging, and not clearly defined. Further, as we have noted, the Petitioner provided evidence reflecting the Beneficiary’s performance of non-qualifying operational duties on its behalf during the time it claims he was employed as a function manager abroad. In contrast, the Petitioner provided no supporting documentation to corroborate the

Beneficiary's performance of qualifying managerial duties while overseeing a defined and essential function abroad in the three years preceding the petition. As such, the Petitioner did not establish that the Beneficiary was primarily tasked with managing a function as opposed to performing it, even if it had clearly defined the function.

Lastly, for similar reasons as those set forth above, the Petitioner has also not demonstrated that the Beneficiary is employed in an executive capacity abroad. The statutory definition of the term "executive capacity" focuses on a person's elevated position within an organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

First, the Petitioner did not specifically articulate how the Beneficiary qualified as an executive capacity abroad, but only vaguely indicates that he was "one of two top executives." As mentioned, the Petitioner submitted an overly vague duty description for the Beneficiary that did not describe in detail the Beneficiary's executive-level tasks during the qualifying three-year period prior to the date the petition was filed. The Petitioner also did not provide supporting documentation to support his performance of executive-level these tasks, such as evidence substantiating the broad goals and policies he established during this time. Similarly, the Petitioner did not sufficiently describe the duties of the Beneficiary's claimed subordinates to properly demonstrate that the foreign employer supports him in an executive level position. In fact, as we discussed, the Petitioner provided evidence reflecting the Beneficiary's performance of non-qualifying operational duties for the Petitioner while abroad. Therefore, the Petitioner has not sufficiently demonstrated that the Beneficiary was employed in an executive capacity abroad.

For the foregoing reasons, the Petitioner has not established that the Beneficiary is employed abroad in a managerial or executive capacity.

ORDER: The appeal is dismissed.