



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

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

In Re: 20882520

Date: JULY 6, 2022

Appeal of California Service Center Decision

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

The Petitioner seeks to operate a solar energy business. It intends to temporarily employ the Beneficiary as “Owner/General Manager” of its new office¹ 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 Petitioner did not establish, as required, that: (1) it has a qualifying relationship with the Beneficiary’s employer abroad and (2) the Beneficiary was employed abroad in a managerial or executive capacity. The matter is now before us on appeal.

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Petitioner has not established that the Beneficiary’s foreign employment was in a managerial capacity.² Because the identified basis for dismissal is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the Petitioner’s appellate arguments regarding its claimed qualifying relationship with the Beneficiary’s foreign employer. *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).

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

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.

² The Petitioner does not claim that the Beneficiary was employed abroad in an executive capacity. We will therefore limit our discussion to the Petitioner’s claim that the Beneficiary was employed abroad in a managerial capacity.

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. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

The issue to be addressed in this decision is whether the Petitioner established that the Beneficiary was employed abroad 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.

Based on the statutory definition of managerial capacity, the Petitioner must first show that the position in question involved certain high-level responsibilities. Sections 101(a)(44)(A) and (B) of the Act. The Petitioner must also prove that the Beneficiary was *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the foreign employer's other employees. See *Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

Beyond the required description of the job duties, we examine 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 a business.

Accordingly, we will address the Petitioner's claims in the discussion below, which will include consideration of the Beneficiary's job duties along with evidence of the nature of the U.S. employer's business, its staffing levels, and its organizational structure.

A. Staffing

First, we will address the foreign entity's staffing in the three years prior to the date this petition was filed.³ When staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, the reasonable needs of the organization must be considered in light of the organization's overall purpose and stage of development. *See* section 101(a)(44)(C) of the Act.

In support of the petition, the Petitioner provided an organizational chart and statements from its general manager and from counsel, respectively. However, these statements contain unexplained irregularities and are not entirely consistent with one another or with the submitted organizational chart. For instance, counsel stated that the Beneficiary oversaw a maintenance manager, an accountant, an account supervisor, and "other management personnel," but this description conflicts with the foreign entity's organizational chart, which depicts the Beneficiary directly overseeing a maintenance manager, an accountant, and a position titled "Just Letting Marketing and Contracts." Because counsel did not specifically identify "other management personnel," it is unclear whether it was intended for the "Just Letting Marketing and Contracts" position. Further, because the organizational chart shows the account supervisor as directly subordinate to the accountant, it conflicts with counsel's claim that the account supervisor was directly subordinate to the Beneficiary.

Similar to counsel's description of the Beneficiary's subordinates, the Petitioner's cover letter also lists the maintenance manager, accountant, and account supervisor as the Beneficiary's three direct subordinates. However, the record contains conflicting information as to who holds the account supervisor position. Namely, the organizational chart lists [REDACTED] as the account supervisor and shows [REDACTED] in the position of "Just Letting Marketing and Contracts." However, the Petitioner's statement contains a list of the Beneficiary's direct subordinates which identifies [REDACTED] rather than [REDACTED] as account supervisor. In a second list, which includes the names and position titles of the Beneficiary's indirect subordinates, [REDACTED] was identified as the account supervisor. While this latter list is consistent with the organizational chart, it is at odds with the list of direct subordinates, where [REDACTED] rather than [REDACTED] was identified as the account supervisor. Of the two lists of subordinates and the organizational chart, it is unclear which, if any, constitutes an accurate representation of the foreign entity's staffing. In addition, the job descriptions of the accountant and account supervisor do not indicate that either position is supervisory, thus leading us to question the accuracy of the multi-tiered structure counsel depicted as representative of the foreign organization. We note that artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support a managerial position. Furthermore, given the critical role that staffing plays in determining whether a given position fits the statutory definition of managerial capacity, the Petitioner must resolve the described staffing ambiguities and inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We also find that the record lacks sufficient evidence establishing precisely whom the foreign entity employed during the Beneficiary's period of employment abroad. Although the Petitioner's

³ The record shows that this petition was filed in July 2021. Therefore, the Petitioner must establish that the Beneficiary's continuous one year of employment in a managerial capacity took place between July 2018 and July 2021.

supporting statement lists 11 employees, including the Beneficiary, the only evidence the Petitioner provided of employee wages was a single paystub for one of its employees and a “wage reconciliation” chart for a 12-month period from May 2020 to April 2021. The latter is comprised of seven columns, each listing the first name of the claimed employee and a monetary amount for each of the 12 months. Peter, one of the first names listed in the wage reconciliation chart, was not listed in the organizational chart. The Petitioner did not address this discrepancy, nor did it explain what information the chart was meant to convey or what it was supposed to reconcile. It is also unclear why only one paystub was submitted for entity with 11 employees listed in the foreign organizational chart, nor is clear why only seven employees were listed in the wage reconciliation chart if the foreign entity had 11 employees as the organizational chart indicates. We also noted that the submitted paystub accounts for only a single pay period and contains information pertaining to [REDACTED] whose position with the foreign organization is unclear, given the above-described anomalies. The paystub does not list the specific duration of the pay period but shows an April 2019 pay date along with the amount of compensation for the unspecified period and year-to-date. Although [REDACTED] employment is further supported by a personnel evaluation, similar evidence was not provided for any other of the foreign entity’s claimed employees.

In a request for evidence (RFE) the Director identified various evidentiary deficiencies, including the lack of employee pay records establishing the foreign entity’s employment of a subordinate staff. The Director acknowledged the wage reconciliation chart but found this document to be insufficient as a means of establishing that the foreign entity employed the listed individuals or that it had a staff sufficient to support the Beneficiary and elevate him to a managerial position. The Director also noted that there was a lack of evidence establishing that the Beneficiary’s claimed subordinates were professional or supervisory.

Although the Petitioner responded to the RFE, it did not adequately address the noted evidentiary deficiencies regarding the foreign entity’s staff. For instance, the Petitioner provided résumés for [REDACTED], [REDACTED] and [REDACTED]⁴ all of whom are listed in the foreign entity’s organizational chart, but it did not provide employee paystubs or pay records to corroborate the foreign entity’s employment of these individuals or for anyone else included in the foreign entity’s organizational chart. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

We further note that the résumé of [REDACTED] shows that he previously held positions as branch/sales manager, sales consultant, director assistant and service advisor and sales for prior employers. However, it is unclear how these positions, which require skills in management and sales, qualify [REDACTED] to perform the duties of an electrician, the position he is claimed to hold within the foreign organization. Likewise, the Petitioner provided evidence showing that [REDACTED] holds a Bachelor of Technology degree in “Dental Technology,” but it did not explain how this degree is relevant to or qualifies [REDACTED] for the role of account supervisor, as he is identified in the foreign entity’s organizational chart.

⁴ The organizational chart contains a different spelling of this individual’s last name, listing it as [REDACTED] rather than [REDACTED] as it is spelled in the résumé.

In the denial, the Director once again pointed to evidentiary deficiencies pertaining to the foreign entity's staffing. However, on appeal, the Petitioner merely reiterates the claim that the Beneficiary was employed abroad in a managerial capacity, but it does not offer further evidence to address these deficiencies. Given the previously described staffing anomalies and lack of sufficient evidence as discussed above, we cannot conclude that the foreign entity was adequately staffed to relieve the Beneficiary from having to carry out primarily non-managerial tasks and support him in a managerial position during his employment abroad.

B. Job Duties

Next, we will discuss the Beneficiary's job duties in his position with the foreign entity. We note that the actual duties themselves reveal the true nature of the employment. *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).

In the initial cover letter, the Petitioner made references to various departments, on the one hand stating that the Beneficiary managed the "administrative, financial, and operational departments," but later adding that he also had managerial control over a marketing and sales department. We note that no departments were identified in the previously discussed organizational chart. Furthermore, while the Petitioner provided a listing of the foreign entity's claimed employees and identified them as having worked in the "management," "administrative" or "operations" department, no one was assigned to a financial or marketing and sales department. Given the staffing-related evidentiary deficiencies discussed previously, these additional anomalies give us further cause to question whether the foreign entity was adequately staffed and able to relieve the Beneficiary from having to perform primarily non-managerial job duties. *See Ho*, 19 I&N Dec. at 591-92.

The Petitioner also made multiple references to the Beneficiary's control of the foreign entity's administrative and operational department "through HR policies and procedures, including general training and development" and "through recruiting and training of employees and managers, overseeing compliance with contracts, and ensuring employees and staff adhered to company policies and procedures." However, the Petitioner did not establish that implementing HR policies and performing HR tasks like recruiting, training, and developing personnel are managerial job duties. Likewise, the Petitioner stated that the Beneficiary's position abroad involved managing "multiple properties and tenants," but it did not establish that carrying out property management services is consistent with managing the organization that owns those properties. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See, e.g.*, sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).

In addition, the Petitioner claimed that the Beneficiary's position abroad was comprised of "both direct supervisory and essential functional duties." Because the Petitioner did not claim that the Beneficiary assumed the role of a function manager and did not identify an essential function that the Beneficiary managed, the assertion that the Beneficiary performed "essential functional duties" indicates that he performed duties that may have supported an essential function and were operational or non-

managerial in nature.⁵ Given this ambiguity, it is critical for the Petitioner to specifically identify the Beneficiary's duties and establish that his time was primarily allocated to managerial, rather than operational, duties. *See id.* In this instance, the Petitioner's initial cover letter contains a job duty chart that separates the Beneficiary's job description into four categories and lists the components of each category, which includes a mix of duties and general responsibilities highlighting the Beneficiary's discretionary authority. The chart shows that the Beneficiary allocated 50% of his time to tasks in the "Administrative and Financial Coordination" category, 25% to tasks in the "Marketing and Sales Coordination" category, and 10% to tasks in the "Customer Service Coordination" category. Because all three categories were comprised of a mix of both managerial and operational duties, it is particularly important for the Petitioner to establish precisely how much time was allocated to managerial versus non-managerial job duties.

However, the Petitioner did not assign a percentage allocation to each of the Beneficiary's assigned activities and therefore did not clarify precisely how much time was spent performing the non-managerial tasks listed in the above three categories. Namely, the job descriptions shows that the "Administrative and Financial Coordination" category required the Beneficiary to perform such non-managerial job duties as seeking out tenants for the various properties, responding to resident requests, formulating budgets for and tracking financial performances of individual properties, and recruiting and training staff. Likewise, the "Marketing and Sales Coordination" category also included multiple non-managerial duties, including advertising property vacancies, performing background and credit checks on prospective renters, explaining contract obligations and rights to new tenants, and seeking out new rental properties. Lastly, the "Customer Service Coordination" category, whose two tasks included monitoring and responding to client reviews and requests and initiating customer surveys, involved entirely non-managerial activities. Because the Petitioner did not include a time allocation for any of the listed non-managerial job duties, we cannot rule out the possibility that these tasks, rather than those of a managerial nature, comprised the primary portion of his employment abroad.

In the RFE the Petitioner was asked to list the Beneficiary's managerial duties and provide a percentage of time allocated to each. Although the Petitioner further discussed the Beneficiary's foreign employment, it did not provide the requested job duty breakdown with a percentage of time for each managerial duty the Beneficiary typically performed during his employment abroad. Rather, the RFE response focused on the Beneficiary's discretionary authority to delegate responsibilities to subordinates and issue directives about operational matters. For instance, the Beneficiary was said to have had the authority to schedule meetings, approve and amend lease agreements, adjust the budget as he deemed necessary, and delegate authority to the accountant to determine when a delay in rent payment should be permitted. The Beneficiary is also claimed to have issued the directive to have virtual meetings during the pandemic and delegated the responsibility of training new employees to two of his claimed subordinates. Regarding the latter responsibility, we note that the original job description stated that the Beneficiary, rather than his claimed subordinates, was tasked with recruiting, hiring, and training new staff. The RFE response in which the Petitioner claims that the

⁵ 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).

Beneficiary delegated staff training to other employees is therefore inconsistent with the original job description. As with prior inconsistencies listed above, this added incongruity regarding the Beneficiary's job duties must be resolved with independent, objective evidence pointing to where the truth lies. *See Ho*, 19 I&N Dec. at 591-92.

Discrepancy aside, we find that although the additional information supports the Petitioner's claims regarding the Beneficiary's heightened level of discretionary authority, it does not address the issue raised in the RFE regarding the amount of time the Beneficiary allocated to managerial-level tasks, nor does it offer sufficient insight as to the tasks the Beneficiary typically performed within the scope of a property management business. As previously noted, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

On appeal, the Petitioner reiterates information that was previously provided and further emphasizes the Beneficiary's authority over the foreign entity's operational and financial matters. However, as previously noted, this information does not impart a meaningful understanding of the Beneficiary's actual job duties or establish that the Beneficiary primarily performed duties of a managerial nature. Although the Beneficiary's placement at the top of the foreign entity's hierarchy and his discretionary authority are relevant factors, the fact that the Beneficiary managed a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" managerial in nature. Section 101(A)(44)(A) of the Act. While the Beneficiary may have exercised discretion over the foreign employer's day-to-day operations and possessed the requisite level of authority with respect to discretionary decision-making, the record does not establish that his actual duties were primarily managerial in nature. To make this determination, we rely on specific information about a beneficiary's actual tasks as an important indication of whether their duties are 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. at 1108. As discussed above, the Petitioner did not offer a detailed job description that included a breakdown of duties performed in the course of the foreign entity's operations and the proportion of time the Beneficiary allocated to managerial tasks as opposed to the various operational tasks we previously listed.

In sum, we find that the Petitioner provided deficient evidence pertaining to the foreign entity's staffing and did not establish that the Beneficiary allocated his time primarily to managerial tasks during his employment abroad. Therefore, given the evidentiary deficiencies described above, we cannot conclude that the Beneficiary's employment abroad was in a managerial capacity.

ORDER: The appeal is dismissed.