



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

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

In Re: 20152800

Date: JULY 28, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, the U.S. representative office of a Chinese [redacted] company, previously employed the Beneficiary as an electrical engineer and project manager under the L-1B nonimmigrant classification for intracompany transferees with specialized knowledge. The Petitioner promoted the Beneficiary to business director and filed the present petition seeking to change the Beneficiary's nonimmigrant classification to L-1A. 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 Texas Service Center denied the petition, concluding that the record did not establish, as required, 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 capacity that was managerial, executive, or involved specialized knowledge. 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.

## 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.*

## II. ANALYSIS

The Director determined that the Petitioner did not establish that it will employ the Beneficiary in a managerial capacity. The Petitioner does not claim to seek to employ the Beneficiary in 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 filed the Form I-129 on February 4, 2019. The Petitioner stated that the Beneficiary “is responsible for two essential functions . . . he has been leading [redacted] project development cooperation and mature [redacted] asset merge/acquisition.” The Petitioner stated that the Beneficiary’s “job responsibilities continue to entail the following:”

1. Manage the engineering aspect of US companies’ technical details with [redacted] focusing on [redacted] technology and equipment.
2. Lead the data analysis on complex [redacted] from potential US target companies to determine future risk.
3. Manage technology related assessment, such as [redacted], [redacted] efficiency, and technology improvement.
4. Lead the [redacted] dynamic modeling and analysis.
5. Lead the data analysis on [redacted] modeling from US target companies.
6. Lead the assessment on technical personnel needs in potential takeover or acquisition.

7. Lead the evaluation of documents on [ ] management of [ ] systems from US target companies.
8. Manage due diligence investigation reports as to [ ] aspects.
9. Review works of the professionals from the Engineering Department.
10. Maintain contact with major partners and participate in major negotiations.

The Director denied the petition, stating that the Petitioner had not established that the Beneficiary “will primarily manage an essential function.” On appeal, the Petitioner contends that the Director disregarded clarifying language that the Petitioner had added to an expanded version of the job description, submitted in response to a request for evidence.

The information added to the job description does not fully illuminate the duties and responsibilities, and in some cases raises more questions than it answers. For instance, the paragraph added to item 1 on the above list includes this passage: “This position will possess exceptional organizational position, leadership, inspires, motivates and builds confidence and engagement in their team and creates an environment where associates are highly committed and perform their best.” The Petitioner does not explain how this passage serves to explain or provide more details about the prior assertion that the Beneficiary would “[m]anage the engineering aspect of US companies’ technical details.”

Other elements are of questionable relevance, and appear to derive from generic position descriptions. For example, the addition to item 3 indicates that the Beneficiary will “[r]eview and screen product development requests for feasibility and completeness.” The same expanded description refers to “prototypes” and “the customer.” But the Petitioner has not shown that it has any customers or engages in product development. These unexplained references therefore raise doubts about the reliability of the job description. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Concerning item 10, the expanded paragraph states that the Beneficiary “works directly with the Merger & Acquisition team in developing a sound engineering development roadmap that targets specific customers’ needs.” The meaning of this passage is not readily apparent, and the Petitioner did not establish its relevance to “participat[ion] in major negotiations.”

The expanded job description appears to have minimal value in terms of establishing the actual nature of the Beneficiary’s duties in the United States.

The Petitioner claims that it seeks to employ the Beneficiary as a function manager, but the Petitioner has not articulated a specific function that the Beneficiary will manage. The term “function manager” applies generally when a beneficiary’s managerial capacity derives not from supervising or controlling a subordinate staff, 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 this matter, the Petitioner has not described or provided evidence that the Beneficiary manages an essential function.

Although the Petitioner has asserted that the Beneficiary is a function manager, whose managerial responsibility derives from management of a function rather than from the supervision of supervisory, managerial, or professional employees, the Petitioner has also asserted that the Beneficiary has authority over professional employees both in the United States and in China.

The Petitioner has six employees in the United States. At the time of filing, the Petitioner claimed the following hierarchical structure:

- President
- Executive Director
- Business Director (the Beneficiary)
- 3 Project Managers

The Petitioner asserted that each project manager has different areas of responsibility. One project manager deals with human resources and accounting issues; a second deals with business development, mergers, and acquisitions; and a third focuses on public relations and consulting.

The job descriptions for the Petitioner's employees do not appear to be consistent with the size and structure of the U.S. entity. The president is said to "[m]entor vice presidents," but the list of titles at the U.S. company does not include any vice presidents. Likewise, the Petitioner asserts that the executive director manages the Petitioner's Manufacturing and Technology Department and its Mergers and Acquisitions Department, but there is no evidence that the petitioning entity is divided into departments, and the record does not show that the entity abroad has delegated responsibility over those departments in China to its U.S. representative office. The Petitioner has no manufacturing capability of its own, and there is no indication that the Petitioner's officials in the United States are responsible for the manufacturing undertaken by its affiliates outside the United States.

The Petitioner submitted documents to establish the Beneficiary's involvement in the company's business activities.<sup>1</sup> The Petitioner noted that the Beneficiary signed various documents on the Petitioner's behalf in 2016 and 2017, and the Petitioner cited "email exchanges establishing his role as Business Director." The record, however, indicates that the Beneficiary did not become the Petitioner's business director until August 2018. From August 2016 to August 2018, the Beneficiary was a "Senior Electrical Engineer & Senior Project Manager," with very different duties and

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<sup>1</sup> We note that the record includes several Chinese-language documents. While English translations accompany each of the Chinese language documents, almost none of these translations comport with the regulatory requirement at 8 C.F.R. § 103.2(b)(3), that the translator must certify that each translation is complete and accurate, and he or she is competent to translate from the foreign language into English. Only two of the English translations submitted with the petition included individual certifications, and only one of those conformed to the regulatory requirements. A translator's blanket certification of "all the translation submitted herein" does not meet the substantive regulatory requirement that each individual translation must be certified.

responsibilities; the position change in 2018 involved more than just a new title. Emails from 2016 show that the Beneficiary was involved in negotiating investments in infrastructure companies, but the signature block in the Beneficiary's own emails identify his title as "Senior Project Engineer." Therefore, the materials from 2016 and 2017 do not illustrate tasks he undertook as business director.

The Director requested further information about the Beneficiary's claimed managerial role and how it relates to the company's employees. In response, the Petitioner submitted an organizational chart which differs from the Petitioner's initial description of the company hierarchy. One of the three previously identified project managers has been promoted to mergers and acquisitions manager, and no longer reports to the Beneficiary. The Petitioner also submitted memoranda and other materials to document some of the Beneficiary's activities after this organizational change took place.

The new organizational chart indicates that the Beneficiary and the executive director share authority over two senior project managers, who in turn oversee "Economic Analytics Teams," "Policy Support Teams," and "Technical Support Teams" in China. The beneficiary, executive director, and mergers and acquisitions manager also share authority over "Project Development Teams" in China. We will address the claimed staff in China further below.

The Petitioner must meet all eligibility requirements at the time of filing the petition. *See* 8 C.F.R. §103.2(b)(1). Post-filing revisions to the Petitioner's organizational structure cannot establish eligibility at the time of filing. The necessity of establishing eligibility at the time of filing also relates to a performance evaluation dated February 2020, discussing the Beneficiary's work from January 2019 to January 2020. Nearly all of this period postdates the filing of the petition in early February 2019. The Beneficiary's work in January 2019 is described as follows: "Lead development of [redacted] [redacted] project participation. Lead meeting discussing [redacted] necessity, feasibility to participate in, preparation. Review and approved meeting summary." The "Support Team" identified for the month's activities consisted of the director of one affiliate's Development Department; a vice president of another affiliate; and one "US Office Senior Project Manager," who took the minutes for the meeting. This information indicates that the Beneficiary was in charge of a particular meeting, but does not establish consistent employment in a primarily managerial capacity.

The record includes minimal evidence regarding the nature of the Beneficiary's activities between his August 2018 appointment as business director and the February 2019 filing date, and how the project managers supported the Beneficiary's work.

The Petitioner initially asserted: "All the members of [the Beneficiary's] team in China continue[] to support [the Beneficiary] in the [redacted] office. . . . In addition, [the Beneficiary] is also supported by a team of ten professional[s] in the [redacted] office." The Petitioner's initial submission included no further information about the support staff in China.

The Director requested detailed evidence to show how personnel in China support the Petitioner in his work in the United States. In response, the Petitioner submitted a list of 11 employees of various affiliated companies in China, calling these employees the Beneficiary's "Supporting Team." Their titles include three vice presidents, four senior project managers, three directors, and one in-house counsel. The Petitioner submitted copies of letters from the Beneficiary to some of these individuals, requesting documents and related materials in preparation for negotiations and meetings with various

U.S. [redacted] companies. These requests for documentation do not suffice to establish that the vice presidents, senior project managers, and others are support staff who report to the Beneficiary.

We note that the Petitioner submits further evidence on appeal relating to the Beneficiary's communications with company officials in China. These materials are essentially similar to previously submitted documents, relating to the Beneficiary's requests for materials needed for meetings and presentations. Therefore, the newly submitted materials are not material to the outcome of the appeal.

The Petitioner asserts, on appeal, that the Beneficiary's reliance on support staff abroad "is almost identical" to the fact pattern in *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016). We disagree. *Matter of Z-A-* involved a beneficiary whose managerial responsibilities encompassed "eight staff members within the parent company's headquarters office in Japan [who] *exclusively* support the Beneficiary's work" (emphasis added). *Id.* at 2. The Petitioner has not shown that the vice presidents, directors, and others in China function as the Beneficiary's subordinates in this way. Rather, the available evidence suggests almost the opposite: that the petitioning entity exists to support the larger organization in China. The Petitioner's chief business function appears to be securing and negotiating investment opportunities for its parent organization. The U.S. entity employs individuals with an engineering background, apparently for their subject matter expertise when dealing with U.S. [redacted] and other companies, but there is no evidence that any engineering or related activity takes place within the petitioning U.S. company.

It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Ho*, 19 I&N Dec. at 588-89; *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966); *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019). Based on the deficiencies discussed above, the Petitioner has not met its burden to establish that the Beneficiary will be employed in a managerial capacity in the United States.<sup>2</sup>

Our conclusion regarding the Beneficiary's U.S. employment is sufficient, by itself, to decide the outcome of the appeal. Discussion of the remaining issue, concerning the Beneficiary's previous employment abroad, cannot change that outcome. Therefore, we reserve this issue.<sup>3</sup>

The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> We note the approval of two subsequent petitions, also seeking to classify the Beneficiary as an L-1A nonimmigrant. The evidence supporting the approved petitions is not before us, and therefore we cannot determine whether those petitions were approved in error, or whether they relied on evidence that is not included in the record before us. The approval of those later petitions does not imply that the earlier petition on appeal before us should also have been approved.

<sup>3</sup> 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).