



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

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

In Re: 20584515

Date: MAY 5, 2022

Appeal of California Service Center Decision

Form I-129, Nonimmigrant Petition for an Intracompany Transferee

The Petitioner, a [redacted] company, seeks to continue the Beneficiary's temporary employment as "Head of Sales Marketing & Distribution [redacted] Auditing and U.S. Hub" 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 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 on the grounds that the Petitioner did not establish that the Beneficiary had been employed abroad in a managerial, executive, or specialized knowledge capacity, as required in 8 C.F.R. § 214.2(l)(3)(iv), or that he would be employed in the United States in a managerial or executive capacity under the extended petition, as required in 8 C.F.R. § 214.2(l)(3)(ii).

On appeal the Petitioner asserts that the Director did not properly consider the evidence of record and improperly applied U.S. immigration law and policy. The Petitioner contends that the documentation previously submitted establishes that the Beneficiary was employed abroad in a managerial capacity and that he has been and will continue to be employed in a managerial capacity in the United States. As discussed below, we will sustain the appeal.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden is on the petitioner in visa petition proceedings to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of the evidence that the beneficiary is fully qualified for the benefit sought. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). To establish its eligibility for the immigration benefit it seeks under the preponderance of the evidence standard, the Petitioner must submit sufficiently probative and credible evidence to establish that its claim is "more likely than not" or "probably" true. *See Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

As defined in section 101(a)(44)(A) of the Act, the term "managerial capacity" means an assignment within an organization in which the employee primarily –

- (i) Manages the organization, or a department, subdivision, function, or component of the organization;

- (ii) 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;
- (iii) If another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. 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.

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have employed the Beneficiary in a managerial or executive capacity, or in a specialized knowledge capacity, 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, executive, or specialized knowledge capacity. *Id.*

The record indicates that the Beneficiary, a German national, started working for the [redacted] organization¹ in 2002. From September 2014 to April 2018 the Beneficiary was assigned to a [redacted] subsidiary, [redacted] to serve in the position of Director, Internal Audit Hub China. From May to November 2018 the Beneficiary was back in Germany working for the parent company, [redacted] as Head of IT-Auditing. In November 2018 the Beneficiary was granted an L-1A visa pursuant to an approved blanket L petition for [redacted] and entered the United States to begin work for the Petitioner, another [redacted] subsidiary, as "Head of Sales Marketing & Distribution [redacted] Auditing and U.S. Hub."

As evidence that the Beneficiary was employed in a managerial capacity for one continuous year before the application for admission to the United States as an L-1A intracompany transferee, the Petitioner has submitted a letter from the Head of Internal Audit and Risk Management of [redacted] describing the Beneficiary's employment in China and Germany during the years 2014-2018, listing his job duties and the percentage of time spent on each, and highlighting the management components of the individual job duties. As evidence that the Beneficiary is also employed in the United States in a managerial capacity, the Petitioner has submitted a letter from its senior immigration specialist which describes the Beneficiary's employment since his entry into the United States as an L-1A intracompany transferee in November 2018, listing his job duties and the percentage of time spent on each, and highlighting the management components of the individual job duties. The Petitioner has also submitted organizational charts showing the Beneficiary's position in the respective corporate hierarchies in China, Germany, and the United States, identifying most of his subordinate employees by name and all of them as auditors, positions that ordinarily require baccalaureate degrees.

¹ The parent company is [redacted] a German corporation headquartered in [redacted]

Based on the above documentation, the record as a whole, and the elements of managerial capacity as defined in section 101(a)(44)(A) of the Act, we determine that the Petitioner has met its burden and established, by a preponderance of the evidence, that the Beneficiary was employed in a managerial capacity by qualifying organizations in China and Germany for more than one continuous year prior to the L-1A application for transfer to the United States, and that he has been and will continue to be employed in a managerial capacity by the Petitioner in the United States. Therefore, the Beneficiary meets the requirements for continuation of his temporary employment under the L-1A nonimmigrant classification as an intracompany transferee. Accordingly, we will sustain the appeal.

ORDER: The appeal is sustained.