U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18848802

Date: MAY 11, 2022

Appeal of California Service Center Decision

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

The Petitioner, a provider of consulting and concierge services, seeks to continue the Beneficiary's temporary[1] employment as its general manager 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, concluding that the record did not establish, as required, that the Beneficiary has been employed abroad, and will be employed in the United States, 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.

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 the Beneficiary has been employed abroad, and will be employed in the United States, in a managerial or executive capacity. The Petitioner asserts that the Beneficiary has been and will be employed in a managerial capacity, and therefore, we need not consider the requirements for an executive capacity.

[1] An introductory letter submitted with the petition referred to the Beneficiary's position as "permanent," although the Petitioner seeks a nonimmigrant classification that, by law, is time-limited.

"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 be 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.

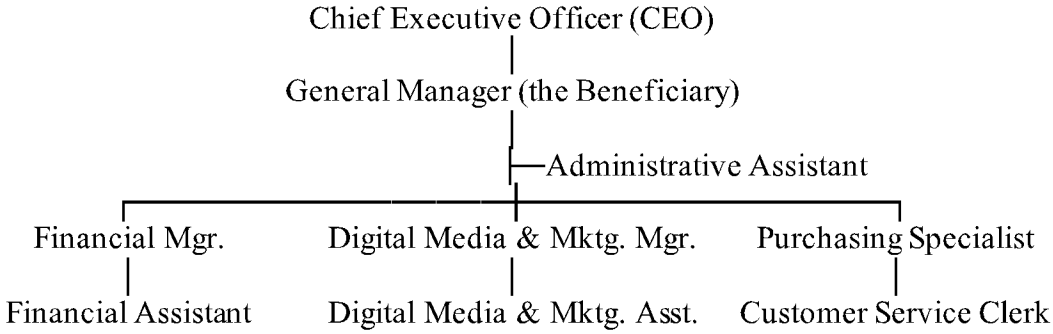
Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business and its staffing levels.

The Petitioner's initial job description lists six responsibilities and the approximate percentage of time that the Beneficiary would devote to each of them:

Manage and supervise the work of the Financial Manager, the Purchasing Specialist and Marketing Manager;	25-30%
Manage general activities related to consulting and concierge services of the Petitioner by supervising the Purchase Specialist;	20%
Manage[] the Marketing Manager in establishing sales strategies and marketing goals, evaluating his performance and determining areas of cost reduction and program improvement;	10%
Supervise the implementation of the corporation's accounting practices and financial policies, analyzing reports, audits, deciding investment risks, budget, allocation of resources prepared by the Financial Manager;	15-20%

Hire and supervise the training of professionals to work in the company; and	10-15%
Supervise the Financial Manager in an[a]lyzing financial information, such as price, future trends, and investment risks, making investment decisions, estimating forecast of business and preparing plans of action.	5-10%

The Petitioner claims eight employees in the United States, with the following personnel structure:



At the time of filing, the Petitioner indicated that the marketing assistant position was vacant, but the Petitioner provided the names of the other claimed employees.

The Petitioner describes its claimed business activities:

> Our Consulting and Concierge services include but are not limited to assisting clients on how to open a business, acquire Tax Id number, translations, personal shopper, renting virtual offices, filing mail and packages for international customers, interpreter services, company referrals, vacation rentals and more.

The job descriptions for the Petitioner's eight claimed employees, however, do not show who provides any of the named services, and they leave other questions unanswered. For example, the job description for the purchasing specialist states that he "[f]orwards available inventory items by verifying stock," but the record does not indicate what inventory a consulting and concierge service would need to maintain, or to whom the Petitioner would forward those unspecified items.

in the record indicate that the Petitioner billed customers for services such as "Accounting Services," "Translation," and "Opening a Company," but the record does not show who performed those services and none of the job descriptions include those responsibilities. The submitted invoices do not appear to identify transactions involving the purchase, sale, or other handling of inventory.

The Petitioner submits copies of quarterly tax returns and wage and tax statements showing the following salaries paid in 2017, 2018, and the second and third quarters of 2019:

Title	2017	2018	2019
CEO	$12,000	$12,000	$9000
General Manager (the Beneficiary)	46,200	50,400	25,200
Purchasing Specialist (the Beneficiary's spouse)	8700	21,000	9000

Customer Service Clerk	—	11,600	7200
Digital Media & Marketing Manager	12,000	12,000	6000
Financial Manager	21,000	12,000	6000
Financial Assistant	—	—	21,000
Administrative Assistant	12,000	12,000	6800

Most of these amounts are inconsistent with full-time, year-round employment at Florida's minimum wage ($8.10 per hour in 2017, $8.25 in 2018, and $8.56 in 2019).[2] As a result, these low salaries raise questions about the true nature and extent of these individuals' responsibilities and employment.

We note that the Petitioner's 2018 and 2019 tax returns in the record do not show that the Petitioner claimed salaries, wages, or officer compensation among its expenses.[3] Although the purchasing specialist's job description contains references to "inventory" and "stock," the Petitioner did not report any inventory among its assets on the tax returns. The Petitioner does not address or explain these discrepancies. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The Petitioner's lease agreement and an exterior photograph of the Petitioner's business premises show that the Petitioner shares the office space with a real estate company. The Petitioner submits interior photographs of its office, but the record does not show how many of the materials and individuals shown relate to the real estate company rather than to the Petitioner.

The Director requested additional details about the Beneficiary's work for the Petitioner in the United States in a request for evidence (RFE). In the RFE, the Director acknowledged that the Petitioner was "filing to extend the beneficiary's previously approved stay in L-1 classification." The Director noted that, "The description of duties also appear[s] to lack sufficient detail for USCIS [U.S. Citizenship and Immigration Services] to determine whether these duties are consistent with an executive or managerial position. You have not adequately addressed or explained how the beneficiary's subordinates relieve her from performing non-qualifying [managerial] duties." Additionally, the Director's RFE noted that the Petitioner had not "sufficiently described the subordinates' duties." The Petitioner responded by submitting essentially the same job description already included in the initial filing.

The Director denied the petition. The Director's decision noted that, "USCIS is aware that you are requesting an extension of stay; however, it should be noted that each petition filing is a separate proceeding with a separate record." Additionally, the Director stated that, "in making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding." *See* 8 C.F.R. § 103.2(b)(16)(ii). Further, "USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition." *See* section 291 of the Act.

[2] *See* https://www.dol.gov/agencies/whd/state/minimum-wage/history.

[3] We note that the returns are IRS Forms 1120S, U.S. Income Tax Returns for an S Corporation. It appears that the Petitioner may not be eligible for status as an S corporation. The Petitioner's majority shareholder is a limited company, [redacted], registered in Brazil. Partnerships, corporations, and non-resident individuals cannot hold shares in an S Corporation. *See* https://www.irs.gov/businesses/small-businesses-self-employed/s-corporations.

Upon review, we agree with the Director's decision. From a review of the record, following an RFE, the Director determined that the Petitioner had not met its burden, stating that the Petitioner did not provide enough details to establish the actual duties that the Beneficiary and her claimed subordinates would perform. The Director noted that the Beneficiary's authority over subordinates does not suffice to show that her position would be *primarily* managerial as the statute and regulations require. Also, the record of proceedings does not contain copies of the visa petition that was previously approved. As noted by the Director, each petition filing is a separate proceeding with a separate record. *See* 1 *USCIS Policy Manual* E.2(A), https://www.uscis.gov/policymanual (the record of any application or petition constitutes a record of proceeding). *See also Hakimuddin v. DHS*, Civ No. 4:08-cv-1261, 2009 WL 497141, at *6 (S.D. Tex. Feb. 26. 2009) (the record of proceeding does not always contain the prior approvals). While we recognize that the Director should explain their departure from previous approvals, the Petitioner carries the burden of proof and must provide requested evidence. A 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).

The Petitioner also submits "some emails from the Beneficiary showing that she does not perform the day-to-day activities but manages the company." While the emails include instructions to others concerning various matters, they do not resolve whether her duties are *primarily* managerial. These emails, mostly from 2018, existed at the time of filing but the Petitioner did not include them in its response to a request for evidence that specifically asked for more details about the nature of the Beneficiary's work. This evidence was not available to the Director at the time of the denial, and the Petitioner does not explain how these new materials establish an erroneous conclusion of law or statement of fact in the denial notice, as required by the regulation at 8 C.F.R. § 103.3(a)(1)(v). Rather, the Director concluded that the Petitioner had not submitted sufficient evidence initially, and in response to the request for evidence, to meet its burden of proof. The submission of new evidence on appeal does not suffice to show that the evidence *previously* in the record was sufficient.

Where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988).

For the above reasons, the Petitioner has not established that it seeks to employ the Beneficiary in a primarily managerial capacity in the United States. This conclusion, by itself, prevents a determination of eligibility and therefore warrants dismissal of the appeal. Detailed discussion of the remaining issue, concerning the Beneficiary's prior employment abroad, cannot change the outcome of this appeal. Therefore, we reserve this issue.[4]

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that it seeks to employ the Beneficiary in a primarily managerial capacity.

ORDER: The appeal is dismissed.

[4] *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).