



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

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

In Re: 19814660

Date: MAY 27, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a management consulting firm, seeks to temporarily employ the Beneficiary in the United States as its director of [REDACTED] 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 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 remand the matter for the entry of a new decision consistent with our analysis below.

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.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. ANALYSIS

The Director determined that the Petitioner did not establish that the Beneficiary: (1) has been employed abroad in a qualifying capacity, and (2) will be employed in the United States in 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.

“Executive capacity” means 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.

To show that a beneficiary is eligible for L-1A nonimmigrant visa classification as a manager or executive, the petitioner must show that the beneficiary will perform all four of the high-level responsibilities set forth in the statutory definitions at section 101(a)(44)(A) or (B) 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 or executive 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 qualify as either executive or managerial, U.S. Citizenship and Immigration Services (USCIS) considers 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.

In this case, however, the Director’s analysis focused mostly on the lack of direct, documentary evidence concerning the Beneficiary’s claimed subordinates and the organization’s business activities, to the exclusion of any discussion of the Beneficiary’s current and proposed job duties. While the decision implies that there was insufficient evidence of the company’s scope and organizational complexity, the record identifies the Petitioner as part of a large organization, with thousands of employees both in the United States and abroad. Therefore, the organization appears to be sufficiently large and complex to support both executive and managerial positions. The denial notice consisted

largely of long quotations from a prior request for evidence, with only a few sentences identifying the grounds for denial.

The denial notice must show the specific reasons for denial. *See* 8 C.F.R. § 103.3(a)(1)(i). We conclude that the denial notice lacked the required specificity. Nevertheless, we will not sustain the appeal and approve the petition at this time, because important issues must still be addressed.

In the denial notice, the Director indicated that the Petitioner described the Beneficiary's past employment abroad, and his intended employment in the United States, as being in an executive capacity. The Petitioner has repeatedly described the positions in question as executive, but the Petitioner also frequently used the terms "managerial" and "management" when discussing those positions. At one point, the Petitioner stated: "The beneficiary's employment as Director of [REDACTED] [REDACTED] abroad qualifies as executive in that he: (a) supervises and controls the work of professional employees and (b) exercises direction over the day-to-day operations of the function and the teams/employees under his purview." These responsibilities, however, are elements of a managerial capacity, not an executive capacity.

These ambiguities warrant a fuller discussion of the issue of managerial capacity, particularly in light of the Petitioner's assertions that the Beneficiary's past and proposed responsibilities would include direct supervision of professionals.

The Director's questions about subordinate personnel are important, particularly because the Petitioner has submitted what appear to be conflicting organizational charts and descriptions of the Beneficiary's subordinate staff. The Petitioner initially stated that the Beneficiary would "[d]irectly and indirectly manage a team of 20 experience[d] professionals who liaise externally with our leading suppliers of data, analytics, and research services," and "[p]rovide overall oversight to a global external knowledge team of 250 individuals." An organizational chart showed the following structure subordinate to the Beneficiary's intended position:

- Knowledge Services Manager
 - Specialists
 - Coordinators
- Technology and Operations Manager
 - Specialists
- External Knowledge Network
 - 250 full-time employees across multiple knowledge firms

In response to a request for evidence (RFE), the Petitioner asserted that "[t]he beneficiary will supervise and control . . . over 50 consultants, and more than 600 professionals." A revised organizational chart showed the following structure that would be under the Beneficiary's authority:

- New Capabilities Specialist (Expert Networks)
 - 17 suppliers
 - 1 Expert
 - 1 Specialist
 - 1 Solutions Leader

- 1 Solutions Manager
 - 1 Product Owner
 - 2 Developers
- New Capabilities Specialist (Global Surveys)
 - 60+ suppliers
 - 2 Senior Experts
- New Capabilities Specialist (Global Data Labs)
 - 100+ suppliers
 - 1 Specialist
 - 4 Data Scientists/Engineers
- Product Manager (Technology and Operations)
 - 10+ tech suppliers
 - 1 Operations Specialist
 - 1 Operations Coordinator
- Manager, Firm Controllershship
 - 1 Financial Specialist
 - 2 Senior Analysts
 - 1 Analyst
- Human Resources Manager
- Global Business Research
 - 250 full time employees across multiple Knowledge Firms
 - 1 Expert
- Knowledge Assets
 - Americas
 - 200+ suppliers
 - 5 Experts/Specialists
 - 2 Coordinators
 - Europe
 - 50+ suppliers
 - 1 Expert
 - 1 Specialist
 - Asia
 - 10+ suppliers
 - 1 Expert
 - 1 Coordinator
- Risk
 - 2 Compliance Coordinators

The first chart indicated that the “Knowledge Services Manager” was one of only two positions immediately subordinate to the Beneficiary; the second chart did not show that title at all. The Petitioner did not explain why the description of the subordinate personnel changed from “a team of 20 experience[d] professionals” and “a global external knowledge team of 250 individuals” to “over 50 consultants, and more than 600 professionals.”

Because the Petitioner has provided two conflicting versions of the subordinate structure that the Beneficiary would oversee in the United States, the Petitioner must provide independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Nevertheless, the Director's decision did not address the discrepancy between the two lists of claimed subordinates, and therefore the Petitioner did not have the opportunity to address this potentially pivotal issue on appeal.

The Director's denial notice did not include a substantive discussion of the Beneficiary's claimed duties abroad and in the United States. The Petitioner should resolve the personnel discrepancies in order to help establish whether the Beneficiary will be employed in a managerial capacity.

In terms of an *executive* capacity, a given beneficiary's authority over subordinates who are deemed to be managers does not presumptively qualify that beneficiary as an executive. Rather, that beneficiary must direct the management of either (1) the organization, or (2) a major (a) component or (b) function of the organization. *See* section 101(a)(44)(B)(i). Authority over a department, subdivision, or minor component of an organization would not qualify as an executive capacity; departments, subdivisions, and non-major components are addressed only in the statutory definition of managerial capacity; their omission from the definition of executive capacity is consistent with the hierarchical idea of executive positions being more highly elevated than managerial positions.

The Petitioner states that, as director of [redacted] the Beneficiary "will oversee [the [redacted] service line within our [redacted] in [redacted] MA," and will be "at the top of the organizational hierarchy for [the Petitioner's] [redacted] Practice." The Petitioner calls [redacted] "a key function within the Firm," but has not established where [redacted] stands within the larger organization, for example by submitting an organizational chart that showed [redacted] relative position. This information is relevant to the question of whether [redacted] is a major component or function of the organization.

The Petitioner's response to the RFE included materials from the company's website describing the [redacted]. These materials do not mention [redacted] and therefore do not show how [redacted] relates to the larger [redacted]. The distinction is significant because the Petitioner does not claim that the Beneficiary has been, or will be, in charge of [redacted] overall; he would report to the "Partner, [redacted]." The web printout also indicates that the [redacted] location, where the Beneficiary would work, is one of [redacted] Locations." Therefore, information about the significance or scope of the wider [redacted] component does not shed sufficient light on the Beneficiary's intended role within that component.

For the reasons explained above, the record does not rule out the possibility that the Beneficiary's past and proposed positions qualify as at least managerial, but the Director's narrow focus on certain evidentiary issues in the denial notice did not afford the Petitioner an opportunity to address other issues of concern.

We note that, in response to the RFE, the Petitioner expressed concerns about the privacy of its employees and clients, resulting in a reluctance to submit direct evidence of the company's activities.

In this regard, we note that *partially* redacted information can help to meet the Petitioner's burden of proof, provided that the information provided is credible and verifiable.¹

In light of the deficiencies noted above, we find it appropriate to remand the matter to the Director to reevaluate the submitted evidence and determine whether the Petitioner has established that past positions abroad, and intended positions in the United States, meet the requirements of a managerial capacity. To aid in making this determination, the Director should issue a new RFE that is more narrowly targeted toward the issues discussed above.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

¹ We further note that the record of proceeding is subject to Privacy Act protections, and certain identifying information cannot be disseminated to the public without redaction of protected identifying information. See 1 *USCIS Policy Manual* A.7 <https://www.uscis.gov/policy-manual>.