



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

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

In Re: 22706592

Date: NOV. 14, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a wholesale distributor of yarn-dyed fabric and shirts, seeks to continue the Beneficiary's temporary employment as its managing director 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 on two separate grounds, concluding that the record did not establish that (1) the Beneficiary had been employed abroad in a managerial or executive capacity and (2) the Beneficiary would be employed in the United States in a managerial or executive capacity. The Petitioner subsequently filed an appeal, which we summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v). The record now reflects that the Petitioner timely submitted a brief and additional evidence in support of the appeal which had not been incorporated into the record of proceeding prior to the date of our summary dismissal decision. Accordingly, we have reopened the Petitioner's appeal under 8 C.F.R. § 103.5(a)(5).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361, *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director for further consideration and entry of a new decision.

While the Petitioner's appeal was pending, U.S. Citizenship and Immigration Services (USCIS) updated the *USCIS Policy Manual's* guidance regarding deference to prior approvals. 2 *USCIS Policy Manual* A.4(B)(1), <https://www.uscis.gov/policy-manual>; *see also* USCIS Policy Alert, PA-2021-05, *Deference to Prior Determinations of Eligibility in Requests for Extensions of Petition Validity* (Apr. 27, 2021), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210427-Deference.pdf>. As noted by the Petitioner, this petition is an extension request in the same nonimmigrant classification, previously approved by USCIS, and filed by the same petitioner and for the same position.¹ Therefore, it is directly impacted by this USCIS guidance. As such, we find it

¹ The record reflects that the initial L-1A petition was denied based on a determination that the Petitioner did not establish

appropriate to remand the matter to the Director to consider the extension request anew and to consider the deference guidance in the first instance.

With respect to the Director's adverse determination regarding the Beneficiary's employment abroad, we note that, given the prior approval and the current USCIS policy guidance, only new material information would warrant reversal of the AAO's previous determination that the Beneficiary was employed abroad in a qualifying capacity for at least one year in the three years preceding the filing of the initial L-1A petition. If the Director intends to issue a new adverse determination with respect to this issue, he must advise the Petitioner of any new material information in a notice of intent to deny or request for evidence and provide it with an opportunity to respond.

Regarding the proposed employment in the United States, in addition to applying the deference guidance in the *USCIS Policy Memorandum*, the Director is instructed to address the Petitioner's claim that the Beneficiary would be responsible for managing or directing an essential function of the organization, and its claim that personnel employed by Petitioner's Portuguese parent company perform operational and administrative activities that support the U.S. company. Neither of these claims was acknowledged in the Director's decision or sufficiently addressed in the RFE. However, the record as presently constituted contains insufficient evidence of the Petitioner's staffing at the time of filing, and the Director's decision, which was limited to a brief discussion of the Beneficiary's U.S. job duties, did not put the Petitioner on notice of this deficiency. An officer must fully explain the reasons for denying a visa petition to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

USCIS reviews the totality of the evidence when examining the claimed managerial or executive capacity of a beneficiary, including the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business. 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).

Here, the record raises questions regarding whether the Beneficiary had sufficient support staff, in the U.S. or abroad, to relieve him from performing the non-managerial and non-executive tasks associated with the function that he is claimed to manage or direct. We note that when the Petitioner filed its

that the Beneficiary was employed abroad, or would be employed in the United States, in a managerial or executive capacity. The AAO sustained the Petitioner's appeal and the prior petition was approved. *See Matter of S-A- Inc.* (AAO Oct. 19, 2018)

initial L-1A petition, it indicated that the company would employ six U.S.-based staff (including two subordinate market managers) almost immediately upon the Beneficiary's transfer to the United States. The approval of the initial petition was based, in part, on this evidence. Based on the statements and evidence submitted in support of this extension request, it is unclear that the Petitioner ever maintained a staff of six employees. Further, although the Petitioner indicated at the time of filing that it had two employees, a statement from the Beneficiary, submitted in support of the appeal, suggests that the company had no employees on its payroll in 2020 when this petition was filed. Therefore, it appears that there may have been a material change in staffing levels that needs to be addressed before a determination can be made regarding deference to the prior approval.

The Petitioner also claims to rely on staff employed by its foreign parent company, but the record lacks updated evidence of the foreign entity's ongoing employment of these staff and the nature and scope of the specific services they provide to the U.S. subsidiary. While an employee who directs or manages an essential function is not required to directly supervise subordinate staff, the Petitioner must still establish that someone other than the Beneficiary is available to perform the operational and administrative tasks associated with the function. As noted, the Director's analysis of the Beneficiary's U.S. employment focused almost entirely on his job description. The Director did not sufficiently address the Petitioner's claim that the Beneficiary would manage or direct an essential function, and did not advise the Petitioner of evidentiary deficiencies with respect to its documentation of the U.S. and foreign-based staff who are claimed to perform the majority of the administrative and operational tasks for the petitioning company.

For the foregoing reasons, the Director is instructed to review the record in its entirety and to issue a new request for evidence or notice of intent to deny, addressing the issues discussed above, prior to issuing a new decision.

ORDER: The decision of the Administrative Appeals Office is withdrawn. The matter is remanded to the Director of the Texas Service Center for the entry of a new decision consistent with the foregoing analysis.