



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

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

In Re: 24061118

Date: APR. 6, 2023

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, which operates vending machines, seeks to extend the Beneficiary's temporary employment as manager of its new office under the L-1A nonimmigrant classification for intracompany transferees. *See* 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 that: (1) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; and (2) the new office is able to support a managerial or executive capacity. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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.*

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and

evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

## II. ANALYSIS

The Petitioner's foreign parent company imports and distributes firearms and related supplies for hunting and target shooting. The Beneficiary worked as the foreign company's international sales manager from May 2018 until he entered the United States as a B-2 nonimmigrant visitor in June 2019. The Beneficiary established the Petitioner as a limited liability company (LLC) in Nevada in [REDACTED] 2020. The Petitioner filed a new office petition in April 2020. The approval of that petition granted the Beneficiary L-1A nonimmigrant status from October 2020 to October 2021.

### A. Qualifying Relationship

To establish a "qualifying relationship" under the Act and the regulations, a petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e., one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The Petitioner asserts that it is a subsidiary of the foreign company that previously employed the Beneficiary. We withdraw the Director's determination that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's foreign employer.

The Petitioner is an LLC, with "members" rather than "shareholders." The Petitioner's LLC operating agreement (OA) indicates that the Beneficiary's foreign employer owns a 51% membership interest in the petitioning U.S. company, and the Beneficiary owns the remaining 49%. The OA also indicates that the members elect the manager(s) with authority over the company. The foreign entity's majority interest therefore establishes ownership and control, and thus a qualifying relationship.

The Director relied on the Beneficiary's 2020 and 2021 income tax returns, each of which includes Schedule C, Profit or Loss From Business (Sole Proprietorship), identifying the Beneficiary as the proprietor of the petitioning LLC. An LLC with two members is, by definition, not a sole proprietorship. The Director therefore concluded that the Beneficiary is the sole owner of the petitioning LLC, in which case no qualifying relationship would exist between the Petitioner and the foreign entity. But given the other documents in the record, particularly the OA, the more likely conclusion is that the tax returns were improperly prepared. The preponderance of the available evidence indicates that the foreign entity owns a controlling interest in the petitioning U.S. entity.

### B. Managerial or Executive Capacity

The "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of a beneficiary in a primarily managerial or executive position. A petitioner filing a new office petition must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there

would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally* 8 C.F.R. § 214.2(l)(3)(v).

After a new office petition is approved, a petitioner seeking to extend a beneficiary's status must establish that the new office has developed to the point that it now supports a managerial or executive position. *See generally* 8 C.F.R. § 214.2(l)(14)(ii). As the Director noted in the denial notice, U.S. Citizenship and Immigration Services (USCIS) will not defer to the prior approval of a new office petition, because new office extension petitions involve new eligibility requirements. *See generally* 2 *USCIS Policy Manual* A.4(B)(1), <https://www.uscis.gov/policy-manual>.

The Director determined that the Petitioner did not establish that the former new office can support a managerial or executive position. The Petitioner asserts that it seeks to employ the Beneficiary as a manager, not as an executive, and so we will discuss the requirements of a managerial 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.

If a petitioner establishes that the offered position meets all four statutory elements of a managerial capacity, 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). 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 specified that it seeks to employ the Beneficiary as a function manager. 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).

We will begin with a discussion of the Petitioner’s staffing. On the petition form, filed in October 2021, the Petitioner claimed two U.S. employees, but the Petitioner did not document their employment. In its business plan, dating from the company’s inception in [ ] 2020, the Petitioner stated that it “will initially hire a minimum of 3 employees in addition to [the Beneficiary] and projects hiring 7 to 10 additional [employees] before the end of its first year of operation.” The business plan forecast the following first-year hiring timetable:

- Administrative Assistant – 3 months
- Inventory Stockers and Collections – currently 2, 4 within 12 months
- Area Supervisors – 2 – first in 6 months, 2nd by the 12th month
- Repair and Service Person – 6 months

In a September 2021 letter submitted with the extension petition, the Petitioner acknowledged that the company “has been unable to hire and retain employees, instead relying on independent contractors for administration . . . , maintenance persons for the machines and collection of coins and bills.” The Petitioner’s tax information, reported on Schedule C of the Beneficiary’s income tax return, does not show any wages paid in 2020.

Copies of three contractor agreements indicate that the Petitioner engaged the services of one “Stocker and Collections” worker in June 2020; an “Area Supervisor and Administrative Assistant” in July 2020; and an “In-house locator, Machine repair and service, Training and education” in July 2020. Each was to be paid \$25 per hour on an as-needed basis. The Petitioner did not submit documentation of payments to these contractors. Schedule C of the Beneficiary’s 2020 income tax return does not show any expenses reported as either “wages” or “contract labor.”

Schedule C of the Beneficiary’s 2021 tax return shows \$2,620 in payments to contractors. Monthly bank statements and profit and loss statements show that the Petitioner made all those payments between January and May, with monthly amounts varying between \$260 and \$915. The Petitioner paid the “stocker and collections” contractor a total of \$1,140 from January to March; the “area supervisor and administrative assistant” \$65 in January; and the “in-house locator, machine repair and service, training and education” contractor a total of \$1,415 from April to May. The evidence does not describe the specific services performed. The submitted materials do not show any payments to contractors in the last seven months of 2021.

The Petitioner did not explain who performed operational tasks for the company after May 2021, when it claimed to own 62 vending machines in numerous locations, but paid no contractors and had no employees other than the Beneficiary.

The new office petition was approved based on the Petitioner's initial claims, including the assertion that the company would hire between three and thirteen employees during its first year. The record shows that, at the end of that first year, the company had no staff other than the Beneficiary, and the small amounts paid to three contractors are consistent with part-time, intermittent services. The Petitioner acknowledged that economic conditions in 2020 and 2021 slowed the company's development and growth, but stated that "the experts are expecting substantial growth in the upcoming months. . . . [The Beneficiary's] foresight has now positioned the company to achieve the success originally forecast in the business plan before the pandemic."

The regulations at 8 C.F.R. § 214.2(l)(3)(v)(C) and 8 C.F.R. § 214.2(l)(7)(i)(A)(3) allow for one year under the more lenient new office provisions to permit the new office to develop to the point where it can support an executive or managerial position. There is no provision in USCIS regulations allowing for an extension of this one-year period. If the business does not have the necessary staffing after one year to sufficiently relieve the Beneficiary from performing operational and administrative tasks, the Petitioner is ineligible for an extension.

In denying the petition, the Director concluded that the Petitioner had "not established that [it] has sufficient support in place to allow the beneficiary to work in a primarily managerial or executive position in the United States." On appeal, the Petitioner acknowledges the limitations in the new office regulations, but states: "this regulation never contemplated instances where acts of God or force majeure interrupt or retard ordinary business practices. From the start Petitioner's business was impacted greatly by the start of the nationwide Covid-19 quarantine beginning in late March of 2020."

The Petitioner asserts that the Director's "heavy-handed approach differs greatly from numerous COVID-19-related flexibilities . . . allowing for a number of previously late filings, delays in responses and other deference's [sic]." The distinction is that USCIS publicly announced flexibilities for certain filings and responses. The Petitioner does not cite any such announcements that suspended the one-year limit for new office petitions, or relaxed the requirements for extension petitions.

Also, the COVID-19 pandemic was not an unexpected development that arose during the Petitioner's year as a new office. The Petitioner filed the new office petition in April 2020, after quarantines had begun. In its extension petition, the Petitioner has repeatedly quoted from a blog post, published before the Petitioner filed the new office petition, that cautioned: "If you were looking to start a vending machine business, don't panic, but also wait to start your business. This is not a good time to start."<sup>1</sup>

The Petitioner cites section 101(a)(44)(C) of the Act, which states: "If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, [USCIS] shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function." This statutory language does not negate the statutory and regulatory requirements for the classification sought. A relatively new or small company will have different staffing needs than a larger or more established employer, but whatever the size of the company, it must have developed to a point where it can support a primarily managerial or executive capacity. The purpose of the new office regulations is to give new employers a chance to reach that point. The matter before us is a new office *extension* petition, in

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<sup>1</sup> "How COVID-19 Will Affect The Vending Machine Business!," *Medium*, March 23, 2020, <https://dominickbarbato.medium.com/how-covid-19-will-affect-the-vending-machine-business-d1e1e610a9d6>.

which the Petitioner must show that it is *already* sufficiently staffed to relieve the Beneficiary from performing primarily non-qualifying tasks.

We agree with the Director that the Petitioner has not shown that the new office was sufficiently staffed to support a managerial or executive capacity after the limited one-year new office period.

We turn now to the Beneficiary's duties. A new office extension petition must include a statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition. 8 C.F.R. § 214.2(l)(14)(ii)(C). In a statement submitted with the extension petition, the Petitioner stated:

[The Beneficiary's] overall duties continue to consist of overseeing the function of the vending business operations while making all strategic financial decisions, and growing the product, which will include but is not limited to the following:

- Overseeing all Vending machine purchases and locations purchasing. Make final decisions for all capital allocations.
- Negotiate and enter into contracts with supplier for vending machines.
- Analyze proposals from potential distributors concerning healthy product replacements.
- Hire, train and supervise employees servicing the vending machines including stocking and income collection.
- Establishing and implementing internal controls and procedures to ensure financial statements are fairly and accurately presented.
- Liaison with parent company['s] . . . executive branch for future strategic planning including establishing relationships at the executive level with US based firearms and peripherals manufacturers.

With regard to the last item above, the foreign entity, not the petitioning U.S. employer, sells "firearms and peripherals." The Petitioner asserts that the Beneficiary retains his position with the foreign parent company. Any work that the Beneficiary undertakes on behalf of the foreign parent company, rather than the distinctly different business activity of the petitioning U.S. company, is not employment in a managerial or executive capacity for the Petitioner.

The fourth item listed above indicates that the Beneficiary would directly "supervise employees servicing the vending machines." First-line supervision of non-professional employees is neither managerial nor executive. *See* 8 C.F.R. § 214.2(l)(1)(ii)(B) and (C). The Petitioner has not claimed or shown that servicing vending machines qualifies as a profession.

An accompanying expansion of the list of duties indicates that the Beneficiary would spend 30% of his time on issues including "personnel issues," such as reviewing "current staffing effectiveness" and "current personnel performance." As discussed above, the Petitioner has no staff other than the Beneficiary himself. The Petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The assertion that the Petitioner will eventually employ subordinate staff is appropriate in a new office petition, but the subordinate staff must already be on hand when the Petitioner files a subsequent extension petition.

Furthermore, the expanded discussion appears to relate to a different business; it includes references to “hiring . . . additional loan officers” and “discussion of collection activities for defaulted loans.” Therefore, the expanded list of duties has little evidentiary weight.

In the RFE, the Director stated that the job description was deficient, because some of the stated duties were vague and general, while others did not appear to relate to the Petitioner’s business. In response, the Petitioner repeated the same job description, including the references to “loan officers,” and asserted that the job description depicts the responsibilities of a function manager. The Petitioner stated, for instance: “The function is very clearly defined. [The Beneficiary] will continue to acquire vending machines and seek out favorable locations and hire and train individuals to service them.”

But the Petitioner has not shown that he only oversees, rather than performs, the function. For instance, the phrase “overseeing all Vending machine purchases” implies that the Beneficiary directs the work of subordinates who actually purchase the machines, but the Beneficiary has no subordinates, and he signed the purchase orders reproduced in the record. The Petitioner asserts that the Beneficiary delegates lower-level tasks to contractors, but the record does not show that the Petitioner engaged any contractors after May 2021. If the Petitioner has continued to stock and service its vending machines after that time, then it appears the Beneficiary himself must have performed these tasks. The principal expense shown on the profit and loss statements from late 2021 is “auto and truck expenses,” with no evidence that anyone other than the Beneficiary was driving the vehicles.

The Director denied the petition, stating that the Petitioner’s response to the RFE did not address the deficiencies in the job description and that the Petitioner had not shown that the Beneficiary’s duties would be primarily managerial or executive. On appeal, the Petitioner cites *Matter of G-* and contends that the Director did “not take into account Beneficiary’s unique role as a function manager.”

Above, we have discussed key deficiencies in the Beneficiary’s job description, which the function manager provisions in *Matter of G-* neither address nor mitigate, and which cannot be fully blamed on the COVID-19 pandemic. Parts of the Beneficiary’s job description lack crucial detail, and where there are details, they appear to refer to a different business and a different claimed manager.

The new office petition was approved with the expectation that the company would develop as described in its business plan, including the hiring of subordinate staff to relieve the Beneficiary from performing non-managerial tasks. The Petitioner has not met its burden of proof to show that the new office has developed to the necessary extent.

### III. CONCLUSION

Although the Petitioner has established a qualifying relationship with the Beneficiary’s foreign employer, it has not shown that the new office was able to support a managerial or executive position within one year after the approval of the new office petition. We will therefore dismiss the appeal.

**ORDER:** The appeal is dismissed.