



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

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

In Re: 23981453

Date: APR. 7, 2023

Appeal of California Service Center Decision

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

The Petitioner, a provider of an advertising technology platform and related products, seeks to continue temporarily employing the Beneficiary in the United States as vice president of business development. The company requests extension of his L-1A nonimmigrant visa classification as an intracompany transferee working in an executive capacity. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate its proposed continued employment of the Beneficiary in the claimed executive capacity. On appeal, the Petitioner asserts that the Director disregarded and mischaracterized evidence and submits additional materials. The company also contends that the Director should have deferred to its prior approved L-1A petition for the Beneficiary, which classified him as an executive.¹

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the Director properly declined to defer to the Beneficiary's prior classification as an executive in the Petitioner's initial L-1A petition for him. But - because the Director disregarded some evidence and relied, in part, on other evidence of which the company did not receive proper notice - we remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

A petitioner seeking to employ an L-1A manager or executive must demonstrate that - for at least one continuous year in the three years before a beneficiary's initial U.S. admission in nonimmigrant status - the petitioner or its parent, branch, subsidiary, or affiliate employed the noncitizen abroad in a

¹ The Petitioner also challenges the Director's denial of the company's request to extend the Beneficiary's stay in the United States. *See generally* 2 *USCIS Policy Manual* A.(4)(C) (explaining that, where a petitioner requests extensions of both a beneficiary's nonimmigrant visa classification and U.S. stay, U.S. Citizenship and Immigration Services (USCIS) separately rules on the requests). A request for an extension of stay, however, "may not be appealed." 8 C.F.R. § 214.1(c)(5). We therefore lack authorization to review that decision.

capacity that was managerial, executive, or involved specialized knowledge. 8 C.F.R. § 214.2(l)(3)(i), (iii), (iv). A petitioner must also establish that a beneficiary's education, training, and employment qualify them for a proposed U.S. managerial or executive position. 8 C.F.R. § 214.2(l)(3)(ii), (iv).

The Petitioner's prior L-1A petition for the Beneficiary authorized him to work in a "new office," an organization that had been doing business in the United States for less than one year. *See* 8 C.F.R. § 214.2(l)(ii)(F) (defining the term "new office"). A new-office petition may not remain valid for more than one year. 8 C.F.R. § 214.2(l)(7)(i)(A)(3).

To extend a new-office petition, a petitioner must submit evidence that it has been doing business for the prior year and that it and a beneficiary's foreign employer remain qualifying organizations. 8 C.F.R. § 214.2(l)(14)(ii)(A), (B). A petitioner must also: describe its staffing, including its: number of employees; types of positions; and proposed employee wages; indicate its financial status; and identify a beneficiary's duties during the prior year and the tasks they would perform in the future. 8 C.F.R. § 214.2(l)(14)(ii)(C), (D), (E).

II. ANALYSIS

The record shows that the Petitioner's parent company in Singapore employed the Beneficiary abroad in the offered position of vice president of business development from July 2010 to December 2019, when he transferred to the Petitioner in the United States. U.S. immigration officials admitted him into the country in L-1A nonimmigrant visa status as an executive until December 9, 2020, the maximum period of stay that his new-office L-1A visa authorized. *See* 8 C.F.R. § 214.2(l)(7)(i)(A)(3).

The Petitioner states that, during the Beneficiary's initial year in the United States, he served as the company's vice president of business development. At the time of the extension petition's filing, the U.S. company claimed 13 employees and annual gross revenues of about \$3.1 million. The Petitioner states its intention to continue employing the Beneficiary in the offered position in an executive capacity.

The term "executive capacity" means work "primarily" involving:

- Directing the management of an organization or a major component or function of it;
- Establishing the goals and policies of the organization, component, or function;
- Exercising wide latitude in discretionary decision-making; and
- Receiving only general supervision or direction from higher-level executives, a board of directors, or stockholders of an organization.

Section 101(a)(44)(B) of the Act.

Thus, to work in an "executive capacity," a beneficiary must hold an elevated position. They must have the ability to "direct the management" and "establish the goals and policies" of an organization or a major component or function of it. Section 101(a)(44)(B) of the Act. A petitioner must show how the organization, component, or function is managed and demonstrate that the beneficiary would "primarily" focus on its management, goals, and policies, rather than on its daily operations. *Id.*

A. Whether to Defer to the Prior Approved L-1A Petition

To determine the nature of the proposed continuing employment in the United States, the Petitioner contends that the Director should have deferred to the Beneficiary's prior classification as an executive in the company's approved new-office petition for him.

Under USCIS policy:

When adjudicating a subsequent petition or application involving the same parties (for example, petitioner and beneficiary) and the same underlying facts, officers should defer to a prior determination that the beneficiary or applicant is eligible for the nonimmigrant classification sought, where appropriate.

2 *USCIS Policy Manual* A.(4)(B)(1). USCIS should not defer to a prior decision if:

- The prior approval contained a material error;
- Circumstances or eligibility requirements have materially changed; or
- New information adversely and materially affects the eligibility of a petitioner or beneficiary.

Id. If deference is inappropriate, USCIS must acknowledge the prior approval and state the reason for not deferring to the previous finding. *Id.*

Both the Director's request for additional evidence (RFE) and decision acknowledge the Petitioner's prior approved L-1A petition for the Beneficiary. But the Director properly declined to defer to the Beneficiary's executive classification in the prior filing, explaining that the initial, new-office petition had materially different eligibility requirements than the current petition seeking to extend it.

The Petitioner's new-office petition for the Beneficiary had to demonstrate, in part, that "[t]he intended United States operation, *within one year of the approval of the petition*, will support an executive . . . position." See 8 C.F.R. § 214.2(l)(3)(v)(C) (emphasis added). In contrast, the Petitioner's current new-office-extension petition requires the company to establish its *immediate* ability to support the Beneficiary in an executive capacity. See 8 C.F.R. § 214.2(h)(ii) (requiring evidence of a U.S. operation's financial status and statements regarding its staffing and a beneficiary's duties).

The Petitioner acknowledges different evidentiary requirements for new-office and new-office-extension petitions but asserts that the changes are immaterial. The Petitioner states that, regardless of its filing of a new-office or new-office-extension petition, it "would still need to show that the job duties are those of an executive."

But the regulations modify timeframes for new offices to meet the definitions of managerial and executive capacities. When first proposed, the L-1 regulations lacked new-office provisions. See Proposed Rules for Nonimmigrant Workers, 51 Fed. Reg. 18501 (May 21, 1986). The former Immigration and Naturalization Service (INS) modified the proposed rules after public commenters expressed feared that the regulations would deter foreign investment in the United States. Final Rule for Nonimmigrant Workers, 52 Fed. Reg. 5738, 5740 (Feb. 26, 1987). The commenters contended that foreign transferees to U.S. start-up companies would not immediately meet the definitions of

managerial or executive capacities. *Id.* “They believed that the rule would require the new office from the time of its inception [to] begin operations with numerous employees and a multi-level organization.” *Id.* INS therefore relaxed the requirements for new offices. The agency stated:

The beneficiary may be classified as a manager or executive during the one year required to reach the “doing business” standard if it can be expected, after review of relevant factors relating to the new office and the parent organization, that the new office will, within one year, support a managerial or executive position.

Id.; see also 8 C.F.R. § 214.2(l)(3)(v)(C).

Thus, the Petitioner’s initial new-office petition did not have to demonstrate that the Beneficiary would “primarily” serve in the claimed executive capacity during the first year of the U.S. company’s operation. See generally 2 *USCIS Policy Manual* L.8)(B) (“A manager or executive who is required to open a new business or office may be more actively involved in day-to-day operations during the initial phases of the business.”) In contrast, the Petitioner’s new-office-extension petition must demonstrate that the Beneficiary would both primarily and immediately serve in the claimed executive capacity. Because the Petitioner did not previously have to demonstrate the Beneficiary’s immediate performance of executive duties, the eligibility requirements of the company’s new-office and new-office-extension petitions materially differ.

The Director properly declined to defer to the Beneficiary’s classification as an executive in the Petitioner’s prior approved new-office L-1A petition. We will therefore affirm this portion of the Director’s decision.

B. Errors in the Remaining Decision

On appeal, the Petitioner demonstrates the following errors in the Director’s remaining decision:

- The decision incorrectly states that the RFE listed “suggested evidence” the Petitioner could submit to demonstrate sufficient staffing to support an executive position. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The RFE noted evidentiary discrepancies regarding whether two sales directors whom the Beneficiary would purportedly supervise have subordinates of their own. See *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring petitioners to resolve inconsistencies with independent, objective evidence pointing to where the truth lies). But the RFE did not suggest types of evidence that the Petitioner could submit to resolve the discrepancies. Nor did the RFE even ask the company to explain the inconsistencies.
- The decision incorrectly states that the Petitioner provided no documentary evidence of two personnel changes or when they occurred. In fact, the Petitioner’s RFE response contained a letter from its managing director mentioning the personnel changes and the dates of their occurrence.
- The decision notes that the Petitioner’s organizational chart indicates that another sales director whom the Beneficiary would purportedly supervise lacks subordinates. The RFE, however, did not mention this derogatory information or provide the Petitioner an opportunity to respond to it. See 8 C.F.R. § 103.2(b)(16)(i).

The Director's decision does not consider all the relevant evidence regarding the nature of the Beneficiary's proposed employment and relies, in part, on other evidence of which the Petitioner did not receive proper notice. Under these circumstances, we will withdraw the Director's remaining decision and remand the matter.

On remand, the Director should review the entire record - including the Petitioner's RFE response and the additional evidence the company submitted on appeal - reconsidering whether the Petitioner demonstrated its proposed employment of the Beneficiary in the claimed executive capacity. If supported by the record, the Director may consider other potential denial grounds. But the Director must first notify the Petitioner of any additional grounds and afford it a reasonable opportunity to respond.

III. CONCLUSION

The Director properly declined to defer to the Beneficiary's prior classification as an executive in the Petitioner's approved new-office petition for him. The new-office-extension decision, however, overlooks evidence of the nature of his proposed employment and improperly relies on other evidence of which the company did not receive proper notice.

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