



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

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

In Re: 25819946

Date: APR. 13, 2023

Appeal of California Service Center Decision

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

The Petitioner, operating as a board game café, seeks to continue the Beneficiary's temporary employment as Chief Executive Officer (CEO) under the L-1A nonimmigrant classification for intracompany transferees.<sup>1</sup> 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, concluding that the record did not establish that the Beneficiary would be employed in the United States in a managerial or executive capacity. The matter is now before us on appeal.

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 managerial or executive capacity, or in a position requiring specialized knowledge for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(1). The prospective U.S. employer must also be a qualifying organization that seeks to employ a beneficiary in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(i).

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;

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<sup>1</sup> The Petitioner previously filed a "new office" petition on the Beneficiary's behalf. That petition was approved for the one-year period from June 11, 2021, until June 10, 2022. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation one year within the date of approval of the petition to support an executive or managerial position.

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. U.S. EMPLOYMENT IN A MANGERIAL CAPACITY

The issue to be addressed in this decision is whether the Petitioner established that the Beneficiary's position under an extended petition would be in a managerial or executive capacity. The record in this instance contains conflicting claims as to whether the Beneficiary's proposed U.S. employment would be in a managerial or in an executive capacity. Therefore, as a preliminary matter we will address those inconsistencies prior to considering whether the proposed position meets the statutory criteria of managerial or executive capacity.

### A. Ineffective Assistance of Counsel

As noted, there are considerable inconsistencies among the Petitioner's various claims as to whether the Beneficiary's proposed employment would be in a managerial or in an executive capacity. The Petitioner claims on appeal, and has similarly claimed at other times throughout the processing of this petition, that the Beneficiary's proposed U.S. position would be in a managerial capacity. The Petitioner further contends that any prior statements claiming that the proposed employment would be in an executive capacity were the result of "former counsel's mistake of negligence." However, the record shows that the Petitioner has also referred to the Beneficiary's U.S. position as that of an executive, thereby undermining the claim that former counsel was solely responsible for the inconsistency. Namely, in a May 2022 support letter, which was provided as initial supporting evidence, and in an October 2022 statement, which was provided in response to a request for evidence (RFE), the Beneficiary, in her capacity as the Petitioner's CEO and primary signatory, referred to her proposed position as that of an executive. Not only were both letters signed by the Beneficiary in her official capacity, but both were also written on company letterhead, thus indicating that former counsel was not solely responsible for providing inconsistent information about the Beneficiary's U.S. employment capacity.

Further, as correctly pointed out in the Director's decision, the responsibility of reviewing the information provided in the petition and any supporting evidence, including the May 2022 letter, falls squarely on the Petitioner, particularly in light of the Petitioner's signature on page 6, part 7 of the Form I-129, filed June 9, 2022, which confirmed that the content of the petition had been "reviewed . . . and that all of the information contained in the petition . . . and in the supporting documents, is complete, true, and correct." Thus, while it is plausible, although unsupported by the record, that certain errors may be attributed to former counsel, ultimately, it is the Petitioner's responsibility to ensure that the information contained in the petition and the evidence submitted in support thereof are accurate. Merely providing an affidavit from the Beneficiary who claimed that she was unaware of erroneous information offered by prior counsel because she "never reviewed the contents of the I-129 petition" does not excuse the Petitioner from its obligation to resolve inconsistencies in the record. *See Matter of Valdez*, 27 I&N Dec. 496 (BIA 2018) (establishing that signature on an application creates a strong presumption of knowledge about the application's contents, which can be rebutted by establishing fraud, deceit, or other wrongful acts by another person). We further note that any material

inconsistencies, if unresolved through the submission of independent, objective evidence, may lead us to reevaluate the reliability and sufficiency of other supporting evidence in the record. *Id.*

In addition, despite claiming that former counsel was to blame for any inconsistencies in the record, there is no evidence that the Petitioner sought to address former counsel's claimed error through a claim of ineffective assistance of counsel. In *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988), the Board of Immigration Appeals (the Board) established a framework for asserting and assessing claims of ineffective assistance of counsel. The Board set forth the following documentary requirements for asserting a claim of ineffective assistance:

- A written affidavit of the petitioner attesting to the relevant facts. The affidavit should provide a detailed description of the agreement with former counsel (i.e., the specific actions that counsel agreed to take), the specific actions taken by former counsel, and any representations that former counsel made about his or her actions.
- Evidence that the petitioner informed former counsel of the allegation of ineffective assistance and was given an opportunity to respond. Any response by prior counsel (or report of former counsel's failure or refusal to respond) should be submitted with the claim.
- If the petitioner asserts that the handling of the case violated former counsel's ethical or legal responsibilities, evidence that the petitioner filed a complaint with the appropriate disciplinary authorities (e.g., with a state bar association) or an explanation why the petitioner did not file a complaint.

*Id.* at 639. These documentary requirements are designed to ensure we possess the essential information necessary to evaluate ineffective assistance claim and to deter meritless claims. *Id.* Allowing former counsel to present his or her version of events discourages baseless allegations, and the requirement of a complaint to the appropriate disciplinary authorities is intended to eliminate any incentive for counsel to collude with his or her client in disparaging the quality of the representation. *Id.*

In addition to these documentary requirements, the petitioner must show that former counsel's assistance was so deficient that the petitioner was prejudiced by the performance. *Matter of Lozada*, 19 I&N Dec. at 632; *Matter of Melgar*, 28 I&N Dec. 169, 171 (BIA 2020).<sup>2</sup> Specifically, the petitioner must demonstrate a reasonable probability that, but for counsel's error, they would have prevailed on their claim. *Matter of Melgar*, 28 I&N Dec. at 171. Harmless error is insufficient. *See Matter of*

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<sup>2</sup> In *Lozada*, the Board determined that Lozada was not prejudiced by counsel's failure to file an appeal brief (resulting in the summary dismissal of the appeal) because: he received a full and fair hearing at his deportation hearing, at which he was given every opportunity to present his case; he did not allege any inadequacy in the quality of prior counsel's representation at the hearing; the immigration judge considered and properly evaluated all the evidence presented; and the immigration judge's decision was supported by the record.

*Lozada*, 19 I&N Dec. at 639 (explaining that individuals are “generally bound by the conduct of their attorneys absent egregious circumstances”).

In this matter, the Petitioner has not complied with the documentary requirements for asserting a claim of ineffective assistance.

## B. Managerial Capacity

Notwithstanding the inconsistent information offered up to this point regarding the claimed classification of the Beneficiary’s proposed position, we will address the Petitioner’s most recent claim that the proposed employment would be in a managerial capacity.<sup>3</sup> In doing so, we will apply the statutory definition of managerial capacity and assess the supporting evidence to determine whether the Petitioner is eligible for the benefit sought herein.

“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.

Based on the statutory definition of managerial capacity, the Petitioner must first show that the position in question involved certain high-level responsibilities. Sections 101(a)(44)(A) and (B) of the Act. The Petitioner must also prove that the Beneficiary was *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the foreign employer’s other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

Beyond the required description of the job duties, we examine 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 a business.

Accordingly, we will address the Petitioner’s claims in the discussion below, which will include consideration of the Beneficiary’s job duties along with evidence of the nature of the U.S. employer’s business, its staffing levels, and its organizational structure. Under the preponderance of the evidence standard, the evidence must demonstrate that the petitioner’s claim is “probably true.” *Matter of Chawathe*, 25 I&N Dec. at 376. Each piece of evidence, even if not mentioned directly, has been

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<sup>3</sup> We will disregard any prior claims that the proposed position would be in an executive capacity.

examined for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

At the time of filing, the Petitioner was operating a single board game café, which it acquired in November 2021. The Petitioner discussed and provided evidence of plans to purchase additional such cafés with the objective of expanding its operations to multiple locations within the United States.

### 1. Job Duties

First, we will discuss the Beneficiary's job duties, highlighting their importance in revealing the true nature of the employment. *See generally Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). While we primarily focus on the Beneficiary's proposed job duties, the duties performed by the Beneficiary during the prior year are also relevant as they allow us to ascertain the Petitioner's readiness to support the Beneficiary in a managerial capacity under an extension of a new office petition. *See* 8 C.F.R. § 214.2(l)(14)(ii)(C) (requiring a statement of the duties performed in the previous year and those to be performed under the extended petition).

In response to the RFE, the Petitioner provided a statement discussing the Beneficiary's role during the Petitioner's new office phase as well as a breakdown of the job duties she would be assigned in her proposed U.S. position. The discussion of the Beneficiary's role consisted of a broad overview of her general responsibilities over the past year in the initial new office phase. Namely, the Petitioner stated that the Beneficiary set strategy for initial operations and future expansion, provided leadership through creation and implementation of the Petitioner's "vision, mission, and overall direction," represented the company in the public sector and in any "business deals," evaluated the performance of subordinate managers, made personnel decisions, and provided direction through management and operational oversight with the goal of achieving "the company's stated mission." Although these responsibilities convey a sense of the Beneficiary's discretionary authority over the set-up, staffing, and operations of the business, they do not disclose any specific tasks the Beneficiary performed or outline actual directives she executed during the company's initial year of operation. As such, it is unclear how or whether the Petitioner was able to advance to an operational phase that would adequately accommodate for the Beneficiary's proposed position in a managerial capacity following expiration of the initial petition.

The job duty breakdown for the Beneficiary's proposed U.S. position was less ambiguous than her initial role in that it listed four broad categories of responsibilities, each of which was further broken down into more specific job duties. However, the job duty breakdown focuses on generalities that mainly highlight the Beneficiary's discretionary authority over the organization, but it does not disclose the Beneficiary's daily or weekly activities within the scope of an entity that operated a game board café at the time this petition was filed. For instance, the Petitioner stated that one set of responsibilities would involve establishing "development strategies, work plans, and internal procedures and policies" as well as making decisions on "important strategic, tactical and staffing moves." The Petitioner stated that these responsibilities would account for 25% of the Beneficiary's time, requiring her to spend 7.5% of her time researching the board game markets, identifying business opportunities, and adjusting objectives in line with market trends; 10% of her time creating annual and semi-annual operations and budget plans consistent with the company's "strategic direction" and stage of development; and 7.5% of her time establishing "internal procedures and policies" for store

operations, customer service standards, safety rules, and human resources. However, the Petitioner did not identify specific policies or procedures the Beneficiary established thus far, which might allow greater insight into the nature of the activities, and how involved the Beneficiary is in these activities to determine if they support managerial job duties. Nor did the Petitioner establish that the Beneficiary would be required to create budgets and establish “internal procedures and policies” in the daily or weekly management of an operation, which, at the time of filing, was comprised of a single game board café. The Petitioner also did not establish that conducting market research and identifying potential business acquisitions are managerial, as opposed to operational, job duties.

Another component of the Beneficiary’s position would involve implementing “company strategies and work plans,” which would account for another 35% of the Beneficiary’s time to be distributed among the listed job duties as follows: 1) “assigning accountabilities to subordinate managers” and evaluating their respective performances for 15% of the time; 2) “strict implementation of standards and controls and regular evaluations and readjustments” through customer service and “HR systems and policies” for 5% of the time; 3) coordinating work of subordinate managers and team leaders, combining their proposals and initiatives, adjusting the operations plan based on managers’ progress reports, and advising on market development for 5% of the time; 4) presiding over staffing meetings and collecting employee feedback for 5% of the time; and 5) reporting the Petitioner’s operational status to the foreign entity’s board and assessing “management effectiveness” and the company’s “financial health” for the remaining 5% of the time.

The Petitioner did not identify specific types of “accountabilities” the Beneficiary would assign or explain how she would distribute those “accountabilities” among her subordinates, nor does the job description specify the “HR systems and policies” the Beneficiary would use or the types of “standards and controls” she would implement within the scope of the operation. The Petitioner also did not explain how the Beneficiary would coordinate work among her subordinates, estimate how frequently operations plans would have to be adjusted, or provide an objective standard for how the Beneficiary will gauge the Petitioner’s “financial health.” In other words, despite continuing to underscore the Beneficiary’s control over all aspects of the company’s operation, the Petitioner remained ambiguous about the Beneficiary’s actual tasks in the regular course of business. The vagueness impacts our ability to determine whether the Beneficiary will primarily function in a managerial capacity.

The job description also dedicates 35% of the Beneficiary’s time to leading, supervising, and training “the management team.” However, the job duties used to describe the Beneficiary’s personnel management role are vague and lack specific information about the actual daily or weekly tasks the Beneficiary would perform in executing this role. The role vaguely entails development of “an effective organizational structure” by means of a management team comprised of a general manager, a chief financial officer, an operation manager, and a store manager. The Petitioner did not clarify what further management actions the Beneficiary would take beyond determining which positions would be part of the organizational structure. Thus, it is not apparent that adjusting the Petitioner’s organizational structure would be an activity that the Beneficiary would undertake as part of a daily or weekly routine. Likewise, although the Beneficiary would make personnel decisions related to the organization’s management staff, such decisions would more likely be made on an intermittent basis, depending on the Petitioner’s need; the record does not indicate that changes in management would

occur frequently enough to require the Beneficiary to allocate time to this matter on a daily or weekly basis.

The Petitioner also stated that specifying management “accountabilities,” evaluating performances, and coaching and training subordinate managers would be included in the Beneficiary’s personnel management role. However, here again the Petitioner has not identified the types of “accountabilities” the Beneficiary would assign. Thus, while the Petitioner argues on appeal that these accountabilities are different from the accountabilities previously mentioned in association with implementing “company strategies and work plans,” the difference is unclear given the ambiguity about the types of accountabilities the Beneficiary would issue. The Petitioner also neglected to elaborate on the type of coaching and training the Beneficiary would provide; without more specific information, we cannot determine whether these duties are truly managerial in nature.

In sum, despite indicating that the Beneficiary would assume a top position at the Petitioner’s business and would have the managerial authority to make decisions regarding personnel and business matters, the job description does not convey a meaningful understanding of the actual tasks the Beneficiary would perform in the routine course of a board game café operation. The fact that the Beneficiary will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be “primarily” managerial in nature. Section 101(A)(44)(A) of the Act. While the sum of the Beneficiary’s responsibilities indicates a heightened level of discretion over the Petitioner’s day-to-day operations and the requisite level of authority with respect to discretionary decision-making, her actual duties may not be primarily managerial in nature. To make this determination, we rely on specific information about a beneficiary’s actual daily tasks as an important indication of whether their duties are primarily managerial or executive in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 905 F.2d 41; 2 USCIS-PM L.6(D), <https://www.uscis.gov/policy-manual/volume-2-part-1-chapter-3>.

As discussed, however, the Petitioner provided a vague job description that offers little insight as to the specific activities the Beneficiary would undertake within the scope of the operation that existed at the time of filing. Although the Petitioner has made claims and provided some evidence of its intent to expand its operation to include multiple board game cafés, the record shows that Petitioner’s organization was comprised of a single board game café and that it was not functioning under the expanded operation at the time of filing. *See* 8 C.F.R. § 103.2(b)(1) (requiring that eligibility must be established at the time of filing).

Further, the Director’s decision states that although the Petitioner claimed that the Beneficiary had four subordinate managers over whom she exercised managerial oversight, it did not demonstrate the Beneficiary’s role in their supervision. On appeal, the Petitioner does not elaborate on the Beneficiary’s proposed job duties or offer insight about her managerial role within the proper context of the Petitioner’s operation at the time of filing; rather, the Petitioner primarily focuses on errors made by prior counsel in the course of filing this petition. As highlighted earlier, greater insight into the nature of the Beneficiary’s activities and the level of her involvement in daily operational tasks is critical to our determination of whether the Beneficiary will manage the organization. *See* section 101(A)(44)(A)(i) of the Act. Having considered the relevant facts and the deficiencies in the

supporting evidence, we conclude that the Petitioner has not met its burden and established that the proposed position would be primarily comprised of managerial job duties.

## 2. Staffing

As noted earlier, the Petitioner's staffing and organizational structure are also critical elements in this analysis. If staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, we 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.

In response to the RFE, the Petitioner provided an organizational chart depicting the Beneficiary at the top of a 17-person organization where 11 of the employees comprise the staff of the Petitioner's board game café and five others occupy positions in either the finance department or the operations department. The chart shows that the Beneficiary's only direct subordinate is a general manager, who is depicted as occupying a dual role, of general manager/operations manager, with the operation manager directly subordinate to the general manager. In other words, the same individual occupies two positions where one position is subordinate to the other. Although the Petitioner indicated that this arrangement is temporary pending the hiring of an employee who would relieve the general manager from his role in the operations department, we must consider the evidence that showed how the Petitioner was staffed at the time of filing and determine eligibility on that basis. *See* 8 C.F.R. § 103.2(b)(1). Here, it is unclear whether the Petitioner's staffing structure would support the Beneficiary in a managerial position, or whether the Beneficiary would be required to take on non-managerial tasks to support the organization's functioning.

Although the Petitioner provided job descriptions for the positions comprising its organization, the job description of the general manager is vague and provides little insight about the activities assigned to that position. For instance, the Petitioner stated that the general manager's job duties would include setting "the values, mission, vision and goals," drafting "development strategies," overseeing "all operational activities," ensuring "a work environment that recruits, retains and supports quality staff and promotes productivity," developing budget plans, and making sure that the marketing staff has "knowledge and information needed to achieve market share growth." The Petitioner did not elaborate on any development strategies that have been or are in the process of being developed, nor did it list any "operational activities," or state how the general manager ensures the desired work environment and productivity and how he secures the proper "knowledge and information" for the marketing staff. Further, it is unclear how setting values, mission, and goals translates to duties performed within the context of a game board café business.

Without a better understanding of what the general manager does in the course of business and how he carries out dual roles where he is his own subordinate in one of those roles, we are unable to properly gauge how the Petitioner's staffing arrangement at the time of filing functioned to relieve the Beneficiary from having to primarily perform operational tasks of the enterprise. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See, e.g.,* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).



In sum, the Petitioner did not adequately describe the Beneficiary's job duties within the context of a board game café business, nor did it establish that it was staffed with employees who would support the Beneficiary in a managerial position at the time this petition was filed.

### III. ADDITIONAL DEFICIENCIES

Finally, while not addressed in the Director's decision, we note several deficiencies that would preclude approval of this petition even if the Petitioner were to overcome the original basis for denial.

#### A. Doing Business

First, we will address the lack of evidence to show that the Petitioner was doing business for one year prior to filing the instant petition, as required. *See* 8 C.F.R. § 214.2(l)(14)(ii)(B).

To establish that it has been doing business for the requisite one-year period, the Petitioner must provide evidence that it has engaged in regular, systematic, and continuous provision of goods and/or services in the United States starting in June 2021 as the petition in this matter was filed in June 2022. *See* 8 C.F.R. § 214.2(l)(1)(ii)(H).

Here, the Petitioner responded to the RFE with a cover letter stating that the board game café it currently operates was acquired on November 3, 2021, which is approximately seven months prior to the date this petition was filed and would not result in the required one-year of doing business. The Petitioner previously submitted a copy of the Business Purchase and Acquisition Agreement, which supports the Petitioner's claim regarding the transaction and date of purchase. Although the record shows that the Petitioner was formed in [REDACTED] 2020,<sup>4</sup> was issued a federal identification number shortly thereafter, and received two fund transfers from its foreign parent, the record lacks evidence of any ongoing business transactions. And although the Petitioner filed a 2021 tax return, it claimed no income that year and instead shows only a payment of rent along with other deductions, which resulted in a loss of over \$3,000 for that year. Likewise, the Petitioner's bank accounts also show no evidence of ongoing business transactions until after the Petitioner acquired the board game café in November 2021.

The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Although not a basis of this denial, given the lack of evidence on record, the Petitioner has not established that it had been doing business since June 2021, for one-year as of the date this petition was filed. The Petitioner must address this issue in any further filings.

#### B. Foreign Employment

Further, as previously noted, to establish eligibility for this visa classification, the Petitioner must establish that the Beneficiary was employed by a qualifying organization abroad for one continuous year within three years preceding the Beneficiary's application for admission into the United States.

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<sup>4</sup> The record contains the Petitioner's Articles of Organization, which was filed in [REDACTED] 2020, and stock certificates and a stock ledger showing that the Petitioner issued stock in [REDACTED] 2020.

8 C.F.R. § 214.2(l)(1). The Petitioner claims that the Beneficiary was employed by [REDACTED] [REDACTED] its parent entity in Singapore, from January 1, 2019, to December 17, 2020, without interruption. However, we question the validity of this claim based on information that the Beneficiary provided in a nonimmigrant visa (NIV) application, which she filed on January 9, 2019, listing her “present employer” at that time as [REDACTED] Although the address listed for this employer is the same as the one listed in the petition for [REDACTED] there is no evidence in the record showing that the two foreign entities are related such that the entity the Beneficiary listed as her employer in the 2019 NIV application can be deemed a qualifying organization for purposes of satisfying the relevant eligibility criteria.

#### IV. CONCLUSION

As stated earlier, the appeal will be dismissed based on our conclusion that the Petitioner did not provide sufficient evidence demonstrating that the Beneficiary’s proposed position under an extended petition would be in a managerial capacity.

While the dismissal of this appeal will not be based on the additional deficiencies discussed above, the Petitioner will need to further address those deficiencies in any future filing where the Beneficiary’s foreign employment and the Petitioner’s ability to demonstrate that it was doing business during the relevant one-year period are material to eligibility.

**ORDER:** The appeal is dismissed.