



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

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

In Re: 24706749

Date: JUN. 30, 2023

Appeal of California Service Center Decision

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

The Petitioner, an investment holding company, seeks to continue temporarily employing the Beneficiary as its president. The company requests extension of its L-1A nonimmigrant visa petition for him 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, contrary to the Act and regulations, the Petitioner did not demonstrate that it had been “doing business” the year before the petition’s filing or that it would employ the Beneficiary in the claimed executive capacity. On appeal, the Petitioner contends that, although it generated no revenues, it had been “doing business” and that the Director overlooked evidence of the executive nature of the Beneficiary’s proposed work.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *See 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 company has not established the Beneficiary’s proposed employment in an executive capacity. We will therefore dismiss the appeal.

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 capacity that was managerial, executive, or involved specialized knowledge. 8 C.F.R. § 214.2(l)(3)(i), (iii), (iv). An L-1A petitioner must also establish that a beneficiary’s education, training, and employment experience qualify them for the 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).

When adjudicating an extension petition involving the same parties and underlying facts, U.S. Citizenship and Immigration Services (USCIS) should defer to a prior approval “where appropriate.” 2 *USCIS Policy Manual* A(4)(B)(1). But deferral to a “new office” approval is inappropriate because the eligibility requirements for the initial and extension petitions materially differ. *Id.* Unlike in the initial petition proceedings, a “new office” extension petitioner must show that it can immediately support an executive or managerial position. 8 C.F.R. § 214.2(l)(3)(v)(C). A “new office” extension petitioner must also demonstrate that it has been “doing business” 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). Further, a “new office” extension petitioner must: describe its staffing, including its number of employees, types of positions, and proposed wages; disclose its financial status; and identify a beneficiary’s prior and future duties. 8 C.F.R. § 214.2(l)(14)(ii)(C), (D), (E).

II. ANALYSIS

The record shows that the Petitioner’s parent company, also an investment holding firm, formed in Singapore in 2017. The parent began employing the Beneficiary, a native of China and citizen of Cyprus, as its general manager in December 2017. The following year, he became the parent’s president.

The parent owns a majority of the Petitioner, a U.S. limited liability company that formed in 2020. Its prior L-1A petition authorized the Beneficiary to work for it from January 2021 to January 2022. The Petitioner states that it “focuses on acquiring small companies or their equities.” The company submitted evidence that, in 2021, it bought minority ownership interests in a residential construction company and a data management firm.

The Petitioner seeks to continue employing the Beneficiary as its president in an executive capacity. The company does not claim that he would serve in a managerial 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, an L-1A executive must hold an elevated position within an organization. A beneficiary 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.*

When determining a proposed position's nature, USCIS first considers the job's duties. *See* 8 C.F.R. § 214.2(l)(3)(ii) (requiring "a detailed description of the services to be performed"); *see also 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) ("The actual duties themselves reveal the true nature of the employment.") The Agency then considers the record's totality and weighs all relevant factors, including: the nature and scope of a petitioner's business; its organizational structure, staffing levels, and a beneficiary's position within the organization; the scope of a beneficiary's authority; a petitioner's employment of others who could relieve a beneficiary from performing operational and administrative duties; the duties of a beneficiary's proposed subordinates; and other factors affecting a beneficiary's business role. *Matter of Z-A-, Inc.*, Adopted Decision 2016-02, **4-5 (AAO Apr. 14, 2016).

A. Job Duties

The Director found that the Petitioner's descriptions of the Beneficiary's job duties do not demonstrate his proposed employment in an executive capacity. The Director found the job descriptions "too generalized."

The Petitioner stated that the Beneficiary would spend the following percentages of his time performing the following duties:

- Strategy-making (25%): Using strategically important measures, determine the organization's ongoing success or lack thereof. Using non-measurable aspects of the work environment, such as ambiance, gauge other aspects of business success. Note opportunities for expanding the company's number of customers, markets, industries, and standards. Evaluate the company's success by comparing information in managerial and financial reports to goals. Make discretionary decisions on company-wide business matters. Research relevant markets to explore merger and acquisition opportunities. Develop company growth and investment strategies.
- Leadership (25%): Create, communicate, and implement the organization's vision, mission, and overall direction. Lead company strategy development and implementation. Work with board members to plan and implement short-, mid-, and long-term company strategies by studying trends in relevant industries, researching competitors, and listening to managerial staff. Set quarterly and annual goals. Oversee the company's fiscal activity, including budgeting, reporting, and auditing. Ensure allocation of sufficient resources to key projects. Lead formulation, revision, and updating of company policies and standard operating procedures to ensure work quality, coordinated processes, or responses to changed conditions.
- Representation (5%): Sign business deals and important documents for the company. Represent the company in state and local government matters and in dealing with the community. Participate in major business negotiations. Review, approve, or reject agreements with other parties. Work with banks, lenders, investors, and public officials.
- Evaluation (10%): Evaluate general manager's performance and the external, competitive landscape. Strategize with general manager to maintain the company's market appeal. Determine evaluation criteria and communicate requirements to managerial staff. Review

performance of department managers. Decide pay increases, merit-based rewards, and promotions. Oversee development of company training plan.

- Human Resources (10%): Make final decisions on hiring or firing general manager based on performance. Hire, fire, and mentor general manager and department managers. Make final disciplinary decisions. Oversee annual updates and re-issues of company employee manual.
- Direction (25%): Regularly meet with general manager to assess company direction and its consistency with company mission. Oversee company operation and its consistency with strategic plans. Call and preside over managerial meetings to solve business problems. Develop annual operational plan articulating the company's key assumptions and reflecting its strategy and goals. Direct departments and function directors to develop annual operational plans, aligning key results with company goals. Direct the development of company budgeting.

As the Director found, the Petitioner's descriptions of the Beneficiary's proposed job duties are vague and generic. The Petitioner states that he would: make discretionary business decisions; develop growth and investment strategies; formulate, revise, and update policies and operating procedures; and develop annual operating plans. But the company does not provide details or examples of the decisions, strategies, policies, procedures, or plans under his purported control. "Specifics are clearly an important indication of whether [a beneficiary's] duties are primarily executive or managerial in nature, otherwise meeting the definitions [of those terms] would simply be a matter of reiterating the regulations." *Fedin Bros.*, 724 F. Supp. at 1108. The Beneficiary has purportedly been performing many of the proposed job duties for the past year. But the Petitioner's descriptions of his duties lack sufficient details to demonstrate his proposed, daily activities.

Supporting evidence of the Beneficiary's job duties also does not establish the claimed executive nature of his work. The Petitioner submitted a schedule of his purported activities during a work week in November 2021. But, like the company's job-duty descriptions, the schedule lacks specifics about his activities. For example, the schedule indicates that the Beneficiary participated in a conference call with officials of the Petitioner's parent regarding future projects and funding. But the schedule does not indicate the projects or funding levels discussed. Also, the schedule indicates that the Beneficiary met with the Petitioner's operations manager for one and one-half hours "to get updates of the product with sales." But the record does not indicate that the Petitioner sells any products. The company describes itself as an investment holding business, and its U.S. income tax returns state that it did not generate any revenues in 2020 or 2021. Further, the operation manager's job duties do not indicate the position's involvement with product sales. These unexplained discrepancies cast doubt on the accuracy of the schedule and the Beneficiary's job duties. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies).

For the foregoing reasons, we agree with the Director that the Petitioner's job-duty descriptions do not sufficiently support the claimed executive nature of the proposed employment.

B. Organizational Structure

The Director also found that the Petitioner's organizational structure does not demonstrate the Beneficiary's proposed employment in an executive capacity. The Director found that, contrary to section 101(a)(44)(B)(i) of the Act, the Petitioner did not establish that the Beneficiary's five direct subordinates would work in managerial capacities, thereby allowing him to "direct[] the management of the organization" as an executive. Rather, the Director found that the subordinates' job descriptions indicate that they would "primarily perform the day-to-day tasks of the U.S. entity's business."

At the time of this petition's filing, the Petitioner demonstrated its employment of nine people - including the Beneficiary. The company's organizational chart lists him at its top as the president, directly supervising a general manager. The Petitioner, however, stated that it would not begin employing the general manager until about eight months after this petition's filing. The company must establish its ability to support the claimed executive position at the time of this petition's filing. *See* 8 C.F.R. §§ 103.2(b)(1), 214.2(l)(3)(v)(C), (14)(ii)(D). Thus, like the Director, we will disregard the general manager's position and, with no evidence to the contrary, assume that the Beneficiary directly supervised the vacant position's subordinates at the time of this petition's filing. These subordinates consist of five people, each purportedly managing one of the following departments: risk control; finance; technical/operations; legal/human resources; and brand management. The organizational chart also shows the Petitioner's employment of three first-line workers, comprising assistants to the heads of the risk control, technical/operations, and brand management departments.

At the time of the petition's filing, the heads of the finance and legal/human resources departments lacked assistants. Thus, without subordinates, these two department heads did not manage personnel and presumably performed their departments' operational duties themselves. The record therefore does not establish the managerial nature of these two positions or the Beneficiary's ability to direct the company's management by supervising them. *See VHV Jewelers, LLC v. Wolf*, 17 F.4th 109, 114 (11th Cir. 2021) (interpreting the phrase "direct the management" in the definition of "executive capacity" at section 101(a)(44)(B)(i) of the Act to require "a subordinate level of managerial employees").

The record shows that, at the time of the petition's filing, the Beneficiary's other three subordinates had assistants. On appeal, the Petitioner contends that the Director overlooked the subordinates' job duties. But their duties do not demonstrate the employees work as managers. Their job duties state that they each spend only 10% of their time supervising their assistants. Thus, the record does not establish that the Beneficiary's subordinates primarily supervise and control the work of other employees. Thus, the Petitioner has not demonstrated that the Beneficiary's five subordinates work in managerial capacities. His supervision of the subordinates at the time of the petition's filing therefore does not demonstrate his direction of the Petitioner's management in an executive capacity. *See VHV Jewelers*, 17 F.4th at 114 (interpreting the definition of "executive capacity" to require direction of "a subordinate level of managerial employees").

Based on the Petitioner's descriptions of the proposed job duties and its organizational structure, the company has not demonstrated that it would employ the Beneficiary in the claimed executive capacity.¹ We will therefore affirm the petition's denial.

Our affirmance resolves this appeal. Thus, we need not review the Director's finding of insufficient evidence that the Petitioner was "doing business" the year before this petition's filing. *See INS v. Bagamasbad*, 429 US 24, 25 (1976) ("As a general rule, courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.") Rather, we will reserve the issue's consideration in case its resolution becomes needed.

III. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's proposed employment in the claimed executive capacity.

ORDER: The appeal is dismissed.

¹ In assessing an offered position's executive nature, USCIS cannot focus exclusively on a petitioner's staffing level. Section 101(a)(44)(C) of the Act. Here, we considered the Petitioner's number of employees. But we also considered other factors, including: the company's organizational structure; the Beneficiary's position within the organization; and the company's employment of other workers and their duties.