



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

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

In Re: 24553289

Date: MAR. 16, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a consultancy services provider in the pharmaceutical industry, seeks to temporarily employ the Beneficiary as its general manager 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 Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary has been employed abroad, or would be employed in the United States, in a managerial 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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.* The petitioner must also establish that the beneficiary’s prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3)(iv).

“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.

II. ANALYSIS

In denying the petition, the Director determined that the Petitioner did not establish that the Beneficiary: (1) has been employed abroad in a managerial capacity, and (2) will be employed in the United States in a managerial capacity.

On appeal, the Petitioner maintains that the previously submitted evidence was sufficient to establish eligibility and contends that the Director did not review and consider the totality of the evidence offered in support of the petition. The Petitioner further emphasizes that U.S. Citizenship and Immigration Services (USCIS) has previously granted the Beneficiary L-1A classification based on similar evidence and maintains that the Director failed to follow policy guidance requiring deference to prior approvals.¹

While we do not agree with the Petitioner's assertion that the record as presently constituted establishes eligibility for the benefit sought, we conclude that the Director did not provide the Petitioner with adequate notice of evidentiary deficiencies that are material to the issues on appeal, particularly relating to the staffing and structure of the U.S. and foreign entities. Accordingly, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision consistent with the following discussion.

A. Employment Abroad in a Managerial Capacity

The Petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker that the Beneficiary has been continuously employed by its Spanish parent company since January 2011, excluding his temporary assignment to the Petitioner's U.S. operations in L-1A status from August 2014 until December 1, 2019. The Petitioner filed this petition on April 8, 2022 and provided evidence that the Beneficiary has been on its parent company's payroll since April 2020.

The record reflects that the Petitioner provided supporting evidence relating to the Beneficiary's two separate periods of employment abroad (from 2011 to 2014 and from April 2020 to the present). Because this petition was filed more than two years after the expiration of the Beneficiary's most

¹ See generally, 2 *USCIS Policy Manual* 4.B(1), <https://www.uscis.gov/policy-manual> (discussing the significance of prior approvals in cases involving a request for an extension of a nonimmigrant petition's validity and noting that officers should generally defer to prior approvals unless there was a material error, a material change in circumstances, or new information that impacts a petitioner's or beneficiary's eligibility).

Although the Petitioner has previously filed L-1A petitions on behalf of the Beneficiary, the most recent approved petition expired on December 1, 2019. USCIS denied the petitioner's request to extend that petition in March 2020 [REDACTED] and the Beneficiary departed the United States shortly thereafter. The Petitioner filed this new petition in April 2022 and as such it cannot be considered a request for an extension of a previously approved petition.

recent L-1A petition, the Director's analysis of whether the Beneficiary has the required one year of qualifying employment abroad in the three years preceding the filing of the petition should be based on his current position with the foreign parent company.

Although the Director issued a request for evidence (RFE) prior to the denial, the RFE did not indicate that the Director had made any distinction between the Beneficiary's two separate periods of employment with the foreign entity. Further, the record reflects that the Petitioner's RFE response primarily addressed the Beneficiary's initial position abroad. As a result, the Director's decision was ultimately based on evidence relating to the position the Beneficiary held from 2011 to 2014.

The Petitioner indicated that the Beneficiary served as "lead manager for records management and decommissioning" during that time, submitted an organizational chart and personnel table showing his supervision of eight employees, and provided supplemental information and documentation regarding those employees, their duties, and their educational qualifications. The Director concluded that the Beneficiary could not qualify as a personnel manager under the definition of "managerial capacity," because the Petitioner did not submit "evidence . . . to indicate that the positions supervised by the beneficiary are professional positions."² The decision cites no other basis for the Director's determination. As the Director's decision was not based on the relevant period of employment abroad, we will withdraw the decision and remand the matter to the Director for further consideration and entry of a new decision.

We note that the record as presently constituted suggests that the Beneficiary currently serves in a more senior position than he did during the 2011 to 2014 period. However, certain material information is lacking and should be addressed by the Director on remand. For example, the Petitioner provided a supporting letter with a list of the duties the Beneficiary has been performing since returning to the foreign entity in 2020 but did not identify his current job title or discuss his placement in the parent company's hierarchy. As the matter will be remanded, the Director should request a letter from the Petitioner or foreign entity listing all positions he has held abroad, the dates of employment in each position, and an explanation of how his current position meets the elements of the definition of "managerial capacity."

The Petitioner's initial evidence included an organizational chart for the foreign entity, but the chart was not dated or labeled, and we cannot determine whether it represents the parent company's staffing and structure as of 2022. The organizational chart depicts the Beneficiary as "chief operating officer" and indicates that he has 16 direct subordinates including a PMO manager, two employees in a warehouse and logistics support department, and 13 employees in a "Records Management Associated / Tech Ops." department whose job titles are not provided.³ The record does not contain additional information or documentation pertaining to the listed subordinate employees and without such evidence, the record does not support the Petitioner's claim that the Beneficiary supervises professional, supervisory or managerial personnel. Further, the Petitioner stated in its supporting

² Contrary to the common understanding of the word "manager," the statutory definition plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A) of the Act.

³ The Director does not mention this organizational chart in the decision and appears to have reviewed a different organizational chart for the foreign entity, submitted in response to the RFE, which depicts the Beneficiary's previous position abroad.

letters that the Beneficiary currently supervises only seven employees, which is not consistent with the information provided in the foreign entity's organizational chart.

The record also contains what appear to be the foreign entity's year-end payroll summaries for its personnel. While most of the employees named on the above-referenced organizational chart also appear on these payroll summaries, these documents are also lacking dates and we cannot determine which years are included. Additional evidence will therefore be needed to corroborate the foreign entity's staffing levels and employment of the Beneficiary's claimed subordinates.

On remand, the Director should review the evidence relating to the Beneficiary's current period of employment abroad and issue a new RFE to allow the Petitioner to address the evidentiary deficiencies addressed above, and to offer any additional evidence in support of its claim that he has been employed in a managerial capacity since being reassigned to the foreign entity in April 2020.

B. U.S. Employment in a Managerial Capacity

The Director also determined that the Petitioner did not meet its burden to demonstrate that the Beneficiary would be employed in the United States in a managerial capacity. In reaching this conclusion, the Director identified two deficiencies in the record. First, the Director observed that, while the Petitioner provided a list of the Beneficiary's proposed duties as general manager, it did not provide the percentage of time he would allocate to each listed task. Therefore, the Director concluded that the Petitioner did not establish that he would primarily allocate his time to managerial duties as opposed to "non-qualifying" duties. The Director did not further discuss the job description or identify which duties were deemed to be non-managerial.

Second, the Director concluded that the Petitioner provided "an inconsistent account of the beneficiary's proposed support staff." The Director acknowledged that the Petitioner submitted both an organizational chart identifying the Beneficiary's proposed U.S. subordinates, and a separate list of his subordinate staff. The Director observed that three of the individuals included on the list did not appear on the organizational chart and based on this apparent inconsistency, questioned the credibility of the evidence submitted to demonstrate the Petitioner's personnel structure.

On appeal, the Petitioner maintains that it provided sufficient evidence relating to the Beneficiary's proposed duties, the company's staffing and structure, and the duties and qualifications of the Beneficiary's U.S. subordinates to establish that the proposed position of general manager is in a managerial capacity. The Petitioner emphasizes that the Director did not adequately address its payroll evidence, evidence of its use of contract employees, and the duty descriptions and educational credentials provided for the Beneficiary's professional subordinates.

We have reviewed the Beneficiary's proposed duties and agree with the Petitioner that most of the duties attributed to the proposed general manager position are consistent with the statutory definition of managerial capacity. However, in determining whether a beneficiary's duties will be primarily managerial, we consider the job description along with evidence of the company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other personnel 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.

The position description alone is not sufficient to establish that the Beneficiary would be employed in a managerial capacity, particularly when the Petitioner claims that he will primarily oversee subordinate personnel who perform the day-to-day activities associated with the activities he is claimed to manage.

Here, there are inconsistencies in the record with respect to the Petitioner's staffing that were not addressed in the Director's RFE or denial notice. Accordingly, we will withdraw the Director's decision. As the matter will be remanded, the Director should address these issues in a new RFE before issuing a new decision.

The Petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that it has 33 employees in the United States, and that the Beneficiary, in his role as general manager, would supervise and control the work of 13 employees at its Delaware location, in addition to other staff assigned to projects at other U.S. and international locations.

The Petitioner submitted its organizational chart, which depicts the Beneficiary as general manager/chief operating officer and indicates that he would supervise 12 staff at its Delaware location, and additional staff in other locations. In addition to the organizational chart, the Petitioner provided a table listing 14 employees the Beneficiary would manage in the United States along with their job titles and highest level of education completed. As noted in the Director's decision, several of these employees did not appear on the organizational chart.⁴ Finally, the Petitioner submitted a copy of its payroll summary for January 2022 and its year-end payroll summary for 2021, showing payments made to both regular employees and to contractors paid on Form 1099. This evidence showed that the company had only 11 staff on its payroll in the beginning of 2022. Moreover, it included only four of the twelve Delaware-based staff, as well as two additional staff who appeared to be under the Beneficiary's supervision on the organizational chart (a "TMO leader" and an "S3/Solix Application Support" employee).

Therefore, the initial evidence included several inconsistencies with respect to both the total number of employees working for the Petitioner and the number of workers reporting to the Beneficiary. As noted, although the Director's RFE generally requested evidence of wages paid to employees and contractors, neither the RFE nor the final decision adequately addressed these deficiencies.

On appeal, the Petitioner asserts that the Director "disputes the number of employees that [the Petitioner] has in the United States despite the submission of payroll records clearly evidencing all direct employees and the submission of contractual documents with [redacted] a staffing agency, for the remaining employees." We observe that the Director did not dispute the Petitioner's overall staffing levels, although, for the reasons discussed above, we find insufficient evidence to support the Petitioner's claim that it had 33 employees at the time of filing or that it employed all the individuals identified on the Beneficiary's subordinates on the submitted U.S. organizational chart. The Petitioner submitted evidence that it has agreements with [redacted] and other contractors to staff projects

⁴ We observe that, based on other evidence in the record, this employee list appears to be outdated and may reflect the Beneficiary's subordinate staff during his prior period of employment in the United States. The list includes a warehouse manager [redacted] who, according to the Petitioner's payroll summary for 2020, was terminated in March 2020.

located in Indonesia, Mexico, and Panama, but did not provide evidence that any of the U.S.-based staff are provided by or other staffing agencies.

As the matter will be remanded, the Director should review the evidence of record, including the Petitioner's claims on appeal, and may request additional evidence related to the Beneficiary's proposed U.S. assignment, including evidence to corroborate the Petitioner's claimed staffing levels and its employment of the personnel who would report to the Beneficiary. Any evidence the Petitioner submits must establish eligibility from the date of filing through adjudication of the petition. *See* 8 C.F.R. § 103.2(b)(1).

III. CONCLUSION

Considering the deficiencies noted above, we find it appropriate to remand the matter to the Director to reevaluate the submitted evidence and determine whether the Beneficiary has been employed abroad, and would be employed in the United States, in a managerial capacity. The Director should request additional evidence pertaining to the Beneficiary's current foreign and proposed U.S. employment and any other relevant evidence deemed warranted, and allow the Petitioner a reasonable opportunity to respond, prior to issuing a new decision.

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