



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 09369742

DATE: SEP. 30, 2020

Appeal of California Service Center Decision

Form I-129, Nonimmigrant Petition for an Intracompany Transferee

The Petitioner, a business specializing in aircraft maintenance, repairs, and tool manufacturing, seeks to temporarily employ the Beneficiary as a chief executive officer under the L-1A nonimmigrant classification for intracompany transferees. 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 on the grounds that the Petitioner did not establish that the Beneficiary had been employed abroad in a managerial or executive capacity for at least one year and would be employed in a managerial or executive capacity in the United States within one year of the petition's approval. A motion to reconsider was dismissed.

The matter is now before us on appeal. The Petitioner asserts that the evidence of record establishes that the Beneficiary has been employed abroad in a managerial or executive capacity and will be employed in the United States in a managerial or executive capacity within one year of the petition's approval.

In visa petition proceedings it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act. 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal because the Petitioner has not established that the Beneficiary was employed abroad in a managerial or executive capacity for at least one year in the three years before her application for admission to the United States. As this is a fundamental element of eligibility which the Petitioner has not satisfied, we will reserve the remaining issue of the Beneficiary's qualifying employment in the United States.

## I. LEGAL FRAMEWORK

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 capacity that is managerial, executive, or involves

specialized knowledge. *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).

As defined in section 101(a)(44)(A) of the Act, the term “managerial capacity” means an assignment within an organization in which the employee primarily –

- (i) Manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) 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;
- (iii) If another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. 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.

As defined in section 101(a)(44)(B) of the Act, the term “executive capacity” means an assignment within an organization in which the employee primarily –

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

Section 101(a)(44)(C) of the Act further provides that:

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, [U.S. Citizenship and Immigration Services] 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. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

To be eligible for L-1A nonimmigrant visa classification as a manager or an executive, a petitioner must show that the beneficiary will perform the high-level responsibilities set forth in the statutory definitions at sections 101(a)(44)(A)(i)-(iv) and 101(a)(44)(B)(i)-(iv) of the Act, each of which has

four elements. If the record does not establish that the offered position meets all four elements of the pertinent statutory definition, we cannot conclude that it is a qualifying managerial or executive position. If a petitioner establishes that the offered position meets all four elements of the applicable statutory definition, it must prove that the beneficiary will be primarily engaged in managerial or executive 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). In determining whether a beneficiary's duties will be primarily managerial or executive, we consider the petitioner's 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.

## II. ANALYSIS

The Petitioner, established in August 2018, is a subsidiary of [REDACTED] located in [REDACTED] Russian Federation. Company literature accompanying the petition describes the business of [REDACTED] as focused on ground handling of aircraft, cargo transportation, leasing, and de-icing services. The Petitioner was established for the purpose of marketing the products and services of [REDACTED] in the United States. [REDACTED] hired the Beneficiary for the position of deputy general director of development in January 2018,<sup>1</sup> and on July 2, 2019, filed the instant petition to transfer her to the United States to serve in the position of chief executive officer for the Petitioner.

### A. Employment Abroad

As previously stated, the Petitioner must establish that the Beneficiary was employed abroad in a managerial or executive capacity for at least one year during the three years preceding the filing of her application for admission to the United States. The only employment of the Beneficiary which meets this temporal requirement is the position for which she was hired by [REDACTED] in January 2018. In the Form I-129 petition (page 23, item 6 – "Describe the beneficiary's duties abroad for the 3 years preceding the filing of the petition.") the job duties of this position were described as follows:

[The Beneficiary] was the Business Development Manager for [REDACTED]. She searched for the new airlines to propose the handling and representation services in [REDACTED] airports where [REDACTED] offers services. [The Beneficiary] also worked for a year as the Manager of Airline Cooperation Department at [REDACTED]. She coordinated the observance of all the terms and conditions between the airport and the airlines. [The Beneficiary] also worked as an Expert in the Airline Cooperation Department at [REDACTED]. She helped to discover and negotiate any difficulties with contracts.

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<sup>1</sup> The Petitioner indicates that [REDACTED] previously employed the Beneficiary in other positions during the years 2002-2012. Regardless of whether any of this employment was in a managerial or executive capacity, it would not make the Beneficiary eligible for L-1A classification because it did not occur within three years of the Beneficiary's application for admission to the United States. See section 101(A)(15)(L) of the Act.

The Petitioner's initial evidence included copies of the Beneficiary's employment contract with [REDACTED] [REDACTED] dated January 10, 2018, which identified her job title as deputy general director for development, and the Beneficiary's resume which listed her "key responsibilities" in the new position at [REDACTED] as follows:

- Σ search of new clients for the [REDACTED] group of companies
- Σ development of the relationship between clients and the [REDACTED] group
- Σ widen operations and launch the new business directions of the [REDACTED] group
- Σ start up the new daughter companies of the [REDACTED] group
- Σ widen the range of products of the [REDACTED]

Also submitted with the Petitioner's initial evidence was an organizational chart of [REDACTED], dated October 1, 2018, which identified the Beneficiary's position as one of three director positions subordinate to the company's director general, which is the top position in [REDACTED]. The chart did not identify any positions directly subordinate to the Beneficiary's.

In response to the Director's request for evidence (RFE) on July 11, 2019, the Petitioner submitted a different organizational chart of [REDACTED] undated, which placed five departmental positions directly subordinate to the Beneficiary's position of deputy general director for development, including the heads of human resources (with eight subordinate employees), legal support (with three subordinate employees), economic and technical support (with 20 subordinate employees), administrative support (with three subordinate employees), and information technology and communications (with seven subordinate employees). In its response letter to the RFE the Petitioner described the Beneficiary's duties vis-a-vis the five departmental heads and their respective departments.

With regard to the human resources department, the Beneficiary's duties were described as:

- Σ Training personnel and helping team members develop their skill.
- Σ Appoints employees responsible for the implementation of projects, gives general guidance, provides direct management and coordination of their activities.
- Σ Developing goals for the development team and business growth and ensuring they are met.
- Σ Determines the forms and systems of remuneration. Material and moral incentives. Bonus.
- Σ Has the right to hire and decide on the dismissal of employees.
- Σ Decision of termination or transfer employee inside [REDACTED] Group.
- Σ Exercises discretion over day-to-day operations of the activity or function.

With regard to the legal support department, the Beneficiary's duties were described as:

- Σ Carries out the conclusion and control of collective agreements and industry agreements.
- Σ Heads the analysis and synthesis of the results of the legal department.
- Σ Supervises the preparation of materials for the development of the holding structure.
- Σ Manages activities to strengthen contractual and financial and labor discipline.

- Σ Defines the goals, strategy and personnel policy of the enterprise.

As for the economic and technical support department, the Beneficiary's duties were described as:

- Σ Defines the general concept and development goals of the enterprise.
- Σ Develops an effective development strategy and the main sections of the enterprise development plan.
- Σ Develops programs for the development and restructuring of the enterprise, analyzes the possibility of financial support for programs.
- Σ Establishes budgeting priorities and monitors expenditures to ensure financial stability of implemented programs.
- Σ Prepares proposals for the development of new areas of business, new markets, develops projects for technical and administrative modernization of the enterprise.
- Σ Represents enterprise development projects to senior management and owners, protects and justifies them.
- Σ After the approval of the projects, organizes the preparation of relevant documentation, obtaining the appropriate licenses and permits.
- Σ Communicates the approved schedules for the implementation of projects to the heads of structural units of the enterprise.
- Σ Organizes the interaction of all enterprise structures for the implementation of enterprise development projects.
- Σ Analyzes the economic and financial indicators at each stage of the implementation of enterprise development projects.
- Σ Finding and developing new markets and improving sales.

With regard to the administrative support department, the Beneficiary's duties were described as:

- Σ Coordinates work on the implementation of projects at all stages, controls the compliance of decisions and actions taken with the basic concept of enterprise development.
- Σ Develops methods for prompt response to crisis and non-standard situations, which can lead to disruption of the enterprise development plan, and other adverse consequences for the enterprise.
- Σ Contacting potential clients to establish rapport and arrange meetings introducing international best practices in managing business processes.

With regard to the information technology and communications department, the Beneficiary's duties were described as:

- Σ Planning and overseeing new marketing initiatives.
- Σ Attending conferences, meetings, and industry events.
- Σ Researching organizations and individuals to find new opportunities.
- Σ Increasing the value of current customers while attracting new ones.
- Σ Introducing international best practices in managing business processes.

The Petitioner also submitted a document from the human resources department of [ ] dated August 1, 2019, which provided the following list of the Beneficiary's duties:

- Σ Defines the general concept and development goals of the enterprise.
- Σ Develops the effective development strategy and the main sections of the enterprise development plan.
- Σ Develops programs for the development and restructuring of the enterprise, analyzes the possibility of the financial support for programs.
- Σ Establishes budgeting priorities and monitors expenditures to ensure financial stability of implemented programs.
- Σ Prepares proposals for the development of new areas of business, new markets, develops projects for technical and administrative modernization of the enterprise.
- Σ Represents enterprise development projects to senior management and owners, protects and justifies them.
- Σ After the approval of the projects, organizes the preparation of relevant documentation, obtaining the appropriate licenses and permits.
- Σ Communicates the approved schedules for the implementation of projects to the heads of structural units of the enterprise.
- Σ Appoints employees responsible for the implementation of projects, gives general guidance, provides direct management and coordination of their activities.
- Σ Organizes the interaction of all enterprise structures for the implementation of enterprise development projects.
- Σ Coordinates work on the implementation of projects at all stages, controls the compliance of decisions and actions taken with the basic concept of enterprise development.
- Σ Analyzes the economic and financial indicators at each stage of the implementation of development projects.
- Σ Develops methods for prompt response to crisis and non-standard situations, which can lead to disruption of the enterprise development plan, and other adverse consequences for the enterprise.
- Σ Contacting potential clients to establish rapport and arrange meetings.
- Σ Planning and overseeing new marketing initiatives.
- Σ Researching organizations and individuals to find new opportunities.
- Σ Increasing the value of current customers while attracting new ones.
- Σ Finding and developing new markets and improving sales.
- Σ Attending conferences, meetings, and industry events.
- Σ Developing quotes and proposals for clients.
- Σ Developing goals for the development team and business growth and ensuring they are met.
- Σ Training personnel and helping team members develop their skill.

According to this document from the HR department, the Beneficiary "interacts with the general directors of [the] commercial departments" of [ ] subsidiaries and exercises "management" responsibilities with respect to six [ ] subsidiaries.

Another document submitted in response to the RFE was an undated statement of a [redacted] official entitled “scope and description of strategic authorities of [the Beneficiary],” which reads as follows with respect to her job at [redacted]

One of the priority areas of activity of [redacted] is setting up and development of new businesses, attraction of investments and professional management, in general, the process of setting up and development of new businesses begins with the decision of shareholders’ meeting of [redacted] that determines a new business stream, sets tasks before [the Beneficiary] aimed at exploring of new prospective markets or areas of business. [The Beneficiary] conducts investigations and makes rationales for expediency and effectiveness of setting up a new business or deficiency of such. In case the shareholders’ meeting approves the proposals and recommendation with regards to setting up a new business provided by [the Beneficiary], she prepares a business plan, holds activities on preparation of [the] start of a new business, coordinates the project from the beginning till the moment of steady and sustainable business operation.

In addition, [the Beneficiary] is engaged in the recruitment of top management in a direction of new business, searches for business partners (prospective shareholders and partners), holds negotiations with them, prepares and approves shareholders’ agreements with the business partners. All the decisions [the Beneficiary] approves with management and shareholders’ meeting of [redacted]. Scope of [the Beneficiary]’s engagement in the above mentioned activity makes 100% of [her] time.

The Petitioner also submitted a chart of the Beneficiary’s day-to-day operations at [redacted] organized in the following categories and percentages of time:

Σ Strategy development and team meetings	10%
Σ Supervising department heads – solving problems and collaborating	20%
Σ Meeting with directors of affiliated companies	5%
Σ Authorizing budget and spending approvals	10%
Σ Administrative management, coordination control	55%

In her initial decision the Director pointed out that the Petitioner did not specify whether the Beneficiary’s employment at [redacted] was in a managerial or in an executive capacity, as prescribed in 8 C.F.R. § 214.2(l)(3)(ii). The Director determined that the documentation submitted by the Petitioner did not sufficiently explain what the Beneficiary does on a daily basis at [redacted] and did not demonstrate that the Beneficiary’s duties are primarily managerial or executive in nature. With respect to the Beneficiary’s subordinate employees, the Director indicated that the record did not contain information about their duties, education, or salaries (which had been requested in the RFE), did not show how the Beneficiary supervises and controls their work, and thus did not show how they relieved the Beneficiary from performing primarily operational as opposed to managerial or executive tasks. Based on the evidence provided the Director indicated that the foreign entity did not appear to have a sufficient organizational structure to elevate the Beneficiary to a supervisory position that is primarily managerial or executive in nature. Accordingly, the Director concluded that the Petitioner

did not establish that the Beneficiary was employed by [ ] in a managerial or executive capacity.

The Petitioner filed a motion to reconsider the Director's decision, which once again did not specify whether the Beneficiary's position with [ ] is primarily managerial or primarily executive in nature. The Director dismissed the motion on the ground that the Petitioner did not show that the denial decision was based on an incorrect application of law or policy, as required by 8 C.F.R. § 103.5(a)(3). On appeal the Petitioner submits a brief referring to previously submitted documentation, but no new evidence. The brief references previously submitted materials relating to the Beneficiary's position with [ ] and reiterates previous arguments that this position is primarily managerial or executive in nature, again without specifying which.<sup>2</sup> Thus, the Petitioner has not properly addressed the evidentiary deficiencies discussed in the Director's decision.

One matter not discussed by the Director is the inconsistency in the organizational charts of [ ] submitted by the Petitioner. As previously mentioned, the initial organizational chart, submitted with the petition, shows the Beneficiary's position of deputy general director of development to be without any subordinates. The Petitioner's business plan that was likewise submitted with the petition contained this same organizational chart for [ ], showing no subordinates to the Beneficiary's position. Not until the Director issued the RFE did the Petitioner respond with a different organizational chart for [ ] which placed five positions directly subordinate to the Beneficiary. On the original organizational chart four of these positions were depicted as directly subordinate to the director general of [ ] while the fifth position was subordinate to the director of information technology.

It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's evidence also reflects on the reliability of the petitioner's remaining evidence. See *id.* The Petitioner has not explained or reconciled the inconsistency in the two organizational charts submitted for [ ] regarding subordinate positions, or the lack thereof, to the deputy general director for development. This inconsistency raises serious questions about the scope of any managerial or executive duties the Beneficiary may exercise with that company.

Even if we overlook the conflicting organizational charts submitted for [ ] and grant the benefit of the doubt to the Petitioner that the later chart depicting the Beneficiary with five direct subordinates was accurate, which we do not, we agree with the Director that the various descriptions of the Beneficiary's job duties provide few substantive details about the Beneficiary's daily tasks at [ ] and do not demonstrate that the Beneficiary's duties are primarily managerial or

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<sup>2</sup> A petitioner claiming that a beneficiary will perform as a "hybrid" manager/executive will not meet its burden of proof unless it has demonstrated that the beneficiary will primarily engage in either managerial or executive capacity duties. See section 101(a)(44)(A)-(B) of the Act. While in some instances there may be duties that could qualify as both managerial and executive in nature, it is the petitioner's burden to establish that the beneficiary's duties meet each element set forth in the statutory definition for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the beneficiary will be primarily employed in either a managerial or executive capacity.



executive in nature. Moreover, the Petitioner has still submitted no information, much less any documentary evidence, about the duties, education, or salaries of the subordinate employees. According to the later organizational chart submitted in response to the RFE, the Beneficiary's five direct subordinates are the departmental heads of human resources, legal support, economic and technical support, administrative support, and information technology and communications, and these direct subordinates themselves have subordinate employees ranging in number from three to twenty per department. As no evidence has been submitted of the job duties of the five departmental heads, the Petitioner has not demonstrated that any of them perform supervisory or managerial functions. Furthermore, as no evidence has been submitted of the educational credentials of the departmental heads, or that any of the five positions requires at least a bachelor's degree, the Petitioner has not demonstrated that any of the departmental heads is a professional.<sup>3</sup>

As previously noted, the definition of "managerial capacity" contains four elements. The Petitioner must show that the position meets each of the four elements. In looking at the second element alone, the evidence of record does not show that the Beneficiary "supervises and controls the work of other supervisory, professional, or managerial employees" at [REDACTED] as required to meet the first part of the definitional element of "managerial capacity" at section 101(a)(44)(A)(ii) of the Act. The Petitioner does not allege that the Beneficiary "manages an essential function" at [REDACTED] which is the second part of the definitional element of "managerial capacity" at section 101(a)(44)(A)(ii) of the Act. As the record does not establish that the Beneficiary meets either part of the definitional element at section 101(a)(44)(A)(ii) of the Act, the Petitioner has not established that the Beneficiary is employed in a "managerial capacity" at [REDACTED]

The definition of "executive capacity" also contains four elements, as previously noted, and the Petitioner must show that the position meets each of the four elements. The evidence of record does not show that the Beneficiary "directs the management of [REDACTED] or a major component or function of the organization," as required to meet the first definitional element of "executive capacity" at section 101(a)(44)(B)(i) of the Act.<sup>5</sup> As previously discussed, no evidence has been submitted of the job duties exercised by the five employees – ostensibly the departmental heads of human resources, legal support, economic and technical support, administrative support, and information technology and communications – directly subordinate to the Beneficiary on the organizational chart submitted in response to the RFE. Absent any evidence of their job duties we cannot conclude that those employees

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<sup>3</sup> As previously indicated, the Director requested evidence of the duties, education, and salaries of the Beneficiary's subordinate employees in the RFE. The regulation at 8 C.F.R. § 103.2(b)(14) provides that the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the benefit request.

<sup>4</sup> 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).

<sup>5</sup> Based on the definition of executive capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary will be primarily engaged in executive 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); *Champion World*, 940 F.2d at 1533.

perform primarily managerial tasks, rather than daily operational tasks, in their respective areas of responsibility. Since the record does not show that the positions allegedly directly subordinate to the Beneficiary are primarily managerial in nature, the Petitioner has not demonstrated that the Beneficiary “directs the management” of the organization or of any component or function at [REDACTED] [REDACTED] as required to meet the first definitional element of executive capacity employment at section 101(a)(44)(B)(i) of the Act. In addition, we note once again the conflict in the organizational charts wherein the initial chart did not show the Beneficiary’s management of any departmental heads. This discrepancy has not been resolved with independent objective evidence. Without resolution of the Beneficiary’s true number of reports, it is unclear whether there is sufficient staff to demonstrate that the Beneficiary primarily focused on the broad policies and goals of the organization, that she was removed from significant involvement in the day-to-day operations of the company, and that she functioned primarily in an “executive capacity” at [REDACTED]

In accord with the foregoing analysis, we determine that the Petitioner has not established that the Beneficiary had one year of qualifying employment abroad in a managerial or executive capacity at the time of her application for admission to the United States.

#### B. Employment in the United States

As previously indicated, we reserve the issue of the Beneficiary’s employment in a managerial or executive capacity in the United States.

### III. CONCLUSION

The Petitioner has not reconciled the conflicting organizational charts it submitted in this proceeding which call into question whether the Beneficiary in her position at [REDACTED] has any direct subordinates. Furthermore, even if we accept the claim that the Beneficiary does have direct subordinates at [REDACTED] the Petitioner has not established that the Beneficiary’s position meets all four elements of either “managerial capacity” or “executive capacity” as defined at sections 101(a)(44)(A) and (B) of the Act. Therefore, the Petitioner has not established that the Beneficiary had one year of qualifying employment abroad during the three years preceding her application for admission to the United States, as required in section 101(a)(15)(L) of the Act. The appeal will be dismissed for this reason.

ORDER: The appeal is dismissed.