



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

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

In Re: 7906355

Date: JULY 7, 2020

Appeal of Texas Service Center Decision

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

The Petitioner seeks to continue the Beneficiary's temporary employment as its operations manager 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 Texas Service Center denied the petition, concluding that the Petitioner did not establish that: (1) the Beneficiary was employed abroad in a managerial capacity; (2) the Beneficiary would be employed in a managerial capacity in the United States under an extended petition; and (3) it has a qualifying relationship with the Beneficiary's foreign employer.

On appeal, the Petitioner asserts that it submitted sufficient evidence to establish that the Beneficiary was employed abroad, and will continue to be employed in the United States, in a managerial capacity. It also asserts that it has a qualifying relationship with the Beneficiary's foreign employer.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. 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 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)(3)(v)(B). 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.*

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as 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.

II. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

The first issue to be addressed is whether the Petitioner established that the Beneficiary was employed abroad in a managerial capacity for one continuous year within three years preceding his application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). On the petition, the Petitioner asserted that the Beneficiary was employed abroad by its foreign affiliate, [REDACTED], in the managerial capacity of international report manager from May 2013 to July 2016. The Petitioner does not claim that he was employed in an executive capacity.

To be eligible for L-1A nonimmigrant visa classification as a manager, the Petitioner must show that the Beneficiary performed the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If the record does not establish that the position abroad meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

If the Petitioner establishes that the position abroad meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary was *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the foreign entity's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's duties were primarily managerial, we consider the foreign entity's description of the job duties, the company's organizational structure, the duties of a 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 a beneficiary's actual duties and role in a business.

Therefore, the first question before us is whether the Petitioner established that the Beneficiary's position of international report manager meets all elements of the statutory definition of "managerial capacity" at section 101(a)(44)(A) of the Act. We conclude that it does not. Specifically, although the Petitioner asserts that the Beneficiary directly supervised other employees, the Petitioner has not

established that the Beneficiary had the “authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization)” as set forth in section 101(a)(44)(A)(iii) of the Act.

With the petition, the Petitioner did not submit any evidence of the Beneficiary’s employment with the foreign entity. In response to the Director’s request for evidence (RFE), the Petitioner provided a letter from its CEO detailing the Beneficiary’s duties abroad and the staff that he supervised.¹ Specifically, the letter states his duties abroad and percentages of time devoted to those duties as follows:

- Financial reporting system development to enhance the financial visibility from Spain without slowing down the local managers – 20%
- Commercial reporting system development for monitoring commercial actions and results – 10%
- Controlling, monitoring, and reporting monthly financial results of the different sites in Europe – 20%
- Reporting BPC SAP reports. [redacted] and [redacted] – 10%
- Making decisions on managerial and supervisory staffing requirement, when related to the proposed solution for different KPI or budgeting projects – 5%
- Reviewing financial statements and other performance data to measure productivity and goal achievement and to determine areas needing cost reductions and/or other improvement measures – 15%
- Establishing and implementing solutions to departmental policies, goals, objectives and procedures, conferring with board members, organizations officials, and supervisory members as necessary in order to adapt to each country or office – 20%

The list of duties, together with additional details provided by the CEO regarding each duty, do not indicate that the Beneficiary had authority over personnel actions relating to any subordinates.

The letter also states that the Beneficiary supervised the following staff:

- [redacted] Commercial Team, including nine named direct reports. It also asserts that the non-managerial duties were assigned to two additional subordinates;
- U.S. finance team, including one direct report, who in turn supervised two employees;
- Germany financial department, including one direct report, who in turn supervised one employee;
- Norway financial department, including one direct report, who in turn supervised one employee;
- China financial department, including two direct reports, who in turn supervised three employees; and
- Arabia financial department, including two direct reports, who in turn supervised five employees.

¹ We note that the RFE requested a letter from an authorized representative of the foreign entity, [redacted]. [redacted] The Petitioner’s CEO does not appear to be an authorized representative of the foreign entity.

The letter does not indicate that the Beneficiary had the authority to hire and fire these employees, or that he had the authority to take any other personnel actions with respect to these individuals.

In response to the RFE, the Petitioner also provided an organizational chart for [REDACTED] for January 2016 showing that the Beneficiary oversaw two support individuals in the commercial team. The chart also lists the U.S., Germany, Norway, China, and Arabia finance departments, but it does not identify any individuals that the Beneficiary oversaw in those departments, nor does it confirm that they directly reported to him.² Although a separate organizational chart indicates that the Beneficiary oversaw the [REDACTED] commercial team, and the U.S., Germany, Norway, China, and Arabia finance departments, the chart is in a different style and format than the [REDACTED] chart,³ and it does not list any identifying information about the organization or the time period that the chart represents.⁴ Thus, it does not appear to correlate to the [REDACTED] organizational chart. The Petitioner must resolve this ambiguity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Further, in response to the RFE, the Petitioner submitted some of the Beneficiary's payroll statements indicating that his employment with the foreign entity started on July 16, 2014, and that his title was international report manager. These payroll statements conflict with the Petitioner's assertion that the Beneficiary started with the Petitioner as an international report manager in May 2013. *See id.* The Petitioner also submitted resumes and untranslated payroll statements⁵ for several individuals that the Beneficiary purportedly supervised, together with educational credentials for some of the individuals. These documents do not indicate that the Beneficiary had authority over personnel actions related to these individuals. Further, the Petitioner submitted monthly payroll sheets for [REDACTED] for 2015 and 2016. The payroll sheets do not mention the Beneficiary, nor do they indicate that anyone at [REDACTED] directly reported to the Beneficiary.

In his decision, the Director stated that the record fails to establish that the Beneficiary had the authority to hire and fire or recommend those actions, as well as the ability to approve or deny leave requests and other personnel actions such as promotion and leave authorization. On appeal, the Petitioner submits an undated letter from the CEO and the International Director of [REDACTED], which contains a more detailed job description for the Beneficiary.⁶ The

² The [REDACTED] chart is printed in color and uses solid red lines to demonstrate the relationship between all individuals in the chart, but it uses a dotted red line to represent the relationship between the Beneficiary and the teams, indicating that there is a difference in the relationships.

³ We note that the color chart contains pictures of most of the individuals listed, while the other black and white chart does not.

⁴ It appears that all of the individuals listed except those in the [REDACTED] commercial team were employed by separate companies.

⁵ Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of the payroll statements, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims.

⁶ As previously noted, the Director requested a letter from the foreign entity in his RFE, but the Petitioner submitted a letter from the Petitioner's CEO instead. Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not generally accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

letter reasserts that the Beneficiary supervised the [REDACTED] commercial team, and the U.S., Germany, Norway, China, and Arabia finance departments. However, the letter does not indicate that the Beneficiary had the authority to hire and fire these employees, or recommend those actions, or that he had the authority to take other personnel actions with respect to these individuals.

On appeal, the Petitioner also submits financial reports and excerpts from emails and asserts that they demonstrate the Beneficiary's managerial role with the foreign entity. Several of the reports are written partially in a foreign language and partially in English, but they do not indicate which entity they relate to. Other reports are provided solely in English. None of the reports demonstrate the Beneficiary's authority over personnel actions relating to any subordinates. Similarly, the emails do not confirm his authority over personnel actions. For example, the Petitioner asserts that the Beneficiary's title was international report manager, yet his email signature indicates that his title was "Finance Control & Reporting support." Further, the emails indicate that the Beneficiary was involved in the preparation of financial reports and distributing engineering management templates, but they do not indicate that he had authority over personnel actions relating to any subordinates.

Section 101(a)(44)(A)(iii) of the Act states that if no other employee is directly supervised, the Petitioner must establish that the Beneficiary functioned at a senior level within the organizational hierarchy or with respect to the function managed. Although the Petitioner asserts that the Beneficiary directly supervised numerous employees abroad, we note that the Petitioner did not establish that the Beneficiary functioned at a senior level within the organizational hierarchy or with respect to a function managed. The 2016 organizational chart for [REDACTED] shows the Beneficiary at the bottom of a complex organizational structure with numerous managers above him in the hierarchy, and it appears that he directly reported to a finance manager whose duties have not been established.

We also note that the Director determined that the Beneficiary was not a function manager abroad. On appeal, the Petitioner does not assert that the Beneficiary served as a function manager abroad. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. As previously noted, to be eligible for L-1A nonimmigrant visa classification as a manager, the Petitioner must show that the Beneficiary's position abroad meets all four of the elements set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If the record does not establish that the position abroad meets all four of these elements, we cannot conclude that it is a qualifying managerial position. Here, we have determined that the position abroad does not meet the requirements of section 101(a)(44)(A)(iii) of the Act.

The Petitioner must establish that it meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). The Petitioner claims that the Beneficiary directly supervised numerous employees in his managerial position abroad, but it has not established that the Beneficiary had the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), as required by section 101(a)(44)(A)(iii) of the Act. Accordingly, the Petitioner has not established that the position abroad was in a "managerial capacity" as defined in the statute governing this classification. As the Petitioner did not establish that the position abroad was in a managerial capacity,

we will not conduct a full analysis of the remaining evidence related to the Beneficiary's position abroad. Accordingly, the appeal will be dismissed.

We acknowledge that U.S. Citizenship and Immigration Services (USCIS) previously approved a nonimmigrant petition filed on behalf of the Beneficiary. However, the mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for extension of that visa. *See, e.g., Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii).

In the present matter, the Director reviewed the record of proceeding and concluded that the Petitioner was ineligible for an extension of the nonimmigrant visa petition's validity based on its failure to establish eligibility. In both the RFE and the final denial, the Director clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand. If the previous petition was approved based on the same evidence of the Beneficiary's eligibility, the approval would constitute error on the part of the Director.

Finally, we note that the Beneficiary was born in October 1991, and therefore he was 21 years old in May 2013 when he purportedly began his managerial role with the foreign entity. According to the Beneficiary's nonimmigrant visa petition filed in June 2016, he attended [REDACTED] [REDACTED] from September 14, 2009, to June 30, 2014. It is not clear how he attended school and simultaneously worked full-time for the foreign entity as an international report manager from May 2013 through June 30, 2014. The Petitioner must resolve this ambiguity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. The Beneficiary also indicated on his nonimmigrant visa application that he had no prior employment before starting his position with the foreign entity. It is not clear how the Beneficiary, who had not yet graduated from college and had no prior work experience, was qualified to enter directly into the managerial capacity of international report manager. *Id.* In any future filings, the Petitioner must address these ambiguities.

III. RESERVED ISSUES

As noted, the Director also determined that the Petitioner did not establish that (a) the Beneficiary would be employed in a managerial capacity in the United States under an extended petition; and (b) it has a qualifying relationship with the Beneficiary's foreign employer. However, because the Beneficiary's lack of qualifying managerial employment abroad is dispositive in this case, we need not reach these issues and therefore reserve them. *See Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.