



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

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

In Re: 9069792

Date: OCT. 1, 2020

Appeal of California Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as President of its new office¹ 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, concluding that the record did not establish that: (1) the new office would support the Beneficiary in a managerial or executive position within one year of the petition's approval; and (2) the Beneficiary was employed abroad in a managerial or executive capacity.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, 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.*

The petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

¹ The term "new office" refers to an organization which has been doing business in the United States 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 no more than one year within the date of approval of the petition to support an executive or managerial position.

The term “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.

The term “executive capacity” means an assignment within an organization where an employee primarily: directs the management of an organization or a major component or function of it; establishes the goals and policies of it, its component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from its higher-level executives, the board of directors, or stockholders. Section 101(a)(44)(B) of the Act.

II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The primary issue to be addressed in this decision is whether the Petitioner established that the new office would support a managerial or executive position within one year of approval of the petition. The Petitioner asserts that the new office would support the Beneficiary in a managerial or executive position within one year of the petition’s approval, but it did not clarify whether the Beneficiary will be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. We will review both below.

In the case of a new office petition, we review a beneficiary’s proposed job duties as well as the petitioner’s business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the intended managerial or executive capacity. A petitioner has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the evidence must be considered in analyzing whether the proposed managerial or executive position is plausible considering a petitioner’s anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

A. Projected Staffing and Business Plan

The Petitioner indicated on the petition that it will operate a residential remodeling and renovation company in Florida.² In a company profile submitted with the petition, the Petitioner

² As noted by the Director in her request for evidence (RFE), the Petitioner submitted a lease for a premises that is a two-bedroom single-family residential home. The lease states that for “a period of September 1, 2019 through *August 31, 2019* rent shall be paid in consecutive monthly installments of \$950.00 per month in advance on the first day of each and every month.” (emphasis added) Thus, it is not clear that any rent is due after the first month. Further, it is not clear where the Petitioner’s proposed staff will work given the residential nature of the premises. There may be cases in which a residential premises or home office would satisfy the regulatory requirements. However, a petitioner bears the burden of establishing

asserted that it planned to hire a project manager and a group of tradesmen, including an electrician, plumber, and carpenter in its first year of operations. It also stated that it planned to retain an accountant and business lawyer in its first year of operations, identify competent business professionals to assist in diversifying its holdings, and to enter into strategic partnerships to complete larger projects.³ It asserted that it will hire an office administrator/secretary/bookkeeper in the second year and that as the business expands, it will hire additional project managers, tradesmen, and laborers. Further, in a first-year timetable of operations, it indicated that it would take the following actions in its first year, in the following order: file petition; retain accountant and business attorney; launch website and marketing campaigns; secure remodeling and renovation contracts; hire electricians, plumbers and carpenters; meet with electrical service businesses, plumbing businesses and carpentry businesses to form strategic partnerships to complete larger projects; meet with real estate brokers and business brokers to identify real estate and business opportunities; interview applicants for project manager; hire project manager; and investigate and pursue available business opportunities to diversity business interests. We note that the first-year timetable does not indicate that the Petitioner will actually begin any remodeling or renovation projects in its first year of operations.

In its response to the Director's request for evidence (RFE), the Petitioner submitted an organizational chart showing that he will oversee a general manager,⁴ three project managers, and an office administrator. It further shows that the project managers will collectively oversee 12 tradesmen including electricians, plumbers, carpenters, and general labor. The chart also shows that the Petitioner will retain a business attorney, an accountant, and unidentified independent contractors.⁵ The Director determined that the Petitioner did not establish that its new office would be able to support a managerial or executive position within one year of approval of the petition. The Director indicated that the Petitioner did not provide job descriptions for the subordinate staff or describe how the subordinate staff would relieve the Beneficiary from having to perform non-executive and non-managerial tasks. On appeal, the Petitioner submits no new evidence, but instead states that the Director ignored evidence in the record regarding the Beneficiary's subordinates.⁶ Upon review, we

that its physical premises should be considered "sufficient" as required by the regulations. See 8 C.F.R. § 214.2(l)(3)(v)(A). To do so, it must clearly identify the nature of its business, the specific amount and type of space required to operate the business, and its proposed staffing levels, and document that the space can accommodate a petitioner's growth during the first year of operations. USCIS may also consider whether the company has obtained a license to operate from a residential dwelling, or evidence that the landlord has authorized the use of residential space for commercial purposes, that the company has established separate phone lines or made other accommodations for the use of the residential premises, or that would establish that a residential dwelling, or portion, meets the company's needs. Finally, photographs and floor plans of the premises may assist in determining that the premises secured is sufficient to accommodate a petitioner's business operations. In any future filings, the Petitioner must establish that it has secured sufficient physical premises to house the new office.

³ The company profile does not clarify how it plans to diversify its holdings or detail the strategic partnerships that it plans to enter into. In response to the RFE, it states that it is planning the "possible purchase of a cleaning business," but it does not provide any details regarding that purchase or indicate how it fits within its stated plans to provide residential remodeling and renovation services.

⁴ The general manager was not mentioned in the company profile initially submitted with the petition. The Petitioner must resolve inconsistencies 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).

⁵ The Beneficiary's list of duties in the company profile mentions a marketing manager, but that position is not referenced anywhere else in the record.

⁶ In a letter supporting the appeal, the Petitioner indicated that a brief and additional evidence would be submitted within 30 days of filing the appeal; however, to date, we have received no additional brief or evidence in this matter.

agree with the Director that the Petitioner did not establish how it would support a managerial or executive position within one year.

As previously noted, the Petitioner did not specify on appeal whether the Beneficiary would serve in a managerial or executive capacity. The statutory definition of “managerial capacity” allows for both “personnel managers” and “function managers.” See section 101(a)(44)(A)(i) and (ii) of the Act. The Petitioner does not contend that the Beneficiary would act as a function manager within one year; as such, we will only analyze whether he would qualify as a personnel manager. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word “manager,” the statute 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.”⁷ Section 101(a)(44)(A)(iv) of the Act. If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

The Director determined that the record does not demonstrate that the Beneficiary will be supervising other supervisory, managerial, or professional employees. The Beneficiary’s job description indicates that the Beneficiary is authorized to hire and fire employees, and the organizational chart shows that he would supervise subordinates with managerial job titles. However, the record does not support a finding that any of the Beneficiary’s subordinates will be supervising their own subordinates by the end of the initial year of operations, such that they could be considered supervisors or managers. As noted by the Director in her denial decision, without additional evidence of the subordinate positions, we cannot determine whether the Beneficiary will work in a position that is higher than a first-line supervisor of non-managerial, non-professional employees.

The Petitioner submits no additional evidence on appeal, but instead states that the Director “has willfully ignored the plain meaning of job titles” and the job descriptions demonstrating that the subordinates are primarily involved with managerial and supervisory duties. The job titles of other workers listed in the record include general manager, project manager, marketing manager, electrician, plumber, carpenter, and administrator/secretary/bookkeeper. The job titles of general manager, marketing manager, and project manager utilize the term “manager,” and the organizational chart indicates that the project managers will have tradesmen subordinates.⁸ However, the Petitioner has not provided job descriptions or any evidence other than the organizational chart demonstrating that any of the projected positions are supervisory or managerial. Further, the company profile states that it will recruit project managers with a bachelor’s degree and two years of experience in project management, but without a job description or additional evidence supporting its claim, we cannot determine if the position is a professional one. The Petitioner must support its assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

⁷ In evaluating whether a beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Cf. 8 C.F.R. § 204.5(k)(2) (defining “profession” to mean “any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation”). Section 101(a)(32) of the Act, states that “[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.”

⁸ The company profile states that it will recruit tradesmen with two or more years of experience.

Thus, without additional evidence of these subordinate positions, we cannot determine whether the Beneficiary will primarily supervise and control the work of other supervisory, professional, or managerial employees within one year. The Petitioner has not established that the Beneficiary would qualify as a personnel manager.

The Petitioner has also claimed that the Beneficiary will be employed in an executive capacity. The statutory definition of the term “executive capacity” focuses on a person’s elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person’s authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to “direct the management” and “establish the goals and policies” of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for a beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they “direct” the enterprise as the owner or sole managerial employee. As further detailed below, the Petitioner submitted a broad description of the Beneficiary’s proposed duties that did not define his actual tasks in sufficient detail, and the record does not detail the responsibilities of any subordinates. Further, as detailed below, the Petitioner has not adequately explained how the proposed staff would allow him to primarily focus on the broad goals and policies of the company within one year.

The Petitioner did not establish that it would hire lower-level staff to assist with administrative or other day-to-day financial functions during the first year of operations. Thus, the Petitioner has not established that it will employ staff that will relieve the Beneficiary from performing non-qualifying duties. For example, the company profile states that its marketing plan “includes development of a website, direct marketing campaigns, and innovative placement of advertisements in strategic locations.” The timetable for the first year does not include hiring a marketing manager, and the position is not listed on the organizational chart. While the Beneficiary’s duties include directing marketing efforts and hiring a marketing manager, the timetable for launching a website and marketing campaigns indicates that they will be launched prior to hiring any employees and, therefore, that the Beneficiary will be responsible for creating them. Further, the Beneficiary’s duties include hiring and training an office manager, yet the timetable for the first year of operations does not include hiring an office manager. And although the company profile states that he plans to hire an office administrator/secretary/bookkeeper in the second year, it is not clear who would perform the administrative office duties until that position is filled. 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).

Further, in her denial decision, the Director determined that despite the job title of President, the structural hierarchy of the new office appears to be insufficient to elevate the Beneficiary to a primarily executive position within one year. The Petitioner has not shown that it will attain the scope of operations needed to support the Beneficiary in an executive role where he would reasonably be required to focus on the broad goals and policies of the company within the first year of operations.

Additionally, the Petitioner provided a company profile that provides an incomplete understanding of the Petitioner's projected operations, costs, and staffing. The record does not sufficiently demonstrate how the Petitioner would achieve its projected income, support its projected workers, and cover its other expenses during its first year of operations. The company profile indicates that the Petitioner's foreign parent company would make a small initial \$10,000 investment. The company profile also includes a five-year projected profit and loss statement which states that the Petitioner expects to achieve gross sales of \$30,000 in its partial first year; and \$120,000, \$175,000, \$200,000, and \$250,000 in subsequent years. However, the record does not provide any detail as to how these projections were calculated. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As previously noted, the first-year timetable does not indicate that the Petitioner will actually begin any remodeling or renovation projects in its first year of operations, so it is unclear that it will have any revenue. The Petitioner must resolve inconsistencies 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). Doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* Further, the statement lists no figures in the category for "costs of goods sold," which would generally include expenses related to projects and materials. *Id.* In addition, the statement lists expenses for payroll,⁹ advertising & marketing, legal & professional, rent, equipment, office supplies, and miscellaneous; however, expenses such as taxes, insurance, licenses, permits, and utilities do not appear to be included and, thus, the list appears incomplete. *Id.* Given the low initial investment, and the lack of detail and inconsistencies regarding its projected income and expenses, the Petitioner has not established that it would be able to achieve its expected income, support the projected workers, and cover its other expenses during the first year of operations.

The new office regulations are premised on the understanding that a new company will progress to a stage of development where it will be able to support a beneficiary in a managerial or executive capacity. Here, the Petitioner's proposed operations and staffing are unclear, and the record does not sufficiently demonstrate how the Petitioner would achieve its projected income, support its projected workers, and cover its other expenses during its first year of operations. Without this evidence, the Petitioner has not supported a claim that the organization will grow to the point where it can support a managerial or executive position within that timeframe.

B. Duties

The company profile submitted with the petition included a description of the Beneficiary's proposed job duties and the hours per week that he would be performing each duty, including: overseeing management of the company (1 hour); analyzing business operations and overseeing activities of the Project Manager (1 hour); directing and coordinating financial operations, including preparation and review of budgets (1 hour); negotiating contracts with customers for remodeling and renovation projects (15 hours); identifying electrical service businesses, plumbing businesses and carpentry businesses and negotiating contracts (5 hours); negotiating purchase agreements for properties to be

⁹ The record does not detail salaries for anyone except the Beneficiary, and therefore, we cannot determine whether the projected payroll expenses are credible.

developed¹⁰ (5 hours); hiring, training, and evaluating the project managers and tradesman including electricians, plumbers and carpenters (1 hour); direct marketing efforts, including development of website, direct marketing campaigns and placement of advertising, and hiring a marketing manager¹¹ (5 hours); hiring, training, and evaluating an office manager and other staff (1 hour per week); and directing continued expansion of business, including meeting with potential investors, business brokers, and real estate brokers (5 hours).

In her denial decision, the Director determined that the Petitioner did not specifically explain how the Beneficiary's duties will be primarily managerial or executive in nature, given that it appears that he will be performing the necessary tasks to provide a service or product. On appeal, the Petitioner submits no new evidence, but instead asserts that the Director failed to consider all of the evidence submitted to demonstrate that the Beneficiary's duties will be primarily managerial or executive in nature. Upon review, we conclude that the Petitioner did not sufficiently explain how the Beneficiary's duties will be primarily managerial or executive in nature.

The Petitioner provided an overly broad and deficient job description that says little about the actual tasks he would perform during the various stages of the company's development. For example, it broadly states that he will oversee the management of the company, but it does not list the specific tasks the Beneficiary would perform as part of this oversight. It states that he will direct the continued expansion of business, but it gives no details about the projected expansion or the tasks that the Beneficiary would perform to accomplish it. Further, the description makes no distinction between tasks that the Beneficiary would need to perform during the Petitioner's rudimentary phase and those he intends to perform once the company is no longer in the "new office" stage of development. For instance, although the company profile indicates that the Beneficiary will focus primarily on directing and overseeing the business once he hires a project manager, his job description indicates that he will continue to spend the majority of his time handling the day-to-day operations of the remodeling and renovation business, including negotiating contracts. The Petitioner provided few specifics related to how the Beneficiary's day-to-day duties fit within the company's first-year business plan. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. *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 will reveal the true nature of the employment. *Id.* Although it is reasonable to conclude that the Beneficiary's duties would change to correspond with the Petitioner's operational development and changing needs, the Petitioner did not provide a job description that reflects this likely progression.

We acknowledge that the Beneficiary, as the Petitioner's senior employee, would have authority to establish plans, policies, and objectives for the company, supervise any employees hired, and make decisions regarding its finances and overall direction. However, the Petitioner has not established that these types of responsibilities would primarily occupy the Beneficiary's time within one year. By statute, eligibility for this classification requires that the duties of a position be "primarily" managerial or executive in nature. Sections 101(A)(44)(A) and (B) of the Act.

¹⁰ The record does not indicate that the Petitioner plans to buy and develop properties, but instead, that it plans to renovate and remodel them. The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

¹¹ As previously noted, the marketing manager is not mentioned anywhere else in the record, including the organizational chart.

As previously noted, when a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require a petitioner to disclose the proposed nature of the business and the size of the U.S. investment, and establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. For the reasons discussed above, the Petitioner has not established that the new office will support a managerial or executive position within one year after approval of the petition. Therefore, we will dismiss the appeal.

III. RESERVED ISSUE

The Director also concluded that the record did not establish that the Beneficiary was employed abroad in a primarily managerial or executive capacity. However, because the issue of whether the new office would support a managerial or executive position within one year of approval of the petition is dispositive in this case, we need not reach the remaining issue and therefore reserve it.

ORDER: The appeal is dismissed.