



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

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

MATTER OF A- CORP

DATE: APR. 27, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a beauty salon, seeks to extend the temporary employment of the Beneficiary as its president and chief executive officer 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 California Service Center denied the petition, concluding that the record did not establish that the Beneficiary will be employed in the United States in a managerial or executive capacity.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary qualifies as an executive, and in the alternative, qualifies as a manager.

Upon *de novo* review, we will dismiss the appeal.

## I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have employed the Beneficiary in a managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the Beneficiary's application for admission into the United States. 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, executive, or specialized knowledge capacity. Section 101(a)(15)(L) of the Act.

An individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, must include evidence that the petitioner will employ the beneficiary in an executive or managerial capacity, or in a position requiring specialized knowledge, including a detailed description of the services to be performed. 8 C.F.R. § 214.2(l)(3)(ii).

An L-1A nonimmigrant visa petition that involved the opening of a new office may be extended by filing a new Form I-129, accompanied by a statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition, and the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees. 8 C.F.R. § 214.2(l)(14)(ii)(C) and (D).

## II. U.S. EMPLOYMENT IN AN EXECUTIVE OR MANAGERIAL CAPACITY

The Petitioner asserts that its description of duties clearly establishes that the Beneficiary will spend 55 percent of her time directing the management of the company and will spend 35 percent of her time setting the policies and goals of the company. The Petitioner claims that the Beneficiary is “responsible for the directing and management of the entire entity and not just a component or a function thereof.” For the first time on appeal, the Petitioner asserts, in the alternative, that the Beneficiary’s position satisfies the definition of managerial capacity.

### A. Definitions of Executive and Managerial Capacity

Section 101(a)(44)(B) of the Act defines the term “executive capacity” as “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)(A) of the Act 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.

Further, “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.” *Id.*

#### B. Duties

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 they 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. A beneficiary must also exercise “wide latitude in discretionary decision making” and receive only “general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.” *Id.*

The Petitioner provided the following duties and percentages of time the Beneficiary will spend on those duties:<sup>1</sup>

- Establish [the Petitioner’s] financial goals and oversee cash management functions (5%).
- Oversee the preparation of cash flow forecasts to anticipate the company’s financial needs and negotiate all business loans (5%).
- Determine the allocation of funds and distribution of resources among various activities (8%).
- Oversee the investment of excess funds in interest-bearing instruments (2%).
- Oversee, plan and coordinate [the Petitioner’s] service and supply needs (5%).
- Based on sales volume, consumer demand, market analysis, inventory turnover, direct staff to place orders with suppliers locally in the U.S. and internationally, in such [*sic*] countries such as Armenia and those of [the] European Union, with which our parent company [] has or shall establish contractual agreements (5%).

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<sup>1</sup> In all three submissions outlining the duties and the allocations of the Beneficiary’s time, the percentage of time allocated to performing the duties totaled 90 percent. The Petitioner does not explain what the Beneficiary will be doing during the remaining 10 percent of her time.

- Ensure that there are procedures in place to ensure that products meet the company's quality control standards and satisfy customer expectations (10%).
- Set policies to be used in handling inventory control responsibilities and assure that merchandise is stocked at proper levels (10%).
- Oversee, monitor and coordinate the activities of other managers, including a VP of Operations (10%).
- Set policies and strategies related to employees' schedules, their activities, job duties and performance (3%).
- Responsible for hiring and setting the procedures for training management staff (3%).
- Set policies to be used in personnel procedures pertaining to benefits, compensation packages, promotional guidelines, and insurance (4%).
- Responsible for setting policies and strategies for marketing functions (5%).
- Analyze information regarding competitors' products, prices, and sales (2%).
- Review [the Petitioner's] sales records and use this information to predict future sales activity (1%).
- Determine the company's distribution system and identify potential markets for [the Petitioner's] services, such as surrounding cities and environs of [REDACTED] (1%).
- Establish the amount of funds to be allocated for advertising (1%).
- Plan and direct the expansion of the company's operations in the United States (7%).
- Exercise total discretion over the selection of new sites, oversee the opening of additional salons in Southern California, and execute capital raising strategies to support the firm's expansion (2%).
- Hire managerial staff to manage the operations of future salons[] (1%)[]

The Petitioner provided a broad description of the proffered position's duties which generally describe an individual performing the day-to-day operations of the company as its owner. For example, overseeing cash management functions, preparation of cash flow forecasts, and the investment of excess funds in interest-bearing instruments, overseeing and coordinating the Petitioner's service and supply needs, as well as negotiating business loans and determining the allocation of funds and distribution of resources, all may involve decision-making by the Beneficiary/owner; however, the performance of each of these duties is also a necessary factor in operating the Petitioner's beauty salon.

Similarly, the record does not detail the Beneficiary's ongoing involvement in establishing policies and procedures to meet quality control standards, ensure inventory, and establish financial and marketing goals, among others. These broadly stated tasks also appear to be short-term or one-time responsibilities that would not make continued demands on the Beneficiary's time. The Petitioner's use of the words "establish," "oversee," and "direct," without the added context of the Beneficiary's duties in carrying out those tasks is, in essence, a restatement of portions of the executive capacity statutory definition. General assertions of this type do not tell us what the Beneficiary is actually

doing and who would perform the operational tasks so that the Beneficiary would not have to perform them herself.

Additionally, the record does not include information supporting the Beneficiary's involvement in expanding the company's business. Other than the Petitioner's assertion and the business plan provided, the record does not include evidence that the Petitioner has begun negotiations or research into finding a second location for an additional salon. Further, we also note that the Beneficiary will be performing duties related to marketing, such as analyzing competitors' products, prices, and sales, reviewing its own sales records, and identifying potential markets.

The Petitioner has not described the Beneficiary's daily duties with sufficient specificity to establish that the Beneficiary's role in the organization will be in an executive capacity. Reciting the Beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the Beneficiary's daily job duties. The Petitioner has not provided the necessary detail or explanation of the Beneficiary's activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *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).

On appeal, the Petitioner argues that the Beneficiary's position also satisfies the definition of managerial capacity. The Petitioner asserts that the Beneficiary supervises and controls the work of other managerial employees, the vice president of operations, and potentially the vice president of marketing who is to be hired. The Petitioner also claims that the vice president of operations supervises the hairstylist supervisor who in turn supervises the activities of employees who perform the day-to-day duties of providing the Petitioner's services.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers."<sup>2</sup> See section 101(a)(44)(A)(i) and (ii) of the Act. 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." 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 duties of the position, as described by the Petitioner, do not suggest that the Beneficiary will be performing managerial duties. The Petitioner's vague reference to overseeing, monitoring, and coordinating the activities of other managers and directing employees to place orders with suppliers is insufficient to demonstrate that the Beneficiary will be involved primarily in personnel management. The Petitioner does not allocate the Beneficiary's time to primarily supervising and

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<sup>2</sup> The Petitioner does not claim and the record does not demonstrate that the Beneficiary is a "function manager."

controlling the work of other supervisory, professional, or managerial employees. The broadly stated duties do not establish that the Beneficiary will perform primarily in a managerial capacity.

We have reviewed the opinion prepared by [REDACTED] Associate Dean – Academic Affairs, [REDACTED] restates the description of the proffered position and concludes, without analysis, that each of these duties fall within the parameters of the statutory definition of “executive capacity.” He does not opine that the duties described are managerial duties. [REDACTED] does not list any reference materials on which he relies, he does not indicate he visited the Petitioner’s salon, and he states that the Beneficiary will be responsible for two upper-level managerial employees. However, as will be discussed, the Petitioner did not employ any managerial employees when the petition was filed. We may, in our discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int’l*, 19 I&N Dec. 791 (Comm’r 1988).

### C. Staffing

Beyond the required description of the job duties, we review the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the company’s organizational structure, the duties of a beneficiary’s subordinate employees, the presence of other employees to relieve a 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.

The record includes evidence that the Petitioner employed five individuals, including the Beneficiary, when the petition was filed. In addition to the Beneficiary, the Petitioner identified the positions of vice president of operations, hairstylist supervisor, hairstylist, and a part-time marketing and sales representative.<sup>3</sup> The Petitioner states that the vice president of operations opens and closes the salon, makes daily bank deposits, performs general bookkeeping duties, is in charge of in-store displays including marking items with codes and prices, investigates customer complaints, arranges for the import and delivery of merchandise, and with the help of the supervising hairstylist supervises the service personnel. The Petitioner notes that the vice president of operations reports directly to the Beneficiary and the organizational chart submitted identifies the vice president of operations as supervising the supervisory hairstylist. The supervisory hairstylist’s duties include temporarily performing the duties of a receptionist and cashier, taking care of the day-to-day issues

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<sup>3</sup> The Petitioner submitted checks made out to each of these individuals, dated August 31, 2016. The check issued to the marketing and sales representative is significantly lower than the checks to the other individuals, which indicates the position is a part-time position. The record does not include quarterly wage reports submitted to the state, despite the Director’s request for this information. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

related to customer care, supervising the hairstylist(s), and also performing as a hairstylist. The Petitioner describes the marketing and sales representative's position as marketing the company through mailer campaigns, as well as establishing partnerships and contacts with local businesses to promote the Petitioner's services.

The description of duties performed by the Petitioner's staff does not include any duties that are primarily managerial or supervisory duties.<sup>4</sup> For example, the vice president of operations is responsible for various duties, but the duties as described do not show that she is a managerial employee. The record does not include an allocation of her time amongst her various duties and although she may have some supervisory duties, the record does not support a claim that this is her primary responsibility. Similarly, the Petitioner does not allocate the supervisory hairstylist's time spent on advising or otherwise supervising the Petitioner's one other hairstylist. Thus, we cannot conclude that the "supervisory hairstylist" position is actually a managerial or supervisory position. The Petitioner does not claim and the record does not demonstrate that the hairstylist and the marketing and sales representative are supervisory or managerial employees. The record does not support the Petitioner's claim that the Beneficiary directs the management of the company, as the organization does not have a subordinate level of managerial employees for the Beneficiary to direct. Also, the record does not support the Petitioner's claim on appeal that the Beneficiary primarily supervises and controls the work of other supervisory, professional, or managerial employees, as the record shows that the Beneficiary's subordinates perform the operational and administrative tasks of the salon, not managerial or supervisory duties.

When reviewing the Petitioner's limited employment records and the descriptions of duties for its employees, the evidence does not support the Petitioner's claimed organizational structure. The evidence submitted must substantiate that the duties of a beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy and artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. In this matter, the record does not include probative evidence establishing who will actually perform the first-line supervisory tasks of the employees subordinate to the Beneficiary's position, if not the Beneficiary. That is, there is insufficient evidence to demonstrate that either the vice president of operations or the individual in the claimed supervisory hairstylist position, supervise either of the Petitioner's two other employees.

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<sup>4</sup> The Petitioner does not claim and the record does not support that the positions of vice president of operations and supervisory hairstylist are professional positions. 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." Therefore, we focus on the level of education required by the position, rather than the degree held by subordinate employee. The record does not establish that either the position of vice president of operations or supervisory hairstylist, as described, requires a baccalaureate degree.

The Petitioner correctly observes that we must take into account the reasonable needs of the organization and that a company's size alone may not be the only factor in denying a visa petition for classification as a multinational manager or executive. See section 101(a)(44)(C) of the Act. However, this petition is an extension of a "new office" petition and the regulations provide strict evidentiary requirements for such a petition which require the examination of the organizational structure and staffing levels of the Petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in the pertinent regulations that allows for an extension of this one-year period. If a business does not have the necessary staffing after one year to sufficiently relieve the beneficiary from performing operational and administrative tasks, the petitioner is ineligible for an extension.

Although the Petitioner references the potential employment of a vice president of marketing and additional hairstylists, the record does not include evidence that these additional individuals were employed when the petition was filed. Thus, these potential positions do not factor into our review of the Petitioner's actual staffing levels. Based on the general descriptions of duties for the Beneficiary and the Petitioner's other employees, the organizational chart, and staffing level when the petition was filed, the Petitioner does not have staffing sufficient to relieve the Beneficiary from primarily performing non-qualifying duties.

Here, the Beneficiary as the sole owner and the chief executive officer of the company will exercise "wide latitude in discretionary decision making" and as she is positioned at the highest level on the Petitioner's organizational chart will not receive supervision or direction from higher-level executives. However, the Petitioner has not established that the Beneficiary will direct a subordinate level of managerial employees or will primarily supervise managerial, professional, or supervisory employees. The record does not include probative evidence that the Beneficiary's primary duties are executive or managerial in nature, rather than performing the operational and administrative tasks necessary to run the beauty salon. The appeal is dismissed for this reason.

### III. CONCLUSION

The appeal must be dismissed because the Petitioner has not established that it will employ the Beneficiary in an executive or managerial capacity.

**ORDER:** The appeal is dismissed.

Cite as *Matter of A- Corp*, ID# 326593 (AAO Apr. 27, 2017)