



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

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

MATTER OF M-USA, LLC

DATE: JUNE 20, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, intending to operate an international development and management consulting company, seeks to temporarily employ the Beneficiary as the international development manager of its new office<sup>1</sup> 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 Vermont Service Center denied the petition concluding that the Petitioner did not establish, as required, that the new office would support the Beneficiary in a managerial or executive position within one year after approval of the petition.

On appeal, the Petitioner provides a list of actions the Beneficiary will be expected to take in order to make the company operational. The Petitioner claims that it plans to hire professional employees “towards the end of the first year and beginning of the second year of operations” as the company continues to develop.

Upon *de novo* review, we find that the Petitioner has not overcome the basis for denial. Therefore, 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

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<sup>1</sup> 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.

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).

## II. U.S. EMPLOYMENT WITHIN ONE YEAR OF APPROVAL

The Petitioner claims that it will be fully operational and that it will employ the Beneficiary in a managerial capacity at the end of its first year of operation. The primary issue to be addressed in this discussion is whether the Petitioner provided sufficient evidence to establish that its operation will support the Beneficiary in a managerial capacity within one year of the petition's approval.

“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.

### A. New Office Requirements

In the case of a new office petition, we review 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 of the petition's approval. Accordingly, we consider the totality of the evidence in analyzing whether the proposed managerial or executive position is plausible based on 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).

In the present matter, the petition shows that the Petitioner claimed no employees and no income at the time of filing. Although the Petitioner did not provide an initial cover letter, it submitted a business plan summarizing its proposed actions explaining how it will become operational at the end of the initial phase of its operation. The Petitioner described itself as a service-based company that will provide “expertise and guidance” to companies “in the areas of finance, accounting, tax, anti-money laundering, and internal controls.” It anticipated that it would generate \$60,000 in income and create one job during its start-up year. The Petitioner did not clarify who, other than the

Beneficiary, it would hire during this initial phase or list the job duties that would be assigned to the unknown position. Further, although the Petitioner projected a staff of at least six more employees by the time it reaches its fifth year of operation, it did not provide a clearly defined hiring timeline between its start-up phase and year five of its operation; it did, however, indicate that it planned to hire one part-time employee to assist the Beneficiary during the first year of its operation. Although the Petitioner stated that it plans to recruit “existing business associates” and foreign-based “local firms” with “local expertise,” it did not specify the types of services these “business associates” and “local firms” would provide, nor did it indicate that it has identified any specific individuals or firms it seeks to recruit to help provide the type of consulting services it intends to offer its clients.

The Petitioner also offered income predictions, indicating that it projected an increase in its net income from \$3000 in its first year of operation to “\$51,508” in its second year of operation; it attributed the additional income to an increase in the number of customers. The Petitioner did not, however, explain how a two-person staff consisting of one full-time and one part-time employee would accommodate the anticipated increase in business or establish that an operation of this size would have the need and capacity to employ the Beneficiary in a managerial capacity, which would require the Petitioner to show that it will relieve the Beneficiary from having to allocate his time primarily to non-managerial job duties. In discussing management and training, the Petitioner claimed that it would “be much less dependent upon its own skills and expertise” in its second year of operation and that it would rely more on “the skills and management of others.” However, it did not clarify how it would make this transition, as it did not identify the “others,” specify the duties and services those “others” would carry out, or indicate the placement of the “others” in the Petitioner’s organizational hierarchy with respect to the Beneficiary.

The Petitioner also addressed its marketing strategy claiming that it would promote its services through “a constantly updated website and direct mailing to customers.” It also indicated that it favors interaction with customers as a means of encouraging customer loyalty, claiming that interaction will be done through “institutional advertising,” social media, and digital marketing by an existing “team” in Brazil at no cost to the Petitioner. However, the Petitioner did not include any details about this claimed arrangement with the foreign entity or provide a timeline for hiring its own in-house employees or contractors to provide its marketing services. Lastly, the business plan identified a “secondary plan” for the Petitioner to become an equity investor for companies that are looking to increase their capital and international growth; it did not, however, specify when it plans to incorporate this “secondary plan” into its business model or when and how it plans to meet the staffing needs associated with offering the services of an equity investment firm.

In a request for evidence (RFE) the Director pointed to the lack of a specific hiring timeline and noted that the record does not explain how the Petitioner plans to support the Beneficiary in a managerial position within one year of approval of the petition. The Director also acknowledged the Petitioner’s submission of financial projections, but found that the Petitioner did not provide a credible basis explaining how it arrived at those projections. The Director instructed the Petitioner to provide proof of the foreign entity’s capital contributions, the size of such contributions, and

evidence of the foreign entity's financial ability to pay the Beneficiary and commence doing business in the United States.

In response, the Petitioner provided minutes summarizing two of foreign entity's meetings where the start-up of the U.S. entity was contemplated. The Petitioner also provided a letter from the foreign entity's CEO discussing the Beneficiary's managerial role with respect to the Petitioner's business activities and finances. The Petitioner provided another letter, also authored by the foreign entity's CEO, and a corresponding unaudited balance sheet and profit and loss statement, indicating that the foreign entity had approximately R\$224,000 (Brazilian reais) in "liquid assets" and approximately R\$401,000 from earnings in "invoicing" in 2016. The Petitioner did not, however, provide the foreign exchange rate for these amounts or indicate how much of the foreign entity's "liquid assets" and "invoicing" was planned as the U.S. entity's start-up capital, nor did it specify the amount of capital it would need for its start-up or provide evidence that the foreign entity actually made capital contributions towards the U.S. start-up operation. Also, despite being notified in the RFE that the record lacked a credible basis for the financial projections contained in the business plan, the Petitioner did not adequately address this concern. Instead, it provided a letter of intent from two entities, each expressing an interest in using the Petitioner's services in the future. One entity expressed an interest in having the Petitioner establish accounting controls and expand its business; the other entity expressed an interest in having the Petitioner establish fraud prevention and anti-money laundering controls. However, neither letter listed the prices the Petitioner planned to charge for those services or the buyer's agreement to pay a set price for those services.

The Director acknowledged the Petitioner's response to the RFE, but found that an approval of the petition was not warranted because the Petitioner did not adequately explain how it would support the Beneficiary in a managerial or executive position within one year of approval of the petition.

On appeal, the Petitioner admits that the Beneficiary will have to perform operational tasks during the initial phase of development, but emphasizes the importance of these tasks and points to the Beneficiary's role as "business partner whose main interest is to see the business succeed." The Petitioner also provides a detailed overview of the actions the Beneficiary plans to take during this initial phase of operations, including hiring an IT employee to assist with network setup and protection. It does not, however, indicate that it plans to hire anyone who will solicit customers, carry out its administrative tasks, and provide the services that it plans to offer. Moreover, the Petitioner does not explain precisely how it plans to relieve the Beneficiary from having to primarily carry out these operational and administrative tasks once it has been operating for longer than one year and no longer qualifies as a new office.<sup>2</sup>

While staffing and business growth are not prerequisites to establishing eligibility, 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. As noted earlier in this discussion, the Petitioner has the burden of establishing that it would realistically

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<sup>2</sup> See FNI.

develop to the point where it would require the Beneficiary to perform duties that are primarily managerial in nature within one year of the petition's approval. It is unclear how the Petitioner can meet this burden with a two-person staff in its second year of operation, at which time the Beneficiary and one part-time employee are expected to comprise the entire staff.

We note that 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). Although the "Competitive Analysis" section of the business plan indicates that the Petitioner plans to be "much less dependent upon its own skills and expertise [] and more dependent upon the skills and management of others," as previously noted, it does not identify who the "others" are, specify their job duties, or provide a specific timeline for expanding its staff in the second year of operation. The Petitioner must support its assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Here, the Petitioner did not provide sufficient evidence to establish that it will experience business growth that will enable it to support the Beneficiary in a managerial capacity within one year of the petition's approval.

#### B. Duties

We also reviewed the job descriptions of the Beneficiary and his projected subordinates and we find the duty descriptions to be insufficient to establish that the Beneficiary would perform primarily managerial duties within one year of the petition's approval.

The Petitioner in the present matter did not describe the Beneficiary's duties beyond its first year of operation. It stated that the Beneficiary would be responsible for making it "fully operational" by the end of its first year by performing a market analysis and feasibility study, adjusting the business plan, creating strategies for market penetration, buying equipment, hiring a part-time employee, and starting to solicit clients and promote the Petitioner's services. The Petitioner also stated that the Beneficiary will be responsible for hiring and training employees, acting as the Petitioner's "senior consultant," negotiating contracts, and contemplating joint ventures with potential business partners. However, the Petitioner did not expound on its strategies for "market penetration," specify the positions the Beneficiary plans to fill within the organization to assist with daily tasks, or clarify the types of "joint business ventures" the Beneficiary would contemplate and the "potential partners" he would work with in his effort to sell the Petitioner's consulting services.

In its RFE response, the Petitioner included a letter, which stated that the Beneficiary's duties would include "handling strategic planning," managing the company and its finances, developing "strong working relationships with clients," creating new contracts, establishing relationships with vendors, planning a budget, monitoring revenue and expenses, and managing accounting statements and ensuring that they comply with "fiscal regulations." The Petitioner did not state how it plans to develop client relationships or plan the company's budget, nor did it explain the significance of

establishing relationships with vendors within the scope of an entity that plans to generate revenue by selling consulting services rather than goods.

On appeal, the Petitioner did not clarify the Beneficiary's job duties during its initial phase of operation or adequately explain how he would ensure that the company progresses to the next phase of development. As such, the Petitioner has not established that within one year of the petition's approval it would employ the Beneficiary in a managerial capacity where he will be relieved from having to spend his time primarily performing operational and administrative tasks of the organization.

### III. MANAGERIAL OR EXECUTIVE EMPLOYMENT ABROAD

In addition, although not addressed in the Director's decision, the job description provided for the Beneficiary's employment with the foreign entity does not establish that the Beneficiary performed primarily managerial or executive duties. In the job description contained in the L Classification Supplement, the Petitioner stated that the Beneficiary's foreign position included managing client portfolios, "promoting and negotiating [the foreign entity]'s products and services," addressing customers' daily needs, maintaining customer records, and planning strategies to help clients "in the area of risk control and management." These duties were reiterated in the Beneficiary's résumé. Although the petition and the résumé pointed to the Beneficiary's role as "managing partner" of the foreign entity, neither established that the duties he was assigned were primarily managerial or executive, as opposed to operational and administrative, in nature.

In light of the above, the Petitioner has not established that the Beneficiary's employment abroad involved primarily managerial or executive job duties. Therefore, we cannot conclude that the Beneficiary was employed in a managerial or executive capacity.

### IV. CORPORATE STATUS

As a final matter, we are unable, through reference to a website maintained by the State of Oklahoma, to determine that the Petitioner is in good standing and authorized to do business in Oklahoma.<sup>3</sup> The Petitioner's corporate status was shown as "Inactive" on the state website. The Petitioner's inactive legal status raises questions about whether it continues to exist as an importing employer, whether it maintains a qualifying relationship with the Beneficiary's foreign employer, and whether it is authorized to conduct business in a regular and systematic manner. *See* section 214(c)(1) of the Act; *see also* 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (l)(3). While not a basis for the dismissal of this appeal, the Petitioner will need to address this deficiency in any future filing where it purports to be the employing entity.

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<sup>3</sup> See [https://\[REDACTED\]](https://[REDACTED]) (last visited on June 14, 2018).

V. CONCLUSION

For the reasons discussed above, we find that the Petitioner has not established that: (1) the Beneficiary will be employed in a managerial capacity within one year of the petition's approval; and (2) the Beneficiary was employed abroad in a managerial or executive capacity.

**ORDER:** The appeal is dismissed.

Cite as *Matter of M-USA, LLC*, ID# 1352891 (AAO June 20, 2018)