



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

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

In Re: 6968792

Date: JAN. 7, 2020

Appeal of Texas Service Center Decision

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

The Petitioner seeks to continue employing the Beneficiary as the corporation's general manager under the L-1A nonimmigrant visa classification for managers and executives. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the Texas Service Center denied the petition. The Director concluded that, contrary to the Act and Department of Homeland Security regulations, the Petitioner did not demonstrate that it would employ the Beneficiary in a managerial or executive capacity.

The Petitioner bears the burden of establishing 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.<sup>1</sup>

**I. NONIMMIGRANT MANAGERS AND EXECUTIVES**

An L-1A petitioner must establish that it or a parent, branch, subsidiary, or affiliate employed a beneficiary abroad in a managerial or executive capacity, or in a position involving specialized knowledge, for at least one continuous year in the three years before his or her admission into the United States. 8 C.F.R. §§ 214.2(l)(3)(i), (iii), (iv). A petitioner must also demonstrate that it would employ a beneficiary in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(ii). Supporting evidence need not accompany an L-1A extension petition, but a director may request it. 8 C.F.R. § 214.2(l)(14)(i).

**II. THE PROPOSED U.S. POSITION**

The Petitioner here does not clearly assert whether it would employ the Beneficiary in a managerial or executive capacity. We will therefore consider both possibilities.

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<sup>1</sup> The Petitioner filed two appeals in this matter. Both Forms I-290B, Notice of Appeal, however, indicate their submissions on the same day, challenging the same decision. Because the Petitioner's appeals are duplicative, this decision also applies to Form I-290B with receipt number:

The term “managerial capacity” means an assignment where an employee would primarily: 1) manage an organization, or its department, subdivision, function, or component; 2) supervise and control the work of other supervisory, professional, or managerial employees, or manage an essential function within the organization, its department, or subdivision; 3) have authority over personnel actions if a direct supervisor, or function at a senior level within the organizational hierarchy or with respect to a function managed; and 4) exercise discretion over the day-to-day operations of the activity or function managed. Section 101(a)(44)(A) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B). Unless supervising professional employees, “[a] first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor’s supervisory duties.” *Id.*

The definition of “managerial capacity” includes management of either personnel or functions. The Petitioner does not contend that the Beneficiary would manage a company function. We will therefore consider only whether he would serve as a personnel manager.

The term “executive capacity” means an assignment where an employee would primarily: 1) direct the management of an organization or a major component or function of it; 2) establish the goals and policies of the organization or its component or function; 3) exercise wide latitude in discretionary decision-making; and 4) receive only general supervision or direction from higher-level executives of the organization, its board of directors, or its stockholders. Section 101(a)(44)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(C).

A petitioner proposing managerial or executive employment in the United States must show that a beneficiary would assume the high-level responsibilities described in the statutory and regulatory definitions of the terms “managerial capacity” or “executive capacity.” *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). A petitioner must also prove that a beneficiary would primarily perform managerial or executive duties, as opposed to operational tasks. *Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533.

When determining the managerial or executive nature of a proposed position, U.S. Citizenship and Immigration Services (USCIS) examines the position’s job duties. USCIS also considers: a petitioner’s organizational structure and the nature of its business; whether other employees would relieve a beneficiary from performing operational duties; the job duties of subordinate employees; and other factors affecting the nature of a beneficiary’s position.

Here, the Petitioner describes itself as a wholesale, diamond trader. Its website indicates that it buys and sells diamonds and makes jewelry. The Petitioner states that it seeks to continue employing the Beneficiary as general manager, a position responsible for managing its business operations.

The Petitioner initially described the position as involving the following duties and percentages of time:

- Sales activities (40%). Oversee sales manager. Formulate company sales policies. Authorize and review performance evaluations of sales employees. Set and monitor sales goals. Review market analysis reports. Attend major trade shows (5% of the time allotted for sales activities);

- Financial activities (20%). Oversee operations manager. Define and allocate quarterly budgets. Review quarterly reports. Investigate relevant factors to formulate business plans. Decide company's financial activities and needs;
- Hire/fire employees, identify problems, and resolve policies and procedures with foreign affiliate. (30%). Recruit staff and oversee their training. Establish personnel policies. Initiate new policies and procedures. Resolve problems. Forward reports to foreign affiliate. Evaluate performances of employees;
- Dealing with organization's lawyers (5%). When major negotiations required, consult and advise lawyers regarding collections and claims; and
- Finalize quarterly and annual reports for review of foreign affiliate (5%). Coordinate with foreign affiliate to ensure availability and quality of goods.

In response to a written request for additional evidence (RFE), however, the Petitioner provided the following job duties and time percentages for the position:

- 15%. Manages administrative, logistical, human resources, and accounting services to support operations. Ensures sales manager achieves goals. Evaluates effectiveness of marketing program and recommends improvements. Develops strategies to improve quality and productivity and ensures compliance.
- 15%. Sets yearly sales targets. Regularly meets with sales team. Ensures sales manager taking new measures to increase sales. Reviews sales reports and revised plans of action.
- 5%. Attend major jewelry shows. Reports trends and new ideas to president and foreign management. Identifies new business opportunities.
- 15%. Oversee operation manager's establishment and enforcement of office systems. Determine staffing requirements and ensure prompt filling of vacancies. Address customer inquiries. Advises president on policies and growth of foreign affiliate.
- 10%. Ensures prompt payments. Checks prices of goods. Oversees inventory levels. Ensures finalization of contracts with vendors.
- 25%. Ensures proper orientation of sales employees. Ensures properly training of staff. Monitors administration of personnel policies. Monitors staff decorum and discipline. Authorizes hiring/firing of employees.
- 15%. Oversee operations manager in budget preparation and expense management. Proposes and finalizes budgets. Monitor's budget implementation. Conducts final review of tax returns.

The new job duties and time percentages differ from those previously provided. The Petitioner has not explained the change in the position's duties and time percentages. The unexplained differences cast doubt on the accuracy of the information provided. *See Matter of Ho*, 19 I&N Dec. 58, 592 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, object evidence pointing to where the truth lies).

Also, as the Director found, many of the Petitioner's job-duty descriptions are vague. For example, the Petitioner states that the offered position involves setting various goals and policies. But the company did not provide sufficient examples of these goals and policies, or explain how the Beneficiary would develop and implement them. Evidence of a beneficiary's employment in a managerial or executive position must include "a detailed description of the services to be

performed.” 8 C.F.R. § 214.2(l)(3)(ii). The Petitioner’s descriptions of the proposed job duties are not specific enough to determine the Beneficiary’s daily activities. Specifics are important indicators of the managerial or executive natures of jobs, otherwise petitioners could obtain approvals by providing job-duty descriptions that simply mirror the statutory and regulatory definitions of the terms managerial and executive capacity. *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).

In addition, the Petitioner’s descriptions contain many job duties that the record does not establish as managerial or executive in nature. Such duties include: recruiting staff and overseeing their training and orientation; resolving problems; forwarding reports to a foreign affiliate; evaluating employee performances; communicating with lawyers; attending trade shows; reviewing tax returns; addressing customer inquiries; and identifying new business opportunities. Because the Petitioner does not specify the amounts of time that many of these duties would entail, the record does not establish that the Beneficiary would *primarily* work in a managerial or executive capacity.

The Petitioner’s evidence on appeal establishes the Beneficiary’s authority over personnel actions. Contrary to the Director’s decision, the record also demonstrates that subordinate employees would likely relieve the Beneficiary of a need to perform operational duties. Based on the previously discussed defects in the Petitioner’s job-duty descriptions, however, the overall record does not demonstrate the managerial or executive nature of the offered position.

### III. THE QUALIFYING RELATIONSHIP

Although unaddressed by the Director, the record also does not establish a qualifying relationship between the Petitioner and the Beneficiary’s prior employer in India. For L visa purposes, a U.S. firm and foreign entity must “exactly” meet one of the qualifying relationships specified in the definitions of the terms parent, branch, affiliate, or subsidiary. 8 C.F.R. § 214.2(l)(1)(ii)(G)(I).

On the L Classification Supplement to Form I-129, Petition for a Nonimmigrant Worker, the Petitioner identified the Beneficiary’s foreign employer as its affiliate. The definition of “affiliate” includes “[o]ne of two subsidiaries both of which are owned and controlled by the same parent or individual.” 8 C.F.R. § 214.2(l)(1)(ii)(L). In turn, the definition of “subsidiary” includes a legal entity of which another owns more than half and controls. 8 C.F.R. § 214.2(l)(1)(ii)(K). The Petitioner stated that its president owns all of its stock and 90% of the Beneficiary’s former employer in India. Thus, the Petitioner claims that, because the same individual owns and controls more than halves of it and the Indian company, the foreign entity constitutes the Petitioner’s affiliate.

Contrary to the Petitioner’s claim, however, the record does not indicate that its president owns and controls more than halves of the entities. Copies of the Petitioner’s federal income tax return for 2017, the most recent of record, states the president’s ownership of only 20% of the Petitioner’s stock. The tax return indicates that an estate owns about 53% of the Petitioner, with another person owning about 27%. Also, copies of the Indian company’s articles of association do not identify the Petitioner’s president as an owner. Rather, the articles indicate that two other people own interests in the foreign entity. The record therefore does not establish a qualifying relationship between the Petitioner and the Beneficiary’s foreign employer. For this additional reason, the petition may not be approved. In any future filings in this matter, the Petitioner must explain its statements on the L

supplement and submit independent, objective evidence of a qualifying relationship between it and the Indian entity.

#### IV. CONCLUSION

The record on appeal does not establish the Petitioner's proposed employment of the Beneficiary in a managerial or executive capacity. We will therefore affirm the petition's denial.

**ORDER:** The appeal is dismissed.