



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

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

In Re: 21920248

Date: AUG. 30, 2022

Appeal of California Service Center Decision

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

The Petitioner, a design and construction company, seeks to continue temporarily employing the Beneficiary in the United States as a senior server operations manager. The company requests his classification under the L-1A nonimmigrant visa category in a managerial capacity. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate its proposed employment of the Beneficiary as a manager of an essential function. On appeal, the Petitioner contends that, when questioning the Beneficiary's management of the function, the Director misinterpreted evidence.

The Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See* section 291 of the Act, 8 U.S.C. § 1361 (discussing the burden of proof); *see also* *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). Upon *de novo* review, we will dismiss the appeal.

## I. L-1A MANAGERS

A petitioner seeking to employ an L-1A manager must demonstrate that - for at least one continuous year in the three years before a beneficiary's admission to the United States - the petitioner or its parent, branch, subsidiary, or affiliate employed the beneficiary abroad in a capacity that was managerial, executive, or involved specialized knowledge. 8 C.F.R. § 214.2(l)(3)(i), (iii), (iv). The petitioner must also establish that the beneficiary's prior education, training, and employment qualifies them for the proposed managerial position in the United States. 8 C.F.R. § 214.2(l)(3)(ii), (iv).

## II. THE PROPOSED U.S. POSITION

Employment in a "managerial capacity" must "primarily" involve managing people or an essential function. Section 101(a)(44)(A) of the Act (defining the term "managerial capacity"). To support employment of a function manager, a petitioner must demonstrate that the function: is a clearly defined activity; and "essential," *i.e.*, core to the organization. *Matter of G- Inc.*, Adopted Decision 2017-05, 3 (AAO Nov. 8, 2017). A petitioner must also show that the beneficiary would: primarily

*manage*, as opposed to *perform*, the function; act at a senior level within the organizational hierarchy or with respect to the function; and exercise discretion over the function's day-to-day operations. *Id.* If incidental to managing the function, a function manager may also oversee personnel. *Id.*

When considering the managerial nature of an offered position, USCIS reviews a petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii) (requiring "a detailed description of the services to be performed"). The Agency also considers: the business's organizational structure; whether other employees would relieve a beneficiary from performing non-qualifying, operational duties; the duties of any proposed subordinate workers; the business's nature; and other factors potentially affecting a beneficiary's role.

The Director found that the Petitioner's descriptions of the offered position's job duties do not demonstrate the Beneficiary's primary proposed performance of managerial duties, as opposed to operational or administrative tasks. The Director found that, in "managing" the company's server operations and cell phone services, the Beneficiary appears to work "independently and directly performs the operational duties associated with the claimed function."

On appeal, the Petitioner argues that its job-duty descriptions indicate that, based on the Beneficiary's authorizations, other employees would make daily updates and changes to the company's technologies. The Petitioner states: "His expertise is required to ensure the correct operations are approved, the correct service orders are approved, and the correct licensures are obtained, but he is not responsible for implementing the changes throughout each function of the company."

As the Petitioner argues, most of its job-duty descriptions indicate that the Beneficiary would authorize technology changes, repairs, and purchases and that other employees or vendors would locally implement the authorizations. For example, the Petitioner's descriptions state that the Beneficiary would: "[a]pprove specs, provisioning server hardware, and software based on project requirement;" "[e]stablish hardware and software policies;" [a]pprove hardware and software service orders;" "issue incident tickets for local IT to action accordingly;" and "[m]onitor, coordinate and approve vendors to execute the repair process." Thus, contrary to the Director's determination, we find that the Petitioner's job-duty descriptions sufficiently support the managerial nature of the proposed U.S. position.

Nevertheless, we agree with the Director that the record lacks sufficient evidence showing the Beneficiary's proposed performance of the described job duties and that employees and vendors relieve him from primarily performing operational tasks. *See Matter of G-*, *supra*, at 5 (finding that the existence of support staff would allow the beneficiary "to primarily manage the . . . function rather than perform it himself").

The Petitioner stated that the Beneficiary's employment in the offered position began in January 2021, about seven months before the petition's filing. As proof of the job's managerial nature, the company submitted copies of the Beneficiary's e-mail exchanges.

As the Director found, most of these e-mail exchanges occurred, or discuss matters that occurred, before the Beneficiary's purported promotion. These e-mails therefore do not necessarily reflect the duties of the offered position. Also, because the Petitioner received the RFE in August 2021, the

Director properly disregarded e-mails from September 2021 and October 2021. These post-RFE e-mails could have been created as evidence in response to the Director's request and thus do not reliably reflect the nature of the Beneficiary's position.

The sole remaining e-mail exchange from March 2021 tends to demonstrate the Beneficiary's authority over the Petitioner's server system. But we find the single exchange insufficient to demonstrate that employees or vendors act on the Beneficiary's authorizations and that the offered position "primarily" involves the performance of managerial duties. *See* section 101(a)(44)(A) of the Act; *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988) (stating that a qualifying beneficiary "must be primarily at the managerial or executive level"). The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Because the Beneficiary worked in the position for about seven months before the petition's filing, we reasonably expect more evidence of the primary managerial nature of the job, such as copies of additional e-mail messages, work orders, invoices, or similar documentation showing others' completions of actions that the Beneficiary authorized.

The descriptions of the Beneficiary's job duties indicate that the position involves managerial tasks. But a determination of the position's eligibility requires a comprehensive analysis of not only the job duties, but all the evidence. *See Matter of G-*, *supra*, at 4 (considering "all factors relevant" to the criteria for work in a "managerial capacity"). Besides stating job duties, the record should demonstrate that others would relieve the Beneficiary from primarily performing non-managerial tasks. *Id.* (considering "operational and administrative work performed by staff within the organization"). The record lacks sufficient evidence corroborating the Beneficiary's primary performance of the described duties and the purported actions of employees and vendors to relieve him from operational tasks. We will therefore affirm the petition's denial.

### III. ELIGIBILITY FOR L-1B-TO-L-1A EXTENSION

Although unaddressed by the Director, the Petitioner also did not demonstrate the Beneficiary's eligibility for the requested extension of his nonimmigrant visa status from L-1B to L-1A.

The L-1B visa category covers proposed U.S. employment in a specialized knowledge capacity and allows an approved beneficiary to remain in the United States in L-1B status for up to five total years. 8 C.F.R. § 214.2(l)(15)(ii). In contrast, the L-1A category for managers or executives allows total U.S. stays for up to seven years. *Id.*

A noncitizen previously admitted in L-1B status may extend their U.S. stay for sixth and seventh years in L-1A status if the worker received a promotion to a managerial or executive position. Final Rule for Temporary Noncitizen Workers Seeking Classification Under the Act, 56 Fed. Reg. 61111, 61114 (Dec. 2, 1991). To receive the additional L-1A years, a noncitizen must have worked in the managerial or executive capacity for at least six months. 8 C.F.R. § 214.2(l)(15)(ii). Also, USCIS must have approved a petition authorizing the beneficiary's change to managerial or executive duties "at the time that the change occurred." *Id.*

The record shows that, as of this petition's filing in August 2021, the Petitioner had employed the Beneficiary in L-1B status in the United States for nearly the five-year categorical limit. The Petitioner

claims that the Beneficiary qualifies for a two-year extension in L-1A status because the company began employing him in the proposed managerial position in January 2021, more than six months before the petition's filing.

Besides not demonstrating the managerial nature of the offered position, however, the Petitioner has not established its claimed promotion of the Beneficiary in January 2021. Although letters from the Petitioner's human resources director state the Beneficiary's promotion at that time, the record lacks independent, documentary evidence corroborating the date and nature of the claimed personnel action.

Moreover, the Petitioner has not established that USCIS approved a petition to change the Beneficiary's duties "at the time that the change occurred." *See* 8 C.F.R. § 214.2(l)(15)(ii). Rather, the company appears to have begun employing the Beneficiary in the offered position without proper authorization. *See* 8 C.F.R. § 214.2(l)(7)(i)(C) (requiring the filing of an amended petition to reflect a "change in capacity of employment (*i.e.*, from a specialized knowledge position to a managerial position)").

In November 2020, two months before the Beneficiary's purported promotion to the managerial position, the Petitioner filed a petition to extend his L-1B visa status by seeking to recapture time he spent outside the United States during the visa validity period. The company stated that it did not file this L-1A petition, notifying USCIS of his change in duties, until after the approval of the L-1B extension petition in July 2021 "to ensure that there was no issue with the 'last action rule.'"

The informal "last action rule" holds that USCIS' most recent approved action in a matter governs a noncitizen's U.S. status. Citing the rule, for example, an Agency official stated that an approved change-of-status application with a future effective date remains valid if a noncitizen travels abroad after the application's approval but reenters the United States before the effective date. *See* "USCIS Discusses Last Action Rule, Effect of Intervening Admission," 81 No. 48 Interpreter Releases 1777 (Dec. 20, 2004). The Petitioner, however, does not explain how the rule excuses its delay in filing an L-1A petition upon the Beneficiary's change in duties. *See* 8 C.F.R. § 214.2(l)(15)(ii).

Because the Petitioner did not receive notice of these evidentiary deficiencies, they do not warrant the appeal's dismissal. But, in any future filing in this matter, the Petitioner must include additional evidence demonstrating the Beneficiary's claimed promotion to the offered position in January 2021 and the company's filing of a petition at the time he changed duties.

#### IV. CONCLUSION

The Petitioner has not demonstrated its proposed employment of the Beneficiary in the claimed managerial capacity. We will therefore affirm the petition's denial.

**ORDER:** The appeal is dismissed.