



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

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

In Re: 28943206

Date: OCT. 18, 2023

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner plans to sell African art and home décor in the United States and seeks to temporarily employ the Beneficiary as its director/owner. The company requests his classification under the L-1A nonimmigrant visa category as an intracompany transferee who would work in a managerial or executive 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, contrary to the Act and regulations, the Petitioner did not demonstrate that:

- It secured sufficient physical premises to house the new U.S. office;
- In the three years before the petition's filing, the company's foreign affiliate employed the Beneficiary for at least one continuous year;
- He worked abroad in a managerial or executive capacity; and
- Within one year of the petition's approval, the Petitioner would support a managerial or executive position.

On appeal, the Petitioner contends that the Director disregarded, misunderstood, and misinterpreted evidence.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the company has not established the Beneficiary's employment abroad within the statutory period for at least one consecutive year. We will therefore dismiss the appeal.

## I. LAW

A petitioner seeking to employ an L-1A manager or executive must demonstrate that - for at least one continuous year in the three years before a beneficiary's initial U.S. admission in nonimmigrant status - the petitioner or its parent, branch, subsidiary, or affiliate employed the noncitizen abroad in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(i), (iii), (v)(B). An L-1A petitioner must

also establish that a beneficiary's education, training, and experience qualify them for the U.S. managerial or executive position. 8 C.F.R. § 214.2(l)(3)(ii), (iv).

The Petitioner seeks to employ the Beneficiary in a "new office," an organization that has been doing business in the United States for less than one year. *See* 8 C.F.R. § 214.2(l)(ii)(F) (defining the term "new office"). Thus, besides the requirements discussed above, the company must demonstrate that it: secured physical premises sufficient to house its operations; and, within one year of the petition's approval, would support a managerial or executive position. 8 C.F.R. § 214.2(l)(3)(v)(A), (C). An L-1A new office petition must also provide information regarding:

- The office's proposed nature, including the entity's scope, organizational structure, and financial goals;
- The size of the U.S. investment and the foreign entity's financial ability to pay the beneficiary and begin U.S. operations; and
- The foreign entity's organizational structure.

8 C.F.R. § 214.2(l)(v)(C)(1)-(3).

## II. ANALYSIS

The Beneficiary, a Kenyan native and citizen, solely owns the Petitioner and its affiliate. The affiliate, which sells African art and home décor, has purportedly employed him in South Africa as its director/owner since October 2013.<sup>1</sup> The petitioning limited liability company, established in October 2022, seeks to expand the affiliate's business in the United States.

The Petitioner states that, as its director/owner, the Beneficiary would be "responsible for the overall leadership, vision, and strategic direction for the organization," ensuring that it "reaches its goals and objectives." He would purportedly oversee a three-person sales staff.

### A. One Consecutive Year of Work Abroad

An L-1 petitioner must demonstrate that, within three years before a beneficiary's application for U.S. admission, the noncitizen worked abroad for at least one continuous year. Section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l)(3)(v)(B). This one-year foreign employment requirement measures only time a beneficiary spent physically outside the United States working full-time for a petitioner or qualifying organization. *See generally* 2 *USCIS Policy Manual* L.(6)(G)(1). Evidence may include "a letter from the beneficiary's foreign qualifying employer detailing his or her dates of employment, job duties, and qualifications, along with supporting documentary evidence." USCIS, "Instructions to Form I-129, Petition for Nonimmigrant Worker," [www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf](http://www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf); *see also* 8 C.F.R. § 103.2(a)(1) (incorporating form instructions into the regulations).

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<sup>1</sup> An L-1 beneficiary may own the foreign or U.S. organization in part or in whole. *Matter of Aphrodite Invs. Ltd.*, 17 I&N Dec. 530, 531 (Comm'r 1980). But an L-1A beneficiary must primarily engage in the organization's business, maintaining more than a ceremonial title or position. *See generally* 2 *USCIS Policy Manual* L.(3)(B), [www.uscis.gov/policy-manual](http://www.uscis.gov/policy-manual).

An L-1 beneficiary must meet the one-year foreign work requirement at the time of a petition's filing. *See* 8 C.F.R. § 103.2(b)(1) (requiring demonstration of eligibility "at the time of filing the benefit request"). The Petitioner filed its petition in February 2023. Thus, the company must demonstrate that, between February 2020 and February 2023, the Beneficiary worked abroad for its South African affiliate for at least one continuous year.

The Petitioner's initial filing included a letter from the foreign affiliate's accounting firm stating the affiliate's current employment of the Beneficiary. In response to the Director's request for additional evidence (RFE), the Petitioner submitted a letter from the affiliate and copies of monthly pay slips from March 2022 through February 2023.

On appeal, the Petitioner asserts that the affiliate's letter and the pay slips establish the affiliate's continuous employment of the Beneficiary during the year before the petition's filing. The Petitioner states that it "has gone to great lengths to gather and present the necessary documentation, which conclusively supports the beneficiary's eligibility for the L-1A classification."

The Petitioner, however, has not resolved a problem with its evidence. As the Director found, the pay slips bear the name of a person other than the Beneficiary. Thus, they do not demonstrate the affiliate's continuous employment of the Beneficiary. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies). On appeal, the Petitioner does not explain - or even mention - the other name on the pay slips. The company therefore has neither resolved the inconsistency nor demonstrated the Beneficiary's claimed employment abroad.

The Petitioner contends that the Director improperly required it to demonstrate its affiliate's employment of the Beneficiary abroad since he began working for the foreign entity in October 2013. The record, however, does not support this contention.

We acknowledge that, at one point, the Director's decision states that "the evidence is insufficient to establish that the beneficiary has been employed abroad since October 2013." But, considered in its totality, the decision shows the Director's focus on the Beneficiary's foreign work during the proper period. The decision concludes that "the documents do not establish that the beneficiary has been employed abroad by your organization for one continuous year of full-time employment within the three years preceding the application for admission into the United States." Thus, the record does not support the Petitioner's contention that the Director applied the foreign employment requirement beyond the statutory period.

The Petitioner has not established the Beneficiary's employment abroad for the requisite one continuous year during the three years before the petition's filing. We will therefore affirm the petition's denial.

## B. The Additional Denial Grounds

Our conclusion regarding the Beneficiary's foreign employment resolves the appeal. We therefore decline to reach and hereby reserve the Petitioner's appellate arguments regarding the sufficiency of its physical premises, its ability to support a manager or executive within one year of the petition's

approval, and the nature of the Beneficiary's work abroad. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant did not otherwise qualify for relief).

**ORDER:** The appeal is dismissed.