

Here is my recent experience with USCIS (California Service Center):

An L-1A petition filed for the President of a U.S. company with 10 employees (many of whom are degreed professionals) with more than \$7 million in annual revenue was denied, even after a comprehensive RFE response was submitted, due to the asserted failure to show that the President would be performing primarily managerial duties. The six-page denial (a full three and three-quarters pages of which regurgitated statutory and regulatory provisions and an additional full page of which recited in lip-service fashion adherence to the notion of supporting L visa requests filed by small- to medium-sized companies) reflects a clear predisposition on the part of USCIS to dissect the filing in an effort to find a reason to deny the work permit request, notwithstanding that the request met all statutory and regulatory requirements.

For starters, the RFE requested the state quarterly wage report of Petitioner, and in response Petitioner submitted its ADP electronic filing records reflecting submission of the 2010 and 2011 quarterly remittances, including the amounts remitted. Not good enough for USCIS, which erroneously stated in its denial that "you did not submit the requested documents. Instead, you submitted ADP payroll records." Okay, so USCIS can't differentiate between payroll records and quarterly wage reports; hey, they're not accountants, let's give them a break. But surely they can read. Not so. In its denial, USCIS replayed from the filing what it characterized as the primary duties of the position, when in fact that particular statement of duties was a high level summary of the actual job duties, indeed intended to align with the regulatory requirements; the actual, concrete job duties were set out in detailed fashion (including names and titles of persons supervised, both in the initial filing as well as in the RFE response), but USCIS chose to ignore those concrete duties and instead focused on the broad summary duties, asserting "[y]ou do not, however, specify the activities associated with these broad job responsibilities. Without more specific information regarding how and at what frequency the stated duties are performed, your job description of the proffered position merely reiterates the definition of managerial and executive capacity." Begging the Service's pardon, this is how the job duties were actually described:

manage and direct the overall performance, strategy and management; serve as a member of the board of directors; lead the strategic planning process, budgeting, development of performance targets and execution of the strategy; manage the \$7.5 million group budget; and work with the Chairman to handle investor relations, enhance shareholder value and ensure governance. The Chief Executive Officer will manage the functional leaders within the business and provide strategic leadership in each area, including [employee name], VP Client Services, who oversees the account management teams and professional services, and [employee name], VP U.S. Sales, who oversees U.S. new business

sales and lead generation. The Chief Executive Officer will also set the marketing strategy and budget; oversee branding, positioning, website and campaigns; and perform planning, strategy development and vision development for the product roadmap. The Chief Executive Officer will also interview, select, recruit, train and mentor a senior manager to be based in the U.S. to lead the next phase of [the business'] growth in North America. The current U.S. managerial staff will report to this individual, who will expand our current offices, lead the development of our U.S. sales activity, expand our U.S. sales team, work with the Board of Directors on strategy and foster partnerships in the U.S. to extend market coverage. The Chief Executive Officer will also recruit, hire, train and mentor two new sales people to lead the business' enhanced sales strategy; and oversee the marketing and team training aspects of our new product launch.

Of course the later summary of the job role seeks to cast those duties in the regulatory light, but it is the actual, concrete job duties as described above and as set out both in the original filing and in the RFE response to which USCIS should refer in assessing the managerial nature of the role. I guess when you pick and choose you can pick and choose what you want to get the result that you want.

USCIS's ignorance around organizational charts was also in full display here. The organization charts submitted were color coded and very clearly referenced that three of thirteen job positions were located outside of the United States; USCIS couldn't get that and instead implied funny business on the part of Petitioner, indicating that "all 13 employees noted on the organizational chart were not identified on the petitioner's payroll." Of course they were not, because they were not in the United States and hence were not on Petitioner's payroll, as was fully evident from the organizational charts.

I could go on but won't. This agency is on a tear -- who knows why -- to create obstacles to U.S. business expansion and to squeeze hard-earned money from the coffers of legitimate businesses seeking to create jobs and grow opportunities in the United States. That sure is an odd way of achieving its mandate to "support international business and legitimate foreign investment in the United States." [52 Fed. Reg. 5738-01. Rules and Regulations, Department of Justice, Immigration and Naturalization Service, 8 CFR 214 Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, Thursday, February 26, 1987.]