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MATTER OF Z-A-, INC.: RECOGNIZING THE GLOBAL ROLE OF THE L-1A MANAGER IN A GLOBALIZED WORLD

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Despite the shrill rejection of globalization in the current presidential election cycle, the Appeals Administrative Office (AAO) has thankfully bucked the trend. It recently designated *Matter of Z-A- Inc.* as an "Adopted Decision, "which means that such a decision "establishes policy guidance that applies to and binds all USCIS employees. USCIS directs its personnel to follow the reasoning in these decisions in similar cases."

Under *Matter of Z-A-, Inc.*, designated as an Adopted Decision since April 14, 2016, an L-1A intra-company manager who primarily manages an essential function can also be supported by personnel outside the United States within an international organization. A USCIS officer can no longer deny L-1A classification to such a manager because he or she is not supported by personnel within the United States. This decision recognizes that we operate in a global world, and that an organization may rely on its resources outside the United States to produce products or provide services.

The foreign national manager seeking an L-1A visa extension in *Matter of Z-A-, Inc*. was the President and Chief Operating Officer of the US petitioning entity whose parent company was in Japan. His duties included: directing and managing the Petitioner's financial, legal, trade, administrative, and sales activities; establishing financial and budgetary plans and goals; reviewing and monitoring sales activities performed by the Petitioner's sales manager; liaising with the parent company; and interacting with customers and outside service providers. The Petitioner in the US only employed a sales manager and an administrative specialist. However, eight staff members within the parent company's headquarters in Japan also exclusively supported the work of this manager.

The key issue is whether the Petitioner established that this manager would be employed in a qualifying "managerial capacity" pursuant to INA 101(a)(44)(A). The Petitioner asserted that this manager would manage an essential function of the organization, which is permitted under the statute, as opposed to managing other personnel. A functional manager under the L-1A visa classification must primarily manager as opposed to perform the essential function, and must also be senior in the organizational hierarchy. An employee who primarily performs the tasks necessary to produce a product or a service is not considered to be employed in primarily a managerial or executive capacity.

See Brazil Quality Stones, Inc. v. Chertoff, 531 F.3d 1063 (9th Cir. 2008).

The L-1A visa classification does not require the organization to employ hundreds of people. Rather, the USCIS is required to take into account the reasonable needs of the organization as a whole, including any related entities within the organization, giving consideration to the organization's overall purpose and stage of development. See INA 101(a)(44)(C). The AAO found that since Congress created the L-1A classification to "eliminate problems.....faced by American companies having offices abroad in transferring key personnel freely within the organization," it was reasonable for a petitioner to assert that its organizational needs include those of its related foreign components.

In the instant case, the request to extend L-1A status was denied by USCIS Service Center Director on the ground that only a small number of employees worked in the United States, who would support the manager and relieve him from performing the duties of the function. It did not address the Petitioner's substantial evidence relating to the staff that was located at the parent entity in Japan who also supported the manager in primarily managing the essential function of the organization. The AAO reversed the Service Center's decision on this ground by noting:

> "Here the record shows that the Beneficiary, in his role as Vice President, will continue to rely on the support of the eight staff members in Japan and two employees in the United States to accomplish non-managerial duties, and that the purpose of his transfer is to oversee the short-term and long-term expansion of the Petitioner's presence in what is a new market. Given the overall purpose of the organization and the organization's stage of development, the Petitioner has established a reasonable need for a senior-level employee to manage the essential function of developing its

> brands and presence in the United States, notwithstanding that the Petitioner employs directly only two other employees in the United States.
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> While the Beneficiary may be required to perform some operational or administrative tasks from time to time, the Petitioner has established by a preponderance of evidence that the Beneficiary will primarily manage an essential function, while day-to-day, non-managerial tasks will be performed by a combined staff of 10 employees of the Petitioner and its parent company, located in the United States and Japan, respectively."

In a globalized world, where people are easily connected to each other by the internet, it is no longer necessary for a manager to rely on personnel in one location, namely in the United States. It is now common for teams of personnel within one organization to easily collaborate across different countries to produce a product or provide a service using cloud technology and even able to video conference on one's smart phone through Skype or FaceTime. The fact that the world is flat, as famously coined by Tom Friedman, is no longer a novelty but a given in a world that has become even more hyper connected since. Despite unrealistic calls by politicians to have operations exclusively in America, the reality is that US businesses can thrive, compete, prosper, create new jobs and benefit the American consumer through international operations, made that much easier with rapidly evolving internet technology.

Until the AAO designated *Matter of Z-A- , Inc*. as an Adopted Decision, it was quite common to receive an objection from the USCIS that the persons supporting the L-1A manager were not in the United States, and would therefore not count in evaluating whether this individual would be performing in primarily a managerial capacity. This sort of reasoning was not consistent with the way businesses operate today, and put the United States at a distinct competitive disadvantage if its corporations could not quickly bring in key personnel, who in turn would be supported by resources in foreign countries. Even if it was logical and commonsensical for a manager to qualify for an L-1A on this obvious basis, some USCIS officers obstructively still denied the L-1A petition. After *Matter of Z-A- Inc.'s* elevation to an Adopted Decision, it now firmly binds all employees of the USCIS even if their worldview may be colored by the clarion calls of politicians who reject globalization. In the event that a USCIS employee still goes rogue and denies the L-1A petition on such a baseless ground, it certainly provides strong grounds for an appeal.