



MAKING THE CASE OF THE MANAGER UNDER THE L-1A VISA WHOSE SUBORDINATES ARE AI BOTS

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When the Administrative Appeals Office (AAO) designated [Matter of Z-A- Inc.](#) as an “Adopted Decision” in 2016 it was seen as a breakthrough as it recognized that a US company can rely on its resources outside the United States to produce products or provide services. *Matter of Z-A-, Inc.* held that an L-1A intracompany manager who primarily manages an essential function can be supported by personnel outside the United States within an international organization and also recognizing that such support was possible with the advent of internet technologies. A USCIS officer could no longer deny L-1A classification to such a manager because they were not supported by personnel within the United States.

[Generative AI -data-trained technology](#) that uses prompts to create content—has seen a massive uptick in adoption since the introduction of ChatGPT on November 30, 2022. As AI enabled chatbots can perform both complex and routine tasks within an organization, a credible case can be made that an L-1A manager may be supported by chat bots to manage an essential function within an organization rather than by humans. A recent estimate by [Goldman Sachs](#) found that generative AI could eventually automate activities that amount to the equivalent of some 300 million full-time jobs globally — many of these in office roles like administrators and middle managers.

The noncitizen 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 in *Matter of Z-A-, Inc.* 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 manage the function 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.

In reversing the denial of the L-1A petition in *Matter of Z-A-, Inc.* the AAO stated:

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. 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 2016 blog written shortly after [Matter of Z-A-, Inc.](#) it was observed that "n 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."

Practitioners may wish to advocate that generative AI can also enable the L-1A manager to primarily manage an essential function as opposed to primarily perform the tasks necessary to produce a product or service. In *Matter of Z-A, Inc.*, the AAO recognized that resources overseas could support the role of the L-1A manager. This sets the groundwork to argue that external resources, not limited to human employees, can be considered in evaluating the managerial capacity of the beneficiary. The L-1A petition can potentially include details of the organizational structure and staffing levels, showing that AI chatbots effectively supplement the limited human resources. The supporting evidence can further illustrate how AI chatbots handle routine tasks by interfacing with customers, thereby allowing the L-1A manager to focus on higher-level managerial duties. The evidence provided can further demonstrate that AI chatbots relieve the L-1A manager from performing the routine day to day operational and administrative duties. This aligns with the requirement that the manager primarily manages an essential function rather than perform it with the help of AI technology.

Following *Matter of Z-A, Inc.* the AAO in [Matter of G- Inc.](#), Adopted Decision 2017-05 (AAO Nov. 8, 2017), provided important guidance to U.S. employers who transfer function managers under the L-1 intracompany visa. To support a claim that a beneficiary will manage an essential function, the petitioner must establish that the function is a clearly defined activity and is core to the organization. In *Matter of G*, the AAO noted that "essential function" is not defined anywhere in the INA. Instead, it relied on the Merriam-Webster Dictionary definitions of "essential" and "function" in proceeding with its analysis, concluding that an essential function must be a core activity of a petitioning organization. Relying on these definitions, the AAO first found that the Petitioner must "(1) describe with specificity the activity to be manage, and (2) establish that the function is core to the organization." The AAO further recognized that an organization could have more than one core activity "such as the manufacture or provision of an end product or service, and research and

development into other products or services.”

Once the petitioner demonstrates the essential function, it must establish that the beneficiary’s position meets all criteria for “managerial capacity” as defined in 101(a)(44)(A) of the Immigration and Nationality Act (INA).

INA § 101(a)(44)(A) defines “managerial capacity” as:

n assignment within an organization in which the employee primarily-

- (i) manages the organization, or a department, subdivision, function, or component of the organization;*
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;*
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and*
- (iv) exercises discretion over the day- to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor’s supervisory duties unless the employees supervised are professional.*

The foreign manager seeking immigrant classification under INA § 203(b)(1)(C) in *Matter of G-* was the Director, Financial Planning and Analysis (FP&A) at a large multinational technology corporation. The company first transferred the Beneficiary to the U.S. on an L-1A visa to seek business opportunities and foster growth of the company in the U.S. markets. After a few years of success, the company decided to petition for the worker to permanently reside in the U.S. under INA § 203(b)(1)(C). The Petitioner explained in their I-140 petition that the Beneficiary would continue to direct and develop revenue forecasts and analysis for the entire company, lead mergers and acquisitions, and oversee

strategic pricing analyses, among other managerial duties. However, the USCIS denied Form I-140, finding that the Petitioner did not establish that the Beneficiary would be employed in a managerial role. It is not unusual for one Service Center of the USCIS to approve the L-1A visa and another Service Center to deny the I-140 petition. Upon review, the AAO reversed, and sought to clarify the role of a function manager.

In applying their new function manager analysis to the case at bar, the AAO found that the FP&A Director was clearly a function manager under INA §101(a)(44)(A). First, it found that “financial planning and analysis” qualified as a function within the organization as it was clearly defined with specificity and indicated a clear goal of generating data to assess the company’s revenue. Second, the AAO found that the FP&A function was essential to the company, where the Beneficiary’s work would be relied upon by the company’s executives and board of directors in making strategic decisions in mergers and acquisitions. Third, the AAO found that the Beneficiary would primarily manage the function where he would “develop and direct revenue forecasts and analysis for the worldwide organization, lead mergers and acquisitions, and oversee strategic pricing analysis.” The AAO continues that the Beneficiary will be supported by six direct and three indirect reports who will “perform the routine duties associated with the FP&A function.” Critically, the AAO finds that even though the Beneficiary directly supervises some of his subordinates, he still primarily manages the function. Fourthly, the AAO found that the Beneficiary will act at a senior level within the organization *and* with respect to the function, where he reported only to the CFO and CEO and worked closely with other senior executives and managers. Finally, the AAO found that the Petitioner clearly established that the Beneficiary will have discretionary authority over day-to-day operations where the Beneficiary will establish policies, goals, and oversee mergers and acquisitions.

Using the same analysis as in *Matter of G*, and as set forth in the [USCIS Policy Manual](#), a company can establish that its AI technology is an essential or core function of the organization. It can further be established that the beneficiary will primarily manage this function, and will be supported by AI bots when managing the function. This would be analogous to *Matter of Z-A, Inc.* which recognized the ability of foreign personnel outside the United States to support the L-1A manager in the US. It can also be established that the L-1 manager is employed at a senior level within the organizational hierarchy and that they

have discretionary authority over the day to day operations.

A [Forbes article](#) that provides examples of how brands are replacing their employees with AI technology. It provides examples of how Klarna, the Swedish-based “buy now pay later service”, was using an OpenAI powered customer service chatbot that was doing the work of 700 customer service agents faster and more efficiently than human workers. The article also notes that large financial service companies like Goldman Sachs and Morgan Stanley are introducing AI tools that can replace much of the entry level white collar work such as preparing spreadsheets, creating PowerPoints and analyzing financial data. BestBuy is replacing its geek squad agents with generative AI technology to provide customers with personalized, best in class tech support experiences. Even local governments are resorting to AI. The Texas Education Agency is rolling out a “new artificial intelligence-powered scoring system set to replace a majority of human graders in the region.” If a petitioning entity is using similar AI technology a case can be made that AI is relieving the manager from performing the day to day tasks while the manager manages the essential function. An organization that relies on bots may have a smaller number of employees, but one should push back against a negative finding only because of the small size. In [Brazil Quality Stones, Inc. v. Chertoff, 531 F.3d 1063 \(9th Cir. 2008\)](#), the Ninth Circuit Court of Appeals found that although size is a relevant factor in assessing whether a company’s operations are substantial enough to support a manager, “an organization’s small size, standing alone, cannot support a finding that its employee is not acting in a managerial capacity.” See also INA 101(a)(44)(C) (“f staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function.”).

While it would be more feasible to build the L-1A case for a functional manager who is supported by AI technology, the next step in the evolution of L-1A jurisprudence would be to establish that even a [people manager](#) might qualify for this visa classification if they supervise AI chatbots rather than humans. These AI bots can take the place of other “supervisory, professional, or managerial employees” under INA 101(a)(44)(A)(ii) who are supervised and controlled by the L-1A manager. Under INA 101(a)(44)(A)(iii) the manager must also have “the authority to hire and fire or recommend those as well as other

personnel actions (such as promotion and leave authorization)” of the employees they supervise. Admittedly the L-1A manager may not have the authority to hire and fire bots or take other personnel actions as they are not employees. The manager, however, could have equivalent authority such as the ability to upgrade the AI technology or replace the bots with other bots to comply with INA 101(a)(44)(A)(ii) and 101(a)(44)(A)(iii). This may seem far fetched for now, there may come a time when the USCIS might be persuaded to approve an L-1A petition for a people manager who will be managing and supervising AI bots rather than humans.