



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

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

In Re: 26349215

Date: APR. 26, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, a manufacturer of food containers, seeks to permanently employ the Beneficiary as its corporate quality assurance (QA) manager under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in a managerial or executive capacity.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Beneficiary has been employed abroad, and will be employed in the United States, in a managerial or executive capacity. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

An immigrant visa is available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

The Form I-140, Immigrant Petition for Alien Worker, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3).

II. ANALYSIS

The Director determined that the Petitioner did not establish that the Beneficiary has been employed abroad, and will be employed in the United States, in a managerial or executive capacity. The Petitioner specifically refers to the Beneficiary's past and proposed employment as managerial. Therefore, we need not address the requirements for an executive capacity.

"Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; 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; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A).

If a petitioner establishes that the offered position meets all four elements set forth in the statutory definition, the petitioner must then prove that the beneficiary will be *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether the beneficiary's duties will be primarily managerial, we consider the description of the job duties, the company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding the beneficiary's actual duties and role in the business.

The Beneficiary worked as a corporate QA manager for the Petitioner's parent company in Canada from 2014 to 2018. She entered the United States in April 2018 as an L-1A nonimmigrant to work in the same capacity for the petitioning U.S. employer. We begin by discussing the Beneficiary's employment in the United States.

The Petitioner submitted two job descriptions when it filed the petition in April 2022. The first job description, dated July 2021, listed the Beneficiary's "[k]ey role accountabilities":

- As we are a SQF (Safe Quality Food) facility we must have someone overseeing the Food Safety Protocols. [The Beneficiary] is the SQF Practitioner on site. . . .
- Develop strategies for the Quality function and manage the Quality Assurance Team. This includes the hiring, directing, performance management and termination of all Quality Assurance employees.
- Align the practices that were integral in the success of the Quality organization in the Canadian location to the US location. Oversee the training of all Quality personnel to the corporate standard.
- Establish and ensure the achievement of performance targets for the Quality Assurance Department. This includes establishing the annual budget, and the employee goals for the year.

- Manage the Quality System for the [Petitioner's U.S.] Plant. Ensure that all inspection and testing processes and procedures are established and are being properly executed to minimize defects.
- . . . [R]eport out and communicate on all Quality related projects and issues. In addition, contribute as an OLT [Operations Leadership Team] member on the projects and policies that are strategically important in the [Petitioner's] facility.
- Be the face of the organization for the Quality function to customers.

After the list of accountabilities, the Petitioner stated that the Beneficiary spends 35% of her time “oversee[ing] and manag[ing] the review of new and open issues on a daily basis with the Production Managers” and “[o]n a weekly and monthly basis, manag[ing] and evaluat[ing] the analysis done by the department for Key Performance Indicators affecting product Quality and Food Safety, as well as Quality System improvements.” The Petitioner also stated that the Beneficiary spends 20% of her time on duties relating to a QA supervisor (who oversees five subordinate QA auditors); 15% of her time on duties relating to two QA lab technicians; and 30% of her time on duties relating to a quality engineer. The Petitioner did not specify the duties the Beneficiary performs in the course of managing these subordinates. Further below, we will discuss the subordinate employees in more detail.

In another statement, dated April 2022, the Petitioner stated that the Beneficiary “will be responsible for overseeing and ensuring that the Food Safety and Quality Systems best practices are being implemented” at the Petitioner’s U.S. location and its headquarters in Canada, and “[s]he will have overall responsibility for the plant Food Safety and Quality Systems program, including validation and verification of the system.” The Petitioner divided the Beneficiary’s responsibilities into six categories:

- Establish and ensure the achievement of performance targets;
- Manage Quality System;
- Manage Quality Assurance Continuous Improvement Program;
- Training;
- Manage, lead, and maintain Food Safety Systems; and
- Fiscal Responsibilities.

The Petitioner provided further information within each of the six categories. Many of the listed items described the Beneficiary’s areas of responsibility rather than the specific duties she would perform in fulfilling those responsibilities. Examples include the following:

- Ensure product quality inspection and testing processes and procedures are established and are being executed properly to minimize defects and protect internal and external customers.
- Ensure that Quality System, Sanitation, and HACCP audits take place and corrective actions for non-compliances are established.
- Promote a continuous improvement culture.
- Ensure Operations procedures and activities related to food safety, including foreign material control, sanitation, product handling, cGMPs, and other prerequisite programs, meet requirements and are maintained.

In a request for evidence (RFE), the Director stated that “the proposed employment job descriptions are vague and do not explain in exact detail the beneficiary’s specific job duties,” and the Petitioner “did not provide the percentage of time the beneficiary spends on each duty.” In response, the Petitioner submitted a new job description, dated August 2022, with the same content as the July 2021 letter submitted previously.

The Director denied the petition, stating that the Petitioner had “not provided any more detailed information regarding the beneficiary’s specific job duties or further breakdown of percentage of time the beneficiary spends on each duty.” The Director determined that the Petitioner had “not demonstrated that the proposed position is primarily managerial.”

On appeal, the Petitioner does not address the specific issues that the Director raised in the denial notice or explain how the Director erred. Rather, the Petitioner summarizes the various regulatory requirements for the classification sought, and then states: “Thus, Petitioner fervently believes this denial was in error.” The Petitioner also states that the appeal “sets forth additional facts to clarify the [the Beneficiary’s] managerial job duties,” but then the Petitioner repeats the same job description first provided in its April 2022 letter.

We agree with the Director that the Petitioner did not provide enough information about the Beneficiary’s actual duties, as opposed to areas of responsibility. The assertion that the Beneficiary “ensures” particular outcomes does not tell us what tasks the Beneficiary performs in order to ensure those outcomes. Some items are worded so broadly that they appear to include operational, non-managerial tasks. For example, the April 2022 job description states that the Beneficiary will “[s]ponsor, lead, facilitate, or participate in specific [continuous improvement] projects.” This item describes a wide range of ways that the Beneficiary might be involved in a particular project.

Specifics are clearly an important indication of whether a beneficiary’s duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F.2d 41 (2d. Cir. 1990). The actual duties themselves reveal the true nature of the employment. *Id.* When given the opportunity to provide more details, the Petitioner instead repeated the same job description.

Turning to the Petitioner’s staffing, the Petitioner stated that the Beneficiary “oversees a department of 9 employees, with 4 direct reports.” As discussed above, the four direct reports are two QA lab technicians; a quality engineer; and a QA supervisor, who supervises five QA auditors.

A manager primarily supervises and controls the work of other supervisory, professional, or managerial employees. Section 101(a)(44)(A)(ii) of the Act; 8 C.F.R. § 204.5(j)(2). 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. Section 101(a)(44)(A) of the Act; 8 C.F.R. § 204.5(j)(4)(i). “Profession” means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.¹ 8 C.F.R. § 204.5(k)(2).

¹ We note that section 101(a)(32) of the Act includes “engineers” in the definition of “profession.” The Petitioner, however, has not established that the quality engineer is an “engineer” in the sense contemplated by the statute. In this regard, it is

Only one of the Petitioner's direct subordinates is a supervisor, and the Petitioner indicated that the Beneficiary's supervision of that employee occupies only about 20% of her time, whereas the Beneficiary spends 45% of her time supervising her other subordinates. The figures provided do not indicate that the Beneficiary primarily supervises supervisors.

Job descriptions in the record do not specify that any of the direct reports' positions require a bachelor's degree. Therefore, the Beneficiary does not supervise professionals.

In the RFE, the Director asked for more details about the Beneficiary's subordinates. The Petitioner's response included a revised organizational chart, which shows that the two lab technicians report to the QA supervisor rather than directly to the Beneficiary. The same RFE response also included the August 2022 job description, mentioned above, which indicates that the Beneficiary directly supervises the lab technicians. The Petitioner did not resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In the denial notice, the Director concluded that the Petitioner had not shown "that the beneficiary would be managing other supervisory, managerial, or professional reports." The Director specifically observed that "[f]or all these positions, the education requirement is less than a bachelor's degree." In response, the Petitioner repeats the assertion that the Beneficiary "will supervise the QA Supervisor, QA Lab Technicians and Quality Engineer." The Petitioner does not address or rebut the Director's determinations regarding the Beneficiary's subordinates.

For the above reasons, we conclude that the Petitioner has not met its burden of proof to establish that it seeks to employ the Beneficiary in a managerial capacity in the United States. The above conclusions are sufficient to determine the outcome of the appeal. Therefore, we reserve the remaining issue regarding the Beneficiary's prior employment abroad.²

The Petitioner observes on appeal that the Beneficiary already holds L-1A nonimmigrant status as an intracompany transferee. The grant of an L-1A visa does not require approval of a related immigrant petition. *Mahalaxmi Amba Jewelers v. Johnson*, 652 F. App'x 612, 618 (10th Cir. 2016). *See also Nat'l Hand Tool Corp. v. Pasquarell*, 889 F.2d 1472, 1476 (5th Cir. 1989) (holding that what was then the Immigration and Naturalization Service should not be "bound by its initial determination that an employee is a manager for purposes of granting a temporary visa when an application for a permanent visa is filed").

We will dismiss the appeal for the above stated reasons.

ORDER: The appeal is dismissed.

significant that the quality engineer position was vacant at the time the Petitioner filed the petition, and so the quality engineer's duties presumably devolved upon another unspecified employee. As noted above, none of the Beneficiary's subordinates work in positions that require at least a bachelor's degree for entry into the occupation.

² *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).