



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

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

In Re: 20318261

Date: APR. 21, 2022

Appeal of California Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, describing itself as an operator of [REDACTED] restaurants, seeks to temporarily employ the Beneficiary in the United States as an assistant manager under the L-1A nonimmigrant classification for intracompany transferees. 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, concluding the record did not establish that the Beneficiary was employed in a managerial or executive capacity abroad or that he would be employed in a managerial or executive capacity in the United States. On appeal, the Petitioner asserts the Director erred in concluding that the Beneficiary would not manage a clearly defined activity within the organization and that these functions were not essential, or core, to its operations. The Petitioner further contends that the Director incorrectly concluded that he would not act at a senior level within his function and not primarily perform managerial duties.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal since the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States.¹ Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its appellate arguments regarding whether the Beneficiary was employed abroad in a managerial or executive capacity. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is 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).²

¹ The Petitioner does not claim that the Beneficiary would be employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary would be employed in a managerial capacity.

² United States Citizenship and Immigration Service (USCIS) records reflect that the Beneficiary was previously granted an L-1A nonimmigrant visa under the Petitioner's approved blanket petition. While the appeal was pending, USCIS updated the USCIS Policy Manual's guidance regarding deference to prior approvals. 2 USCIS Policy Manual A.4(B)(1), <https://www.uscis.gov/policymanual>; *see also* USCIS Policy Alert, PA-2021-05, Deference to Prior Determinations of Eligibility in Requests for Extensions of Petition Validity (Apr. 27, 2021), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210427-Deference.pdf>. However, since the

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary “in a capacity that is managerial, executive, or involves specialized knowledge,” for one continuous year within three years preceding the beneficiary’s application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.* The petitioner must also establish that the beneficiary’s prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(I)(3).

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term “managerial capacity” as an 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.

II. BACKGROUND AND BENEFICIARY’S DUTIES

The Petitioner stated that it operates over 40 “upscale [redacted] steakhouses” in the United States, including one in [redacted] Florida where the Beneficiary would be employed as an assistant manager. The Petitioner further indicated that each restaurant location employs approximately 70 to 90 individuals, as well as “Assistant Managers and [a] General Manager, who are entrusted to ensure the delivery by each restaurant team of an authentic [redacted] culinary experience.” The Petitioner explained that the Beneficiary manages three clearly defined functions within this restaurant,

prior approval of the L-1A nonimmigrant visa was provided by the Department of State (DOS) abroad, we need not defer to this prior decision as it was not made by our agency. *Ibid.*

specifically, adherence to the company's "business concept," meat production and distribution, and the restaurant supply.

The Petitioner listed the following duties for the Beneficiary:

i. Adherence to the [Petitioner] business concept

- Assist, oversee, and guide staff regarding company standard operation procedures to ensure compliance with objective of conveying the authentic [redacted] experience. (10%)
- Manage, supervise, and control the work of the entire restaurant team (including [redacted] chefs, servers, kitchen prep, dessert, and market table attendants, butcher, dishwasher, host staff, cashiers, and valet employees) to ensure culinary standards of excellence in the delivery of product and service to customers. (3%)
- Monitor and perform a variety of restaurant management functions, such as utilizing scheduling software to ensure effective requirements by shift, and ensure that all restaurant "key" areas are fully staffed, and kitchen, bar, and dining room staff are prepared for shift logistics and prepared to meet customer service goals. (3%)
- Coordinate with human resources to execute new hire orientation paperwork, personnel issues, terminations, and employee relations activities, such as setting performance objectives and goals, performance evaluations, and professional development. (3%)
- Schedule with L&D to implement and provide in-store training and online training to provide development opportunities that enhance the team knowledge, develop and revisit skills, and offer opportunities for professional growth (2%)
- Lead weekly hands-on training and utilize learning management online system ("LMS") to assist in training of restaurant leadership and team members to supervise the team's daily performance, provide understanding and feedback of the restaurant team's strengths and weaknesses, and tailor weekly training sessions to address any and all training issues and promote the overall development of the restaurant team. (2%)
- Supervise the food service (including hygiene, safety, supply and apply appropriate sanitary regulations) performed by the [redacted] (approximately 12 employees). (2%)
- Supervise team of [redacted] chefs by (i) training the team weekly, (ii) controlling their work schedule; and (iii) assigning tasks each day. (2%)
- Hold staff meetings when the General Manager is not available to update and inform the restaurant team of any managerial/restaurant changes and resolve and

restaurant issues within established company customer services and operational guidelines. (1%)

- Manage administrative functions, including employee vacation, time off, work hours, monitor inventory order supplies, manage deliveries, meet health and safety regulations, and organize add-on promotions. (1%)
- Supervise beverage services with respect to drinks, beverage, and wine service, side dishes and desserts, and meats. (3%)
- Adhere to [the Petitioner's] marketing guidelines and direct the Sales Manager to adhere to local restaurant marketing (Concierge Program) campaigns, group dining and event execution and monitor the appropriate staff for the dining space on each scheduled date and time. (2%)
- Supervise the opening and closing of the restaurant procedures and walk-through checklists. (2%)
- Ensure implementation and execution of primary service to enrich guests' overall experience, handle guest concerns/complaints and ensure that each guest enjoys a quality dining experience. (5%)

ii. Meat production and distribution

- Oversee and coach all [] staff in food preparation for each shift to ensure that all food from the menu [] is prepared and presented according to [Petitioner] standards. (15%)
- Oversee and supervise all kitchen staff to ensure that each gourmet salad, cheese, and vegetable items are featured on the buffet, and that a variety of [] side dishes are prepared and presented according to [Petitioner] standards. (2%)
- Oversee and supervise the [] in preparation for lunch and dinner shifts to ensure adequate dining room coverage according to forecasted customer reservations. (2%)

iii. Restaurant Supply

- Monitor the restaurant unit's supply expenses to ensure cost control goals are achieved and that the restaurant maintains budget targets. (20%)
- Assist the General Manager to (i) manage kitchen standards of excellence in production and waste control, (ii) organize the restaurant to be guest ready, (iii) monitor receiving and storing of goods, and (iv) supervise dining room set-up as well as the organization of storeroom, china dinnerware, utensils, menus, and special table arrangement for reservations. (10%)
- Maintain the restaurant's monthly inventory management process, including (i) receiving deliveries and directing storage of meat, market seafood, perishables, kitchen supplies, and other restaurant supplies, (ii) verifying the quantity and quality of products ordered, and (iii) keeping inventory of all beverages ordered and monitor purchasing and receiving and par levels. (5%)

- Direct bar staff in monitoring and estimating [Petitioner] wine, beer menu items and liquor supplies and consumption to maintain adequate inventories for each shift. (2%)
- Direct [] staff in monitoring and estimating meat and seafood supplies and consumption to maintain adequate inventories for each shift (1%)
- Update corporate purchasing department to review vendor/supplier relationships, purchase orders, receipts, product invoices, and vendor/supplier contractual obligations. (1%)
- Oversee and ensure facilities maintenance program execution, by evaluating, submitting repair and maintenance requests to Facilities Manager. (1%)

The Petitioner submitted an organizational chart reflecting that the Beneficiary reported, and would report, to a general manager of the company's restaurant chain location. The chart indicated that the location would have two assistant managers, one supporting the "front of the house" including the dining room floor, bar/lounge and the grill, while the other assistant manager would support the kitchen and "to/go" and catering services.

III. ANALYSIS

The sole issue to analyze here is whether the Petitioner established that the Beneficiary will be employed in a qualifying "managerial capacity" as defined in the Act and Department of Homeland Security regulations. Section 101(a)(44)(A) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B). As part of that inquiry, we must examine whether the Petitioner established that the Beneficiary will primarily manage an essential function within the organization.³

A. Function Manager

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A) of the Act. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act. If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that "(1) the function is a clearly defined activity; (2) the function is 'essential,' i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations." *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

When examining the managerial capacity of a given beneficiary, we will review the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the

³ The Petitioner does not assert that the Beneficiary would qualify as a personnel manager.

duties to be performed by the beneficiary and indicate whether such duties are in a managerial capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

To be eligible for the L-1A nonimmigrant visa classification as a manager, the Petitioner must show that the Beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If the record does not establish that the offered position meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

If the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, the Petitioner must 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 a given beneficiary's duties will be primarily managerial, we consider the Petitioner's description of the job duties, the company's organizational structure, the duties of a 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 a beneficiary's actual duties and role in a business.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, we take into account the reasonable needs of the organization, in light of its overall purpose and stage of development. *See* section 101(a)(44)(C) of the Act.

B. Application of Law to Facts

Upon examination of the duty description and the totality of the evidence, the Petitioner has not established that the Beneficiary would qualify as a function manager. The Petitioner submitted a duty description indicating the Beneficiary's substantial involvement in non-qualifying operational-level duties leaving uncertainty as to its assertion that he would devote most of his time to qualifying managerial tasks. On appeal, the Petitioner asserts that the Beneficiary primarily manages the functions listed within his duty description and does not perform the operational tasks making up these functions. However, the provided duty description appears to include more non-qualifying operational duties directly related to performing the functions of promoting the company's business concept and coordinating its meat production and restaurant supplies.

For instance, the Beneficiary's most prominent duties include operational tasks he either performs directly or completes alongside his colleagues, including assisting and guiding his colleagues in the company's standard operating procedures, and monitoring their compliance and adherence to "guest ready routines," "production specifications," and inventory management. Likewise, the duties further state that the Beneficiary is tasked with utilizing scheduling software to ensure proper staffing on the floor of the restaurant based on "daily reservations," supervising food service and safety, monitoring inventory, ordering supplies, managing deliveries, dealing with special events, and making changes to the menu. The duties further explain that the Beneficiary oversees beverage services and organizes wine tasting events, coordinates the opening and closing of the restaurant, reports issues with

restaurant furniture and carpeting, handles guest concerns and complaints, and handles guest reservations, wait times and online reservations.

The Beneficiary's responsibilities for meat production and distribution, and restaurant supplies, also appear to primarily consist of non-qualifying operational tasks, such as coaching chefs on meat and side dish preparation and standards, ensuring proper preparation of foods, communicating anticipated reservations, and making sure there is proper kitchen staff. Similarly, the Beneficiary is directly involved in monitoring restaurant supplies, forecasting needs, communicating with distributors, reordering goods and supplies, analyzing inventory reports, maintaining inventory, monitoring and estimating meat and seafood supplies, and submitting repair and maintenance requests.

After reviewing the Beneficiary's duties, it is difficult to discern the operational aspects of the restaurant with which he is not directly involved. In other words, the Beneficiary's duties leave substantial uncertainty as to whether he is primarily performing qualifying managerial duties, or whether he is merely working alongside the restaurant's first level operational employees, observing them, and assisting them in performance and compliance. In comparison, there is insufficient detail and little supporting documentation to substantiate that the Beneficiary would likely devote more than half of his time to managerial tasks. For instance, the Petitioner did not sufficiently articulate which of the Beneficiary's duties are considered managerial or non-qualifying operational duties, and these two types of tasks are confusingly intermingled within his duty description.

Whether the Beneficiary is a managerial employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial. *See* sections 101(a)(44)(A) of the Act. Here, the Petitioner does not credibly document what proportion of the Beneficiary's duties would be managerial functions and what proportion would be non-qualifying. The Petitioner lists the Beneficiary's duties reflecting both managerial tasks and several administrative or operational tasks, but it does not sufficiently quantify the time he would spend on these different duties. For this reason, we cannot determine whether the Beneficiary would primarily perform the duties of a manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). Although we do not expect the Petitioner to articulate and document every managerial task performed by the Beneficiary, it is reasonable to expect that it would provide sufficient detail and documentation to corroborate his performance of qualifying duties, particularly since the record reflects that he has already acted in his claimed managerial role as of the date the petition was filed.

As discussed, the Petitioner asserts that the Beneficiary would manage three functions, specifically, promoting the company's business concept, and managing its meat production and restaurant supply functions. The submitted organizational chart reflects that the Beneficiary would oversee the "front of the house" within the restaurant, including the dining room with its servers, customer service employees, hosts and hostesses, bussers, and other relevant employees. As noted, the duties reflect the Beneficiary's involvement with all the operational aspects of the dining room operations, including shift management, ensuring compliance with operating procedures, managing daily reservations, monitoring scheduling software, overseeing food service, and handling customer complaints. Likewise, the organizational chart reflects the Beneficiary's oversight of the bar area, its bartenders and barbacks, and his duties reflect his engagement in overseeing the service of beverages, ensuring compliance with policies and procedures, and organizing wine tastings. Lastly, the organizational chart reflects his supervision of the grill area, consisting of the [] responsible for

preparing the restaurant's various meat and side dishes. The Petitioner indicated that the Beneficiary would be responsible for coaching these employees on the preparation of meats and other dishes and coordinating preparation in relation to customer reservations.

Again, it is difficult to discern where the Beneficiary's management of these claimed functions and his performance of them ends and begins. The Beneficiary's duty description indicates his wide involvement in various non-qualifying operational duties, rather than his management of defined functions and primary delegation of operational tasks to others. The duty description suggests the Beneficiary's performance of many of these functions alongside of his colleagues, albeit with some level of authority. The Petitioner has not sufficiently demonstrated that the Beneficiary would be primarily engaged in managerial duties as opposed to non-qualifying operational tasks.

The Petitioner provided little supporting documentation specific to the Beneficiary reflecting his management of defined functions. The Petitioner only submitted general corporate documentation setting forth policies and procedures for the operation of all its restaurants. Based on the Beneficiary's duty description, this documentation, and the provided organizational chart, it appears more likely that the Beneficiary works alongside his colleagues in operating the "front of the house" within the restaurant, rather than managing defined functions of promoting the company's business concept and managing its meat production and restaurant supply. In fact, the Beneficiary's title and his duties indicate that his role is more likely that of assisting the general manager in operating the restaurant, namely, the "front of the house," rather than managing his asserted functions.

For instance, the Beneficiary's duty description regularly indicates him acting in a role where he is assisting and supporting the general manager and the restaurant operations in general, such as him assisting with "conveying the authentic [redacted] experience," holding meetings with staff in the general manager's absence and assisting the general manager in interviewing employees. Similarly, the duty description also states that he is tasked with supporting employees by coaching them in the company's training software, assisting the general manager in managing production and waste control, organizing the restaurant in being "guest ready," and overseeing dining room set-up. As such, the Beneficiary's duty description does not reflect a manager with full discretionary authority over a defined function, but a support employee assisting and coordinating restaurant operations in support of the general manager. The evidence further reflects the Beneficiary following very defined policies and procedures, passed down from the corporate parent company, rather than him having discretionary authority over these within a defined function.

In *Matter of G-*, the beneficiary in that matter developed and directed revenue forecasts and analysis for that petitioner's worldwide organization, led mergers and acquisitions, and oversaw strategic pricing analysis for the company's entire worldwide organization. The beneficiary in that matter further managed the compilation and processing of raw financial data by the finance team to prepare forecasts and create short-and long-term financial strategies, and he provided revenue estimates to the chief executive team and the board of directors. The beneficiary in that case was supported by six direct and three indirect reports and he developed policies and goals and oversee the execution of long-term strategies. In that decision, we concluded that the petitioner showed that the beneficiary's staff would relieve the beneficiary from performing day-to-day administrative and reporting tasks, allowing

him to primarily manage his function rather than perform it himself. *See Matter of G-*, Adopted Decision 2017-05 (AAO Nov. 8, 2017) at 5,6.

In contrast, the Beneficiary here assists the general manager with operating the front part of one restaurant for a Petitioner with over 40 restaurant locations in the United States, as well as many other abroad. There is little indication that the Beneficiary is primarily relieved from performing operational duties, and the Petitioner has not clearly documented or articulated how this is the case. In fact, as discussed, the Beneficiary's duty description reflects that he is likely involved in nearly all operational aspects of the dining room, bar, and the restaurant's grill. There is no indication that the Beneficiary is responsible for formulating the policies and procedures he implements, which appear to be corporate-wide directives that control all restaurants, general managers, assistant managers, and employees.

The Beneficiary's position also appears fluid, rather than a very clearly defined function over which he has specific managerial authority. It appears more likely that the general manager of the restaurant has discretionary authority over all the aspects the Beneficiary oversees, and the organizational chart suggests that he also shares his responsibilities with another assistant manager at the restaurant location, leaving further uncertainty as to whether he holds discretionary authority over his claimed functions.

IV. CONCLUSION

The Petitioner has not sufficiently established that the Beneficiary manages a defined function or functions, that he had discretionary authority over his claimed functions, or that he primarily manages rather than performs them. Therefore, for the foregoing reasons, the Petitioner has not established in the current record of proceeding that the Beneficiary would be employed in a managerial capacity in the United States.

ORDER: The appeal is dismissed.