



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

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

In Re: 22649519

Date: OCT. 21, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an [REDACTED] consulting firm, seeks to temporarily employ the Beneficiary as an associate (management consultant) 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 Texas Service Center denied the petition concluding the record did not establish that the Beneficiary was employed abroad in a managerial or executive capacity or that he would be employed in a managerial or executive capacity in the United States.

On appeal, the Petitioner asserts that the Beneficiary oversaw professional subordinates abroad who primarily relieved him from performing non-qualifying operational tasks while they provided professional consulting services to clients. The Petitioner further contends that the Beneficiary would qualify as a manager in the United States working in a similar role as he did abroad.

Upon *de novo* review, we will dismiss the appeal, as the Petitioner did not establish that the Beneficiary was employed in a managerial or executive capacity abroad. 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. Since this issue is dispositive, we decline to reach and hereby reserve its arguments with respect to whether the Beneficiary would be employed in a managerial or executive capacity in the United States. *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).

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).

II. MANAGERIAL CAPACITY WITH THE FOREIGN EMPLOYER

The sole issue we will address is whether the Petitioner established that the Beneficiary was employed abroad in a managerial capacity. The Petitioner does not claim that the Beneficiary was employed abroad in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary was employed in a managerial 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.

A. Duties

To be eligible for 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 foreign position meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary was *primarily* engaged in managerial duties abroad, 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 foreign duties were primarily managerial, we consider the description of the Beneficiary's foreign job duties, the foreign employer's organizational structure, the duties of a beneficiary's subordinate employees abroad, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the foreign business, and any other factors that will contribute to understanding a beneficiary's actual duties and role with the foreign employer.

The Petitioner is a large [redacted] consulting company with affiliates and operations in many countries. The Petitioner stated that the company's function “is to assist corporations, government entities and charitable organizations worldwide to solve major business problems.” The Petitioner indicated that when clients engage the firm, both abroad and in the United States, they form engagement teams to address client problems, teams that vary in size and complexion based on the nature of the engagement. The Petitioner stated that each one of these engagement teams is led by a managerial level “management consultant” responsible for directing the team. The Petitioner explained that the Beneficiary acted in this managerial role as a management consultant for a foreign affiliate from August 2016 to July 2018. It provided the following duties for this position:

- Managed key, discrete parts of consulting projects and ensured performance of all required analyses, research, computations and problem-solving syntheses (20% of his time);
- Oversee development and implementation of analytical approaches and project plans for work streams (10% of his time);
- Supervise the work of Junior Associates and Business Analysts and develop external/internal data requests (15% of his time);
- Lead and identify innovative data sources and data collection approaches to be used in more advanced data analyses (5% of the time);
- Manage collection of required client and industry data and performance of required analyses and syntheses of findings and the development of client-ready recommendations (10% of his time);
- Oversee the syntheses of work completed by Junior Associates and Business Analysts into a set of findings or recommendations and structure the overall final written and oral presentation to client (15% of his time);
- Organize and lead client interviews on behalf of the engagement team and lead selected client interviews (5% of his time);
- Oversee writing of parts or chapters of client reports and other documentation based on won analyses as well as analyses performed by Business Analysts and others (15% of his time); and
- Direct the development of data charts illustrating client performance trends and supporting proposed recommendations (5% of his time).

In addition, the Petitioner submitted explanations of projects the Beneficiary worked abroad, and duties related to these projects. For instance, the Petitioner pointed to a project the Beneficiary was engaged in for a “Major [redacted] electrical player” involving the foreign employer setting up their trading department, including him being tasked with “defining underlying mathematical models that would be used to guide trading decisions,” collaborating “with a client team of 5 people to expand the department,” and advising a “team of 8 professional-level employees from external agencies to create dashboards.” Likewise, the Petitioner highlighted the Beneficiary’s work on another project with a [redacted] bank and his work for the client in effectuating “a [redacted] transformation.” The Petitioner indicated that the Beneficiary was responsible for assessing “the current situation of the bank’s [redacted] practice and [the] identification of potential improvement levers” as well as conducting “multiple interviews with the bank’s management team...to understand the current set-up.” Further, the Petitioner emphasized the Beneficiary’s work with the [redacted] bank in “creating advanced analytics sales models as well as the user interfaces required to ease usability of the tool,” including him acting as a “key point of contact for the sales executive of the bank,” “gather[ing] their feedback on desired tool features,” and “communicat[ing] project progress.”

The above discussed duties suggest the Beneficiary’s direct involvement in the provision of services to clients and leave uncertainty as to whether he was primarily performing qualifying managerial duties, or in the alternative, merely providing services to clients in cooperation with his colleagues. Again, Petitioner must prove that the Beneficiary was *primarily* engaged in managerial duties abroad, 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). We acknowledge that the Petitioner states that the Beneficiary “managed,” “oversaw,” “supervised,” and “led” client projects and oversaw

subordinate professionals who relieved from him from primarily performing non-qualifying operational duties. However, the Petitioner has provided little supporting documentation to substantiate this assertion, such as evidence demonstrating his claimed personnel authority over professional subordinates, his direction of them, and his delegation of non-qualifying duties to them. Without this supporting evidence, the Petitioner has not sufficiently established that the Beneficiary was primarily engaged in qualifying managerial tasks, as opposed to non-qualifying duties directly related to the provision of services to clients, such as “defining underlying mathematical models that would be used to guide trading decisions,” advising them, collecting their requirements, formulating improvements, conducting interviews for them to collect data, creating advanced analytics, acting as a point of contact gathering their feedback, and communicating project progress to them. The Petitioner must resolve ambiguity 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).

Whether the Beneficiary was a managerial employee abroad turns on whether the Petitioner has sustained its burden of proving that their duties were “primarily” managerial. *See* sections 101(a)(44)(A) of the Act. Here, the Petitioner does not document what proportion of the Beneficiary’s duties were managerial functions and what proportion represented non-qualifying operational tasks directly related to the provision of services to clients. The Petitioner submits evidence indicating that the Beneficiary’s foreign duties included administrative or operational tasks, but it did not quantify the time he spent on these duties. For this reason, we cannot determine whether the Beneficiary was primarily performing the duties of a manager or an executive abroad. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Even though the Beneficiary held a senior position within the foreign employer, the fact that he managed or directed a portion of the business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a foreign position be “primarily” managerial in nature. *Id.* The Beneficiary may exercise discretion over certain aspects of the foreign employer’s day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that his actual duties abroad are primarily managerial in nature.

B. Staffing

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

The statutory definition of “managerial capacity” allows for both “personnel managers” and “function managers.” *See* section 101(a)(44)(A) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word “manager,” the statute plainly states that 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.” *Id.* If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those

employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

The Petitioner provided general organizational charts related to the projects the Beneficiary worked abroad. For example, the Petitioner submitted a chart related to the Beneficiary's engagement with "a major [redacted] energy company" reflecting that he oversaw three data scientists, a research analyst, and two "UX designers." The Petitioner also provided a chart specific to the Beneficiary's assignment to "a major [redacted] bank" indicating that he supervised a management consultant, two marketing experts, and two visualization experts. Yet another project specific chart reflected that he managed four data scientists and two visualization experts. The Petitioner asserts that all the Beneficiary's subordinates on all three projects held bachelor's degrees required to perform the duties of these positions.

First, the Beneficiary could not qualify as a personnel manager abroad based on the oversight of subordinate supervisors or managers as the provided foreign organizational charts reflect that he did not supervise these employees abroad. On appeal, the Petitioner emphasizes that the Beneficiary supervised professional subordinates and that he held personnel authority over them. To determine whether a beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." Therefore, we must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity.

However, the Petitioner did not submit supporting documentation to corroborate that he oversaw teams of professionals abroad who relieved him from performing non-qualifying operational duties directly related to the provision of services to clients, nor did it provide supporting evidence to demonstrate that him held personnel authority over several subordinate professionals. Further, although the Petitioner provided general duty descriptions for the various professional positions the Beneficiary was claimed to supervise, it also did not submit other substantiating evidence, such as the salaries of these employees or documentation to establish that they held bachelor's degrees. The Petitioner also does not indicate how the Beneficiary was selected for a managerial level position overseeing several professionals with bachelor's degrees only approximately three months after he had obtained his own bachelor's degree abroad. In addition, the Petitioner submitted no evidence reflecting his delegation of non-qualifying operational duties to his claimed subordinates abroad. Therefore, the Petitioner did not sufficiently establish that the Beneficiary acted as a personnel manager abroad.

The Petitioner also appears to assert on appeal that the Beneficiary qualified as a function manager abroad asserting that this position included "functional managerial responsibilities in the form of project planning, project management and resource development management." 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).

The Petitioner did not sufficiently demonstrate that the Beneficiary acted as a function manager abroad. As we have noted, the Petitioner provided evidence indicating the Beneficiary’s performance of non-qualifying operational duties directly related to providing services to foreign employer clients. Again, the Petitioner did not submit supporting documentation to substantiate that the Beneficiary was primarily engaged in managing a function rather than performing it. The Petitioner contends that he manages teams of professionals who relieve him of from performing non-qualifying operational tasks, but it provided little evidence to substantiate his direction of these employees abroad or his delegation of tasks to them. Further, the Beneficiary’s responsibilities abroad appear to be wide ranging and dictated by the client, or project, to which he is assigned. The same could be said with respect to his various asserted professional subordinates who appear to fluctuate according to his specific assignment or the client’s needs. Therefore, the Petitioner has not sufficiently established that the Beneficiary’s function is well defined and that he has senior level discretionary authority over it.

For the foregoing reasons, the Petitioner has not established that the Beneficiary was employed abroad in a managerial capacity.

ORDER: The appeal is dismissed.