



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

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

In Re: 22648930

Date: MAR. 23, 2023

Appeal of Texas Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a consulting company, seeks to temporarily employ the Beneficiary as a management consultant. The company requests her classification under the L-1A nonimmigrant visa category as an intracompany transferee who would work in a managerial or executive capacity in the United States. *See* Immigration and Nationality Act section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate, as the requested classification requires, the Beneficiary's employment abroad in a position that was managerial, executive, or involved specialized knowledge. On appeal, the Petitioner asserts the Beneficiary's foreign employment in a managerial capacity, contending that she both managed an essential function and supervised and controlled the work of other professionals.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the Petitioner has neither demonstrated the Beneficiary's employment abroad as a function nor personnel manager. We will therefore dismiss the appeal.

I. LAW

A petitioner seeking to employ an L-1A manager or executive must demonstrate that - for at least one continuous year in the three years before a petition's filing - the petitioner or its parent, branch, subsidiary, or affiliate employed the beneficiary abroad in a capacity that was managerial, executive, or involved specialized knowledge. 8 C.F.R. § 214.2(l)(3)(i), (iii), (iv). A petitioner must also establish that a beneficiary's education, training, and employment qualifies them for a proposed U.S. managerial or executive position. 8 C.F.R. § 214.2(l)(3)(ii), (iv).

II. ANALYSIS

The Petitioner states that, from August 2017 to August 2019, the Beneficiary worked for its affiliate in Spain as a management consultant. The record indicates her possession of a Spanish bachelor of science degree in aerospace engineering. The Petitioner states that she left its affiliate to study in the

United States, where, in 2021, she purportedly earned a master of business administration degree. That same year, the Petitioner filed this petition, seeking to temporarily employ her in the United States as a management consultant and claiming her prior foreign employment in a managerial capacity.

The term “managerial capacity” means work “primarily” involving:

- Managing an organization or its department, subdivision, function, or component;
- Supervising and controlling the work of other supervisory, professional, or managerial employees, or managing an essential function within the organization or its department or subdivision;
- If directly supervising another employee or employees, having authority to hire and fire or recommend those and other personnel actions, or functioning at a senior level within the organizational hierarchy or regarding the managed function; and
- Exercising discretion over the daily operations of the authorized activity or function.

Section 101(a)(44)(A) of the Act.

As indicated, an L-1A manager may manage either people or an “essential function.” Section 101(a)(44)(A)(ii) of the Act. “Personnel managers must primarily supervise and control the work of other supervisory, professional, or managerial employees, whereas function managers must primarily manage an essential function within the organization.” *Matter of Z-A-, Inc.*, Adopted Decision 2016-02, *4 (AAO Apr. 14, 2016).

In the initial filing, the Petitioner asserted the Beneficiary’s management of an essential function abroad. As the Director’s decision notes, however, the Petitioner also claimed the Beneficiary’s supervision of foreign professional employees. On appeal, the Petitioner states that the Beneficiary’s foreign work “involved both functional managerial responsibilities . . . as well as the management of professional-level subordinate employees.” We will therefore consider her qualifications in both purported roles.

A. Function Manager

To establish a beneficiary’s employment as a “function manager,” a petitioner must demonstrate that:

- the function is a clearly defined activity;
- the function is “essential,” i.e., core to the organization;
- the beneficiary primarily managed, as opposed to performed, the function;
- the beneficiary acted at a senior level within the organizational hierarchy or with respect to the function managed; and
- the beneficiary exercised discretion over the function’s day-to-day operations.

Matter of G- Inc., Adopted Decision 2017-05, *4 (AAO Nov. 8, 2017).

The Petitioner identified the function that the Beneficiary managed in Spain as “critical workstreams for important client engagements.” In response to the Director’s request for additional evidence

(RFE), the Petitioner described the Beneficiary's foreign job duties and the percentages of time she spent on them, as follows:

- 20% - Managed key, discrete parts of consulting projects, ensuring performance of required analyses, research, computations, and problem-solving syntheses;
- 10% - Led development of analytical approach and project plans for workstreams;
- 10% - Supervised work of professional-level subordinates in development of data requests;
- 5% - Identified innovative data sources and data collection approaches for advanced data analyses;
- 15% - Managed collection of client and industry data and performance of analyses and syntheses of findings and development of recommendations;
- 10% - Oversaw syntheses of work by subordinates into findings or recommendations and structured overall final written and oral client presentations;
- 10% - Organized client interviews for team and participated in selected interviews;
- 15% - Oversaw or participated in drafting parts of client reports and other documents based on own analyses or those of subordinates; and
- 5% - Directed development of data charts showing client performance trends and supporting proposed recommendations.

Thus, the record indicates the Beneficiary's management of parts of individual and changing consulting projects abroad. We agree that, for a consulting company, management of all its client engagements is an essential function. The record, however, does not demonstrate that the Beneficiary managed that entire function within the Spanish organization. *See* section 101(a)(44)(A)(ii) of the Act.

When considering whether a function is essential, we must consider the scopes of an employer's business and a beneficiary's work. For example, in *G-* we found the function of directing financial planning and analysis to be essential to an employer because the:

revenue planning and forecasting process impacts every business unit and geographic area within the worldwide organization. Additionally, the [employer]'s executive team and board of directors depend on these [financial] reports and strategies to drive its financial health and make critical decisions regarding mergers and acquisitions. Given the type and scope of the [employer]'s business, size, and international reach, we find that financial analysis and planning is core to the [employer]'s business and therefore, it is an "essential" function to this business.

Matter of G-, Adopted Decision 2017-05 at *5.

In contrast, the Petitioner has not demonstrated that the Beneficiary's management of parts of individual, temporary consulting projects had a significant, company-wide effect on her foreign employer. An online business information company estimates that the Beneficiary's foreign employer has 50 to 259 employees. The Petitioner described three engagements on which she worked abroad, with none involving her supervision of more than 10 people. Thus, the record suggests that the Beneficiary's foreign employer had other client engagements that she did not manage. Also, the Petitioner stated that the Beneficiary "[m]anaged key, discrete *parts* of consulting projects," indicating

that other employees in Spain managed other portions of consulting projects. (emphasis added). The Petitioner has not established that the Beneficiary's management of parts of individual temporary client projects affected the foreign employer's operations significantly enough to constitute a permanent, essential function of the organization. Thus, the Petitioner has not established the Beneficiary's role as a function manager at her foreign employer.

Further, the Petitioner has not demonstrated that the Beneficiary functioned "at a senior level within the organizational hierarchy or with respect to the function managed." *See* section 101(a)(44)(A)(iii) of the Act. Organizational charts of the Beneficiary's foreign employer and three engagements she managed abroad show only two layers of employees. In each chart, the Beneficiary is alone at the top, directly supervising subordinates beneath her. The record does not indicate to whom the Beneficiary reported or establish the responsibilities of her superior(s). The record also does not indicate whether she or her superior(s) selected her projects and team members. If she did not choose her projects and team members, the record would not establish that her authority rose to a "senior level." *See* section 101(a)(44)(A)(iii) of the Act. The Beneficiary's discretion and authority also appear to have been limited to discrete portions of individual projects, rather than to an essential function of her foreign employer. *See* section 101(a)(44)(A)(iv) of the Act.

The Petitioner has not established that the Beneficiary primarily managed an essential function abroad. We will next consider whether she primarily worked as a personnel manager in Spain.

B. Personnel Manager

The record indicates that the Beneficiary spent about 65% of her time supervising personnel, including: research analysts; junior management consultants; analytics analysts; visualization experts; and data scientists. The Petitioner also submitted organizational charts of three of her foreign client engagements and employee personnel records, indicating that she supervised employees whose positions required at least baccalaureate degrees. The Petitioner has therefore established that she primarily supervised the work of other professional employees. *See* section 101(a)(44)(A)(ii) of the Act. The record also demonstrates her exercise of discretion over the daily operations of her professional team. *See* section 101(a)(44)(A)(iv) of the Act.

As the Director found, however, the Petitioner has not demonstrated the Beneficiary's authority to have hired and fired her foreign subordinates or to have recommended those and other personnel actions, such as promotions and leaves. *See* section 101(a)(44)(A)(iii) of the Act. On appeal, the Petitioner states that the Beneficiary had "authority to contribute to [the] formal evaluation process [of her subordinates] based on their performance, which impacts hiring, firing, and compensation." But, contrary to section 101(a)(44)(A)(iii) of the Act, the record does not establish her authority to have hired or fired her subordinates or to have "recommended" their hiring, firing or other personnel actions. The Petitioner therefore has not demonstrated the Beneficiary's employment abroad as a personnel manager.

The record does not establish the Beneficiary's foreign employment in the claimed managerial capacity. We will therefore affirm the petition's denial.

III. THE PROPOSED U.S. EMPLOYMENT

Although unaddressed by the Director, the record also does not establish the Beneficiary's proposed U.S. employment in the same claimed managerial capacity. The record shows that she would perform the same duties in the United States that she provided in Spain. Although the proposed percentages of time she would spend on some duties differ from her work abroad, these changes do not materially affect our analysis.¹ Thus, for many of the same reasons that applied to the Beneficiary's work abroad, the record does not establish her proposed U.S. employment in a managerial capacity.

Like the Beneficiary's work abroad, the Petitioner stated that, in the United States, she would manage the essential function of "critical workstreams for important client engagements." But the company also proposed her supervision of professional employees. We will therefore also consider her proposed U.S. work as both a function and personnel manager.

A. Function Manager

As with the Beneficiary's work abroad, the Petitioner has not demonstrated that her proposed U.S. management of parts of client projects would constitute the company's entire and permanent function of overseeing client engagements. On the Form I-140, Petition for Immigrant Workers, the Petitioner stated its employment of more than 9,000 people. The company, however, provided examples of three types of client projects that the Beneficiary would manage in the United States, with none involving supervision of more than 11 employees. Thus, the record indicates that the Petitioner would have additional client engagements that other employees would manage. The Petitioner has not established that management of parts of individual changing client projects or workstreams - as opposed to management of *all* its client engagements - constitutes an essential function. Thus, the Petitioner has not established the Beneficiary's proposed management of the company's claimed function.

Also, the Petitioner has not demonstrated that the Beneficiary would function "at a senior level within the organizational hierarchy or with respect to the function managed." *See* section 101(a)(44)(A)(iii) of the Act. The Petitioner stated that "[w]ithin her department's hierarchy, the beneficiary will be the leader of this function." But the company did not identify or describe the Beneficiary's proposed department or describe or provide an organizational chart of its structure. Organizational charts of the Petitioner and the three proposed types of U.S. engagements show only two layers of employees. Each chart places the Beneficiary alone at the top, above subordinates. The record neither indicates to whom she would report nor the responsibilities of her proposed superior(s). The record also does not indicate whether she or her superior(s) would select her projects and team members. If she would not choose her projects and team members, the record would not establish that her authority would rise to a "senior level." *See* section 101(a)(44)(A)(iii) of the Act. The Beneficiary's discretion and authority would

¹ The Petitioner stated that the Beneficiary would spend 30% of her time managing key, discrete parts of consulting projects and ensuring performance of required analyses, research, computations, and problem-solving syntheses. As compared to the time she spent on the same duties in Spain, this is an increase of 10 percentage points. The Petitioner also stated that she would spend 5 percentage points less on both supervising work of professional-level subordinates in development of data requests, and managing collections of client and industry data and performing analyses and syntheses of findings and developing recommendations than she did abroad.

also appear to be limited to individual, changing projects, rather than to an essential function of the Petitioner. *See* section 101(a)(44)(A)(iv) of the Act.

B. Personnel Manager

The Petitioner stated that “[t]he beneficiary will be responsible for evaluating [company] team members on the engagement, which will directly inform decisions relating to hiring, firing, year-end performance, and bonus/compensation.” But the Petitioner has not demonstrated the Beneficiary’s proposed authority to hire and fire her U.S. subordinates or to “recommend” those and other personnel actions. *See* section 101(a)(44)(A)(iii) of the Act. The Petitioner therefore has not demonstrated the Beneficiary’s proposed employment in the United States as a personnel manager.

The Director’s RFE did not specifically notify the Petitioner of all the evidentiary defects regarding the proposed managerial capacity of the offered U.S. employment. Thus, in any future filings in this matter, the company must submit additional evidence to establish the managerial nature of the proposed U.S. employment.

IV. CONCLUSION

The Petitioner has not demonstrated the Beneficiary’s employment abroad in the claimed managerial capacity. We will therefore affirm the petition’s denial.

ORDER: The appeal is dismissed.