



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

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

In Re: 25785427

Date: APR. 06, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Multinational Manager or Executive)

The Petitioner, a book publisher, seeks to permanently employ the Beneficiary as its general 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 (1) the Beneficiary would be employed in the United States in a managerial or executive capacity, (2) the Beneficiary has been employed abroad in a managerial or executive capacity, and (3) the Petitioner had been doing business in the United States for at least one year at the time of filing. 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).

The statute defines “managerial capacity” as 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.

“Executive capacity” means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The primary issue we will address is whether the Petitioner has established that the Beneficiary will be employed in a managerial or executive capacity in the United States. The Petitioner has claimed that the Beneficiary’s offered position of general manager meets the requirements for executive capacity, and alternatively claims that the position is managerial in nature because it will involve supervision of professional staff and management of the Petitioner’s essential function.

To establish that a beneficiary is eligible for immigrant classification as a multinational manager or executive, a petitioner must show that the beneficiary will perform all four of the high-level responsibilities set forth in the statutory definitions at section 101(a)(44)(A) or (B) of the Act. If a petitioner establishes that the offered position meets all four elements set forth in either statutory definition, the petitioner must then prove that the beneficiary will be *primarily* engaged in managerial or executive 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 or executive, we consider the required description of the job duties, the company’s organizational structure, the duties of the beneficiary’s subordinate employees, the presence of other personnel 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.

A. Job Duties

The regulation at 8 C.F.R. § 204.5(j)(5) requires that a petitioner “clearly describe the duties to be performed.” At the time of filing, the Petitioner submitted an overview of the Beneficiary’s proposed duties as general manager of its children’s book publishing business. This description was repeated in its entirety in the Director’s decision and will not be repeated here. Briefly, the Petitioner indicated that the Beneficiary would have 12 different areas of responsibility with each requiring 5% to 10% of his time. These responsibilities included: strategic planning; finance and accounting; setting company

rules and policies; setting up the company's organizational and departmental structure; establishing the chain of supervision; determining each departments' function; defining job duties and objectives for subordinate staff and evaluating their performance; setting up guidelines for cooperation between departments; human resources planning and policy-making, including policies related to hiring/firing and compensation; representing the company by finalizing contract decisions and signing contracts; problem solving through regular meetings with subordinate managers and key employees; and advancing the company's mission and objectives.

In a request for evidence (RFE), the Director advised the Petitioner that this description of the Beneficiary's proposed position was overly broad and provided little insight into the nature of the actual day-to-day job duties he would perform. We agree with this assessment. Many of the responsibilities attributed to the position generally paraphrased the statutory definition of executive capacity by focusing on the Beneficiary's responsibility for establishing the company's policies, strategies and objectives, his responsibility for directing the overall management of the company, and his discretionary decision-making authority. However, reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient. 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).

Here, the position description was so vague it could have applied to any senior-level position at any company; it contained no references specific to the Petitioner's book publishing business or to specific subordinate positions or departments within the company, nor did it otherwise provide a probative explanation of the Beneficiary's expected day-to-day tasks. Further, several of the duties appear to describe the duties of an employee responsible for setting up a brand-new company that is still in the process of organizing its initial operations. Given that the Petitioner indicates that it has been operating in the United States since 2019, it is unclear why it would reasonably require the Beneficiary to, for example, spend up to 30% of his time determining and establishing the company's overall structure, chain of supervision and departmental responsibilities.

Finally, the Petitioner's submission of a vague job description was compounded by the fact it did not submit an organizational chart or otherwise describe the company's current structure or staffing at the time of filing. Therefore, the Petitioner's statements that the Beneficiary would be performing the claimed duties within the context of a multi-tiered structure that includes department managers, key personnel and other staff were not corroborated. Overall, the Petitioner's initial submission did not contain the necessary detail or an adequate explanation of the Beneficiary's expected day-to-day activities within the context of its business.

The Director provided the Petitioner with notice of these deficiencies and requested that the Petitioner provide a letter "clearly describing the beneficiary's proposed duties." The Director specified that the letter should describe "the specific daily tasks that are involved with the completion of each duty and the percentage of time to be spent on each." The Petitioner acknowledged this request and submitted a letter in response to the RFE. In its response, it attempted to provide additional explanation as to how the offered position qualifies under the statutory definitions of managerial or executive capacity at section 101(a)(44)(A) or (B) of the Act. However, it did so without providing any additional details regarding the Beneficiary's day-to-day job duties.

First, the Petitioner explained that the Beneficiary would be “supervising and managing the essential function of our company, namely, the editing, publishing, sales and marketing of our children’s books” as well as overseeing all other company functions. The Petitioner emphasized that the position would be that of a function manager because the Beneficiary would be: (1) managing the essential function of the company by “cooperating with authors and illustrators, editors, printing, publishing and sales of original English editions of children’s books”; (2) functioning at a senior level within the company and with respect to the function managed; and (3) exercising discretion over the day-to-day operation of the function by controlling “a broad range of activities associated with the management of the business of publishing.”

The Petitioner also stated that the Beneficiary qualifies as a “professional manager” because he will be supervising a deputy manager and a financial department employee who possess master’s degrees, two vice-general managers based in China who hold bachelor’s degrees, and authors, illustrators, and designers who “are all considered to be professionals.” Finally, the Petitioner stated that he “is functioning primarily [in] an executive capacity” in which his duties “consist of the management through direction of his sub-managers, organizing and implementing all programs, coordinating, directing and implementing all service programs for our business.”

This letter did not address or overcome the deficiencies in the initial job description addressed above, and it lacked the specific information the Director requested regarding the Beneficiary’s actual job duties within the context of its business. Conclusory assertions regarding the Beneficiary’s employment capacity are not sufficient. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros.* 724 F. Supp. at 1108, *aff’d*, 905 F.2d 41 (2d. Cir. 1990). Here, the Petitioner has not provided the necessary detail or an adequate explanation of the Beneficiary’s activities in the course of his daily routine.

The fact that the Beneficiary has the authority to manage or direct a company and holds a senior position in the company’s organizational chart does not necessarily establish eligibility for classification as multinational manager or executive as defined in the statute. By statute, eligibility for this classification requires that the duties of a position be “primarily” managerial or executive. Although the Petitioner asserts that the Beneficiary would primarily perform the high-level duties described at sections 101(a)(44)(A) or (B) of the Act, it has not met its burden to support this claim with a detailed job description and other relevant supporting evidence.

B. Staffing and Structure

The Petitioner asserts that the Beneficiary directs and manages both the company and its essential function through subordinate managers and other staff, and that it has sufficient staff to relieve the Beneficiary from significant involvement in non-executive and non-managerial duties. However, as discussed further below, it has not provided sufficient evidence of its staffing and structure from the time of filing. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

The Petitioner stated on the Form I-140 that it had six employees as of April 2021. The Petitioner did not submit an organizational chart, an employee list, or otherwise describe its staffing or structure. To

document its staffing levels, the Petitioner provided copies of its California state quarterly wage reports for the first three quarters of 2020 but did not provide evidence documenting its staffing at the time of filing. In the first nine months of 2020, the Petitioner's staffing levels varied, and ranged from 0 employees in April and May 2020 (which the Petitioner attributes to a temporary COVID-19 related closure) to six employees in September 2020.

In the RFE, the Director requested a list of all employees and contractors by name and job title. The Director also requested a summary of their duties, their educational levels, their salaries, and whether they work full- or part-time. In addition, the Director requested an organizational chart or diagram showing the company's overall structure and staffing levels, and evidence of salaries, wages and other payments made to employees and contractors for 2021, noting that the submitted evidence should document the company's structure and staffing starting at the time of filing.

The Petitioner's response included an organizational chart which depicts the Beneficiary as general manager and shows that he supervises a deputy manager, a financial department employee, and a U.S. sales and distribution center in [REDACTED] that is operated by a contractor [REDACTED]. The chart does not identify any additional U.S.-based staff or include the requested summary of job duties for the two U.S. employees, nor did the Petitioner provide the requested employee list. The block on the chart for the deputy manager position states "authors, illustrators, designers, editors, manuscripts, copyrights, online sales" with no further explanation from the Petitioner.

The Petitioner provided copies of its IRS Forms W-2, Wage and Tax Statement, indicating that it paid a total of eight employees in 2021. This evidence documented payments to the deputy manager and the financial department employee identified on the organizational chart. The Petitioner provided no additional information regarding the other six individuals it employed in 2021, and based on submitted payroll statements, only one of those six employees [REDACTED] remained with the company in 2022. In addition, four of the eight employees who received Forms W-2 in 2021 earned wages between \$6000 and \$9000 and were likely employed for only part of the year. Although requested by the Director, the Petitioner did not provide copies of any additional state quarterly wage reports or quarterly federal tax returns for 2021. Therefore, the record does not contain evidence corroborating the Petitioner's staffing levels at the time of filing.

For 2022, the Petitioner provided monthly payroll statements showing: payments to the Beneficiary for the months of January through May; payments to the vice general manager, the financial department employee, and [REDACTED] from January through April; and payments to two other employees, one who received wages in March and April, and one who appeared to be hired in April 2022. As the Petitioner provided only the Beneficiary's pay statement for May 2022, it is unclear whether it continued to employ the other staff at the time of the RFE response. As noted, the only U.S. employees who appeared on the organizational chart submitted in response to the RFE were the Beneficiary, the deputy manager, and the financial department employee.

As a result of these evidentiary deficiencies, the Petitioner has not adequately documented its staffing levels, organizational structure, or the activities performed by subordinate U.S. employees at the time of filing or at the time of adjudication.

The Petitioner has consistently indicated that it relies on contractors to perform certain functions. Its response to the RFE included a copy of its “Full Service Sales Representation and Distribution Agreement” with [REDACTED] (along with evidence of services provided by this contractor), and copies of its book contracts with authors and illustrators, as well as copies of Forms 1099 showing payments to some of these individuals.¹

The Petitioner’s organizational chart also depicts “supporting departments of parent company in China” including a printing and logistics department and an editing department, each led by a “vice general manager” (identified as [REDACTED] respectively). The Petitioner stated in its letter in response to the RFE that these two employees supervise a total of 14 employees in the parent company’s foreign language center and printing and logistics department “whose duties directly support the U.S. subsidiary under the supervision of [the Beneficiary].” However, it did not specifically identify these lower-level foreign employees, provide their job titles or duties, or provide corroborating evidence of their employment.

Further, the record contains unexplained inconsistencies regarding the positions held by [REDACTED] within the parent company. First, the foreign parent company’s organizational chart submitted at the time of filing identifies [REDACTED] as staff members within the [REDACTED] Customer Dept.” which is depicted as a sub-department of the “business department” with five employees; it did not depict their positions as managerial or supervisory. The foreign entity organizational chart submitted in response to the RFE depicts [REDACTED] as a deputy general manager supervising a marketing department and a printing and shipping department with a combined total of 24 employees, and [REDACTED] as a deputy general manager supervising a “basic education publishing center” and a “retail product publishing center” with a combined total of 37 employees in five sub-departments. The Petitioner offered no explanation for the significant differences between the two organizational charts and the placement of these two employees within them.

Second, the Petitioner’s initial evidence included the foreign entity’s monthly payroll rosters for October through December 2020. These documents, like the initial organizational chart, identify [REDACTED] as staff within the “customer department” who earned a monthly salary of RMB 8400. The RFE response included the foreign entity’s monthly payroll rosters (with different formatting) for the period April 2020 through January 2022. These documents indicate that [REDACTED] earned a monthly salary of RMB 15,000 throughout this period. The Petitioner did not explain why the foreign entity would have two completely different payroll rosters for the same months. The inconsistencies in the foreign entity’s organizational charts and payroll evidence are material and the Petitioner did not attempt to resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Based on these unresolved inconsistencies, the Petitioner has not met its burden to document the nature or scope of support the U.S. entity receives from its parent company’s staff, nor has it specifically identified or supported its claims regarding which employees provide services to the Petitioner and the services they provide.

¹ The Director observed that the number of Form 1099s the Petitioner issued to authors and illustrators was inconsistent with the number of book contracts and publishing agreements it provided. We note that many of the authors who published with the Petitioner reside outside the United States and therefore would not necessarily receive a Form 1099.

In sum, the record supports the Director's conclusions that the Petitioner did not provide the required detailed description of the Beneficiary's proposed job duties in the United States, probative evidence corroborating its staffing levels and structure in the United States at the time of filing through adjudication, or sufficient probative evidence to establish how the foreign entity's staff support the Petitioner's U.S.-based book publishing business. All this evidence is critical in evaluating the Petitioner's claim that the Beneficiary will be employed in a managerial or executive capacity in the United States, and we cannot reach a favorable determination on this issue in its absence.

Further, although the Director specifically addressed the deficient job description and the lack of supporting evidence to corroborate the Petitioner's staffing, the Petitioner has not addressed these issues on appeal. Accordingly, we conclude that the Petitioner has not met its burden to establish that it will employ the Beneficiary in the United States in a managerial or executive capacity. We will nevertheless address the Petitioner's appellate arguments below.

On appeal, the Petitioner claims that the previously submitted evidence is sufficient to establish that the Beneficiary would be employed in a managerial capacity. 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. 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.

The Petitioner maintains that the Beneficiary will supervise and control the work of subordinate supervisory and professional personnel and that the Director erred by concluding he will not be employed as a personnel manager. The Petitioner's organizational chart identifies only two U.S. employees who report to the Beneficiary and does not depict them as supervisors. The Petitioner provided evidence that its deputy manager and its financial department employee both have master's degrees and emphasized that, as a publishing business, it reasonably has a need for professional employees and contractors.

To determine whether a Beneficiary supervises professionals, we focus on the level of education required by the position, rather than the degree held by the subordinate employee. *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"). 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. The Petitioner has not submitted position descriptions or requirements for the employees who report to the Beneficiary in support of its claim that he will supervise professionals; its assertion that any position in the publishing field reasonably requires a degree is insufficient.

Moreover, even if we determined that the Beneficiary would allocate some portion his time to supervising professionals, this would not lead to a conclusion that he *primarily* performs managerial duties consistent with the definition at section 101(a)(44)(A) of the Act. As discussed above, the Petitioner has not submitted a detailed description of the Beneficiary's duties which demonstrates his actual tasks or how much time he would spend on the supervision and control of subordinate staff.

The Petitioner also repeats its previous assertion that the Beneficiary will be employed as a function manager. 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. Here, the Petitioner did not clearly describe the Beneficiary's duties in support of its claim that he would primarily provide services as a function manager. The broad job description provided contains no references to a function to be managed by the Beneficiary or the duties to be performing in managing such function. In addition, whether a beneficiary is a function manager turns in part on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial. *See Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016).

Further, in addition to clearly articulating the function to be managed and the Beneficiary's duties, 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 maintains that the Beneficiary manages its core function of "cooperating with authors and illustrators, editing, printing, publishing and sales of original English editions of Children's books." However, as noted the Beneficiary's job description does not articulate how he primarily manages this function.

Regardless of whether the Beneficiary is claimed to be a personnel manager, a function manager, or an executive, the Petitioner must establish how he would be relieved from significant involvement in the company's day-to-day administrative and operational tasks; it is not sufficient for the Petitioner to rely on an overly broad position description and an organizational chart depicting the Beneficiary in a senior position. Here, the Petitioner has not sufficiently explained the Beneficiary's duties, corroborated its claimed staffing levels, or provided duty descriptions for its U.S. employees in support of its claim that the Beneficiary would more likely than not perform primarily managerial or executive duties consistent with the statutory definitions.

The Petitioner maintains that *Matter of Z-A-* requires USCIS to consider the support provided by staff of a related foreign entity. While we have also considered the Petitioner's claims that it works closely with its parent company's personnel to carry out its publishing activities, it is the Petitioner's burden to identify those personnel, describe their duties performed in support of the U.S. entity, and corroborate the details of their employment with the foreign entity. Due to the inconsistencies and deficiencies discussed above, the Petitioner has not met that burden.

For the reasons discussed, the Petitioner has not established that the Beneficiary would be employed in the United States in a managerial or executive capacity.

III. RESERVED ISSUES

As noted, the Director also concluded that the Petitioner did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity, and that the Petitioner was doing business in the United States for at least one year at the time it filed the petition. Because the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's appellate

arguments regarding the remaining grounds for denial. *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).

IV. CONCLUSION

The Petitioner has not established that it will employ the Beneficiary in a managerial or executive capacity in the United States. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.