



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

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

In Re: 2925974

Date: DEC. 19, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Multinational Managers or Executives)

The Petitioner, describing itself as an investor in a restaurant and a convenience store business, seeks to permanently employ the Beneficiary as its general manager in the United States 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 Texas Service Center denied the petition, concluding the Petitioner did not establish that the Beneficiary would be employed in the United States in a managerial or executive capacity. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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

## I. LEGAL FRAMEWORK

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

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

## II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The sole issue we will address is whether the Petitioner established that the Beneficiary would be employed in a managerial capacity in the United States. 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.

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

The statutory definition of “managerial capacity” allows for both “personnel managers” and “function managers.” *See* section 101(a)(44)(A) of the Act. The Petitioner only contends that the Beneficiary would qualify as a personnel manager, and not as a function manager. 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. § 204.5(j)(2). In addition, on appeal, the Petitioner does not assert that the Beneficiary would qualify as a personnel manager based on his supervision of professional subordinates, but his oversight of subordinate supervisors and managers.

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 duties to be performed by the beneficiary and indicate whether such duties are in a managerial capacity. 8 C.F.R. § 204.5(j)(5).

### A. Duties

To be eligible as a multinational 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.

The Petitioner stated that the Beneficiary would oversee the investment decisions of the Petitioner, including a Mediterranean restaurant it owns and a gas station and convenience store owned by a wholly owned subsidiary of the Petitioner, B-E- LLC. The Petitioner explained that the Beneficiary would be responsible for controlling and managing the income and expenses of the company, reviewing its marketing, promotion, sales strategies, human resources, and other costs, and devising policies related to material purchases, staffing, pricing of menu items, and the selection of providers. The Petitioner submitted the following duty description for the Beneficiary:

- Develop a strategic plan to advance [the Petitioner's] mission and objectives (9.5%)
  - Develop and review vision/mission statement and its impact on decision crafting.
  - Craft and review current strategic plan and relevant business plans against new opportunities and risks.
  - Determine what has been missed and what should be incorporated into the revised strategic plan, missions, and objectives.
  - Ensure that appropriate strategies are designed and implemented for embedding the strategic plan into performance measures and job descriptions at all levels of the organization.
- Ensure [the Petitioner's] growth projections, sale objectives, food cost objectives, and desirable profits are consistently met by meeting with the Head Chef and Front Office Managers for the restaurant and the General Manager for the convenience of store on a weekly basis to review operational reports, analyze promotional programs and their effectiveness, establish profit expectations, and review weekly income and expense reports (5.5%)
  - Compare data and trends against agreed-upon financial and production business plan goals and objectives.
  - Recommend corrective actions and measures.
- Review and amend strategic policies and procedures and direct the operations of the organization in order to meet [Petitioner's] objectives, sales goals and profit margins (10%)
  - Ensure that specific and measurable performance improvements are set within specific strategic timeframes and tied to relevant strategic goals.
  - Ensure that subordinate managers implement action plans that translate objectives into a specific set of steps, responsibilities, schedules and teams for implementing the plans to achieve the objectives.
  - Review strategic policies and performance measures that provide quantitative means of reviewing, evaluating and updating actions, improvement objectives, strategic goals, and process performance.
- Analyze FOB/BOH operations to evaluate performance and determine areas of potential cost reduction, service improvement, or policy change (10%)
  - Ensure that the policies and procedures remain current and appropriate.

- Compare results against defined benchmarks to identify opportunities for improved performance.
- Approve business strategy changes that reflect new areas of improvement.
- Approve action plans to address performance gaps.
- Oversee and ensure that company policies on employee performance appraisals are followed and completed by the Head Chef, Front Office of the House Managers and Convenience Store Manager on a timely basis (5%)
- Review and analyze financial statements in order to recommend yearly budgets for shareholder approval and prudently managing the organization's resources within budget guidelines (5%)
- Review and approve the balance sheets for submissions to shareholders, keeping abreast of the various activities of [the Petitioner] and its economic performance; conferring with and reporting to the Venezuelan parent company's shareholders on matters that have a material effect on fundamental corporate issues, such as pricing and profitability (10%)
- Exercise discretionary authority over the hiring and firing of Head Chef, Front of the House Managers and Convenience Store General Manager, as well as oversee the hiring of support personnel for all operations; ensuring personnel policies and procedures are followed; developing performance standards; completing and administering merit reviews; having authority to terminate and recommend personnel actions (10%)
- Exercise managerial discretion over the day-to-day operations and provide guidance and advice to underlying managerial staff (5%)
- Analyze customer research, current market conditions and competitor information (5%)
- Oversee the business development activities by reviewing and amending, as needed, the marketing strategies and plans and ensuring that [the Petitioner's] growth projections, sales objectives and desirable profits are consistently met (10%)
- Meet with CPA to establish procedures and reporting schedules for attaining objectives, directing and coordinating formulations of financial programs to provide funding for new a continued operations to maximize return on investments (5%)
- Review and sign contracts and other documents to bind [the Petitioner] legally such as purchase agreements and bank loans (5%)
- Manage the relationship with product and service providers, such as food suppliers, maintenance contractors, etc. (5%)

The Petitioner submitted little detail and supporting documentation to substantiate the Beneficiary's performance of her claimed managerial duties, such as the strategic plan she developed, vision and mission statements she formulated, further investment decisions she made, and promotional programs she analyzed. Likewise, the Petitioner did not sufficiently explain and document the business plan goals the Beneficiary set, corrective actions and measures she implemented, policies and procedures she reviewed and amended, performance improvements she set, and cost reductions and service improvements she determined. The Petitioner similarly did not articulate and document the benchmarks she identified, goals and objectives she set, key performance indicators she negotiated,

budgets she recommended, or personnel policies and procedures she established. The Petitioner also did not discuss with specificity or support the marketing strategies she put in place, financial plans she formulated, or relationships with suppliers and service providers she managed. In addition, in each case, the Petitioner did not provide sufficient detail as to the various managerial tasks she would perform under an approved petition, including the investment decisions she would make, marketing and promotion she would oversee, sales strategies she would implement, and policies related to material purchases, among others. The duty description further included little discussion of the Petitioner's restaurant and convenience stores businesses and the description largely could have applied to any manager acting in a business in any industry.

For instance, the Petitioner submitted several letters the Beneficiary was asserted to have issued to "all of the employees" of the company, but these included few specifics to corroborate her primary performance of managerial level duties and her delegation of non-qualifying tasks to her claimed subordinate supervisors and managers. The provided letters mainly ordered all employees to meet on unspecified topics at the restaurant, including a letter in April 2019 discussing "new offers" the company would offer and another in February 2018 mentioning "new products" they would implement. Similarly, two letters from the Beneficiary from January and February 2019 stated that all the staff would meet to "discuss all the improvements for the better performance of the restaurant," while another in May 2018 noted the meeting was related to "restructuring of the personnel hours." Two other provided letters from March and April 2018 indicated the employees would "discuss all that happened in said month." In sum, the provided letters did little to credibly substantiate that the Beneficiary was, and would be, primarily engaged in managerial-level duties and primarily delegating operational tasks to his asserted subordinate supervisors and managers. The letters do not provide relevant detail such as the improvements the Beneficiary implemented, how she restructured personnel, or the new products she introduced.

The Petitioner further emphasized in the Beneficiary's duty description that she held weekly meetings with her head chef and managers discussing their reports and promotional programs. However, the submitted support letters did not substantiate that her subordinate supervisors provided weekly reports or that the Beneficiary and her asserted managers discussed them. In fact, the letters are more reflective of the Beneficiary's apparent involvement in most of the day-to-day operational functions of the business. Again, the Petitioner must establish that the Beneficiary would be *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside its other employees. *See Family Inc. v. USCIS*, 469 F.3d at 1313, 1316.

In addition, in the Beneficiary's duty description, the Petitioner discussed her focus on investment decisions and marketing strategies. However, it is not clear what investment decisions the Beneficiary would focus on, beyond the company's initial decision to invest in the restaurant and convenience store businesses it already owns. The Petitioner also pointed to the Beneficiary's focus on "marketing strategies" and "promotional programs," yet a provided 2018 IRS Form U.S. Return of Partnership Income showing that it only invested \$890 on "advertising and promotion."<sup>1</sup> Likewise, the Beneficiary's duty description questionably explained that the Beneficiary would be tasked with reporting to its shareholders, when it has no shareholders, since it is partnership. In total, these discrepancies and ambiguities leave uncertainty as to the credibility of the Beneficiary submitted duty

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<sup>1</sup> The petition was filed on July 19, 2018.

description. The Petitioner must resolve discrepancies and ambiguities 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).

Although we do not expect the Petitioner to articulate every specific managerial task or document her performance of every managerial duty, it is reasonable to expect that it would provide sufficient credible detail and documentation to properly substantiate her primary performance of qualifying managerial duties. Further, there is little supporting evidence to demonstrate the Beneficiary delegating non-qualifying operational tasks to her claimed subordinate supervisors or managers or her exercising personnel authority over them. This lack of detail and documentation is noteworthy considering the Petitioner asserts in its support letters that the Beneficiary has been acting in her purported managerial role since 2017. Specifics are clearly an important indication of whether a beneficiary's duties are primarily 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).

Even though the Beneficiary holds as a managerial title and manages or directs a portion of the business does not necessarily establish eligibility for classification as a multinational manager within the meaning of section 101(a)(44)(A) of the Act. The Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making; however, the position description alone is insufficient to establish that her actual duties would be primarily managerial in nature.

#### B. Staffing, Personnel Manager

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.

In support of the petition, the Petitioner provided an organizational chart reflecting that the Beneficiary supervised two "front of the house managers" and a head chef working for its restaurant, and a general manager working for its wholly owned subsidiary, B-E- LLC, operating the gas station and convenience store. The chart further showed that the front of the house managers supervised a waiter supervisor overseeing a head waiter who was shown to supervise three waiters and two servers (who were not identified by name). The chart also showed that the head chef oversaw two kitchen employees and a dishwasher. Meanwhile, the general manager working for B-E- LLC was shown to supervise two sales/cashier employees working at the gas station and convenience store.

As a preliminary matter, the Petitioner submitted another organizational chart in response to the Director's request for evidence (RFE) showing several differences, asserting this was due to normal turnover in the restaurant industry. However, our focus must be on the Petitioner's organizational structure as of the date the petition was filed, namely that explained above. The affected party has the burden of proof to establish eligibility for the requested benefit at the time of filing the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also* *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was

properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts.”).

The Petitioner submitted state quarterly tax returns from the second quarter of 2018, corresponding with the date the petition was filed in July 2018, leaving uncertainty as to its assertion that the Beneficiary oversaw subordinate supervisors and managers at this time. For instance, these state wage forms reflected that the Petitioner’s two asserted full-time front of house managers earned \$2,067.01 (approximately \$8268 annually) and \$1870.00 (approximately \$7486 a year) that quarter, while their claimed subordinates accrued more salary, namely the head waiter \$3446.71 (about \$13,786 annually), the waiter supervisor \$4654.49 (or \$18,617.96 annually), and the dishwasher \$3730 (about \$14,920 annually). Likewise, the state quarterly wage forms showed that the head chef, another of the Beneficiary’s other asserted subordinate supervisors, earned \$3639 (or approximately \$14,556 annually). Meanwhile, according to the state tax forms, the head chef’s subordinates again earned more than their claimed supervisor, as the the kitchen employees earned \$5280 (\$21,120 annually) and \$4260 (\$17,040 annually) that quarter. In addition, state wage forms specific to the Petitioner’s convenience store business, also from the second quarter of 2018, showed that the claimed general manager (the last of the Beneficiary’s asserted subordinate supervisors) earned much less than both the salesclerk/cashiers.<sup>2</sup>

In total, the fact that all the Beneficiary’s claimed supervisors and managers earned less than their operational subordinates at the time the petition was filed leaves substantial question as to whether there was a tier of supervisors and/or managers working below him as claimed. Indeed, the limited income of the two front of the house managers and the claimed general manager of the convenience store suggests that the Beneficiary would likely assist with the non-qualifying operational tasks of the business alongside his subordinates, particularly since the organizational chart showed only two filled waiter positions and five vacant waiter/server positions. These inconsistencies in the state wage forms and the lack of supporting evidence to substantiate the Beneficiary’s delegation of non-qualifying duties to his claimed supervisors, leaves uncertainty as to the Petitioner’s claim that he was acting primarily as a personnel manager when the petition was filed. In addition, it also noteworthy that the record includes no evidence of the Beneficiary exercising personnel authority over his claimed subordinate managers and supervisors. Again, the Petitioner must resolve discrepancies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 582, 591-92. 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.

As noted, the Petitioner only contends that the Beneficiary would qualify as a personnel manager. However, as discussed, the Petitioner did not submit sufficiently detailed duties and supporting documentation necessary to corroborate that the Beneficiary was, and would be, primarily engaged in performing the qualifying tasks of a personnel manager. In addition, the Petitioner provided state wage forms corresponding with the date the petition was filed which did not substantiate that there were four subordinate supervisors and/or managers working below him as asserted. Therefore, the

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<sup>2</sup> The state quarterly wage form from the second quarter of 2018 applicable to the Petitioner’s wholly owned subordinate B-E- LLC reflected that the claimed general manager of the convenience store earned only \$990 that quarter, while the salesclerks accrued \$4120 and \$3960 respectively.

Petitioner did not demonstrate that the Beneficiary would act as a personnel manager under an approved petition.

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

**ORDER:** The appeal is dismissed.