



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

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

In Re: 21564316

Appeal of Texas Service Center Decision

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

The Petitioner, a management consulting firm, seeks to temporarily employ the Beneficiary in the United States 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 L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish, as required, that: (1) the Beneficiary has been employed abroad in a qualifying capacity, and (2) the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

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(l)(3).

II. ANALYSIS

The Director determined that the Petitioner did not establish that it seeks to employ the Beneficiary in the United States in a managerial or executive capacity. The Petitioner refers to the position as managerial, and therefore we need not address the separate requirements for an executive 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.

To show that a beneficiary is eligible for L-1A nonimmigrant visa classification as a manager, a petitioner must show that the beneficiary will perform all four of the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A) of the Act. If a petitioner establishes that the offered position meets all four elements set forth in the statutory definition, the petitioner must then 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 the beneficiary’s duties will be primarily managerial, we consider the description of the job duties, the company’s organizational structure, the duties of the 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 the beneficiary’s actual duties and role in the business.

The Beneficiary entered the United States in July 2019 as a J-1 nonimmigrant exchange visitor to study at [REDACTED] University, where he earned a master’s degree in business administration in May 2021.¹

The Petitioner described the Beneficiary’s intended position in the United States:

[T]he beneficiary will manage workstreams for client engagements, drawing on his experience with [the Petitioner’s affiliate] abroad, to ensure that the team’s deliverables align with the client’s objectives. The beneficiary’s responsibilities will include project planning, project management, and resource deployment management. In addition, he will have supervisory authority over a team of . . . professionals supporting each study, including Business Analysts (Management Consultants), Research Analysts, and other members of the consulting team. . . .

. . . [T]he beneficiary’s position in the U.S. will entail the management of an essential function within our business operations. Specifically, the beneficiary will manage specialized and critical workstreams by leading and guiding various projects teams and supervising analysts . . . [and] will manage these workstreams by leading his teams to validate data, create potential solutions based on that data, build portfolio models, and highlight subsequent implications of such models. The beneficiary will be brought in to lead these specific client engagements. . . .

¹ We note that, following the denial of the present petition, the Petitioner filed another Form I-129 petition, seeking to classify the Beneficiary as an H-1B nonimmigrant in a specialty occupation. That petition was approved in February 2022, granting the Beneficiary H-1B status until August 2024.

The Petitioner asserted that, in the course of carrying out the above duties, the Beneficiary will:

(a) manage an essential function of our business – specifically, critical workstreams for important client engagements which help our clients transform their businesses; (b) function at a senior level with respect to the function managed; (c) supervise and control the work of professional employees; and (d) exercise discretion over the day-to-day operations of [the] essential function under his purview.

The statutory definition of “managerial capacity” allows for both “personnel managers” and “function managers.” *See* sections 101(a)(44)(A)(i) and (ii) of the Act. The Petitioner asserted that the Beneficiary’s “job responsibilities will entail both functional managerial responsibilities . . . [and] people management.” The Petitioner, however, has not established that the Beneficiary would be primarily either a personnel manager or a function manager.

Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. The beneficiary must have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. Sections 101(a)(44)(A)(ii)-(iii) of the Act; 8 C.F.R. §§ 214.2(l)(1)(ii)(B)(2)-(3).

The Petitioner asserted that the Beneficiary would “have supervisory authority over” teams comprising “1-2 Analytics Analysts, 1-3 Business Analysts, 1-3 Research Analysts, and Visualization Specialists/Experts.” The Petitioner submitted an organizational chart, showing the Beneficiary alone on the upper level and the various analysts and experts on the lower level. The chart did not show the organizational structure above the Beneficiary’s intended position, or otherwise place the team into the context of the larger organization.

The Petitioner did not indicate that the teams are fixed structures within the organization. Rather, the company’s “organizational structure is . . . fluid by its very nature – lower-level management consultants can report to several managerial-level management consultants concurrently on different client engagements, while managerial-level management consultants can have a number of different management consultants reporting to them on different engagements at the same time as well.” This informal structure suggests that a “managerial-level management consultant” has authority over “lower-level management consultants” only within a given project; the higher-level consultant does not have exclusive authority over any permanently designated subordinates.

Under section 101(a)(44)(A)(iii) of the Act, direct supervision of other employees must entail “the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization).” The Petitioner stated: “No single employee at [the petitioning company] has direct hiring or firing authority for management consulting roles. Instead, individuals in managerial positions provide strategic input on decisions that directly influence these outcomes, and they further contribute directly to subordinate employees’ performance reviews.” The Petitioner stated that the Petitioner would participate in these performance reviews, but did not indicate that the Beneficiary’s authority would include recommending hiring, firing, and other personnel actions. Evaluations that do not involve recommendations for specific personnel actions do not satisfy the statutory and regulatory criteria for a managerial capacity.

The Director denied the petition, concluding that the Petitioner had not established that it would employ the Beneficiary as a personnel manager. On appeal, the Petitioner repeats the assertion that the Beneficiary would have supervisory authority over professional employees.

The record portrays the Beneficiary's position as that of a team leader, who actively participates in the operational tasks of individual client engagements rather than primarily overseeing and coordinating operational tasks delegated to subordinates. The Petitioner has not established that the Beneficiary's intended position meets all the statutory and regulatory criteria of a managerial capacity.

The term "function manager" applies generally when a beneficiary's managerial capacity derives not from supervising or controlling a subordinate staff, but instead from primarily 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). In this matter, the Petitioner has not described or provided evidence that the Beneficiary manages an essential function.

The job description for the Beneficiary's intended position includes these elements, among others:

- Manage key, discrete parts of consulting projects . . . ;
- Develop and implement analytical approach and project plans for work streams;
- Manage collection of required client and industry data and performance of required analyses and syntheses of findings and the development of client-ready recommendations; [and]
- Organize and lead client interviews on behalf of the engagement team and lead selected client interviews.

The Petitioner asserts that "workstreams and client engagements are a crucial part of [its] business operations, and the Beneficiary's management over them therefore constitutes management of an essential function of [the] business." The Petitioner, however, has not shown that the Beneficiary would be responsible for the overall management of these workstreams throughout the company. Rather, the Beneficiary's stated responsibilities would involve granular details of individual projects by one team, rather than oversight over the process performed in parallel by many other teams throughout a company that claims over 9000 employees in the United States and 30,000 worldwide.

The Petitioner has not established that each project is an essential function of the company in its own right, rather than one iteration of an ongoing activity that, *collectively*, constitutes an essential function.

Likewise, the Petitioner asserted that the Beneficiary would “function at a senior level with respect to the function managed,” but the Petitioner did not show that the Beneficiary would have senior-level authority over the company structure that encompasses all its consulting projects. Rather, he “will serve in a senior capacity with respect to *his engagement projects*” (emphasis added).

As noted above, the organizational chart submitted with the petition illustrated the structure *below* the Beneficiary, but not *above* him, and therefore the Petitioner provided no broader frame of reference for the “senior level” claimed. After the Director requested more details about the Beneficiary’s place in the organizational hierarchy, the Petitioner submitted charts for some specific projects. Each of these charts shows three levels of employees:

- Engagement Manager
- The Beneficiary
- Junior Management Consultants and various experts and analysts

The Petitioner did not provide more information about the “Engagement Manager” to whom the Beneficiary would report. The scope of an engagement manager’s responsibility is directly relevant and material to the issue at hand. If an engagement manager’s primary responsibility is overseeing a number of management consultants, then we cannot conclude that the Beneficiary would function at a senior level with respect to the overall function of client engagements.

The Director denied the petition, stating that the Petitioner had not shown that the intended position in the United States qualifies as a managerial capacity. The Director observed that the submitted organizational charts did not show the Beneficiary’s place in the company’s hierarchy, and that the Petitioner had not corroborated the assertion that the Beneficiary will exercise discretion over the day-to-day operations of an essential function of the company.

On appeal, the Petitioner asserts: “In any given engagement, [the Beneficiary] will be a senior team leader. . . . The organizational charts that were provided illustrate his senior, hierarchical role.” The Petitioner does not address the Director’s remarks concerning those organizational charts, and the Petitioner does not establish that “any given engagement” is an essential function of the organization rather than a single manifestation of the overall function of undertaking such engagements.

The Petitioner also states: “leading and developing the strategies for major clients . . . is one of the most important functions” within the company. But, as explained above, the Petitioner does not show that the Beneficiary would have senior authority over this function. Rather, he would lead teams on individual projects *within* that function.

The information provided by the Petitioner indicates that the Beneficiary would have some authority over small teams working on individual projects, but does not demonstrate that he would function at a senior level with respect to an essential function of the organization.

For the above reasons, the Petitioner has not met its burden to establish that it will employ the Beneficiary in a managerial capacity in the United States.

Because the above discussion is sufficient to determine the outcome of the appeal, we need not discuss the issue of the Beneficiary's previous employment abroad, and we therefore reserve that issue.² While we have not undertaken an in-depth analysis of the Beneficiary's prior position abroad as a management consultant, we note that the Petitioner's description of that position is essentially identical to the description provided for his intended position in the United States, which, as discussed above, has not been shown to be a qualifying managerial capacity, either as a function manager or a personnel manager. We further note a potentially significant discrepancy. The Petitioner asserts that the Beneficiary worked in Pakistan "as a Fellow (Management Consultant)" from April 2015 to October 2016, and as a "Management Consultant from October 2016 to July 2019." But an August 2019 letter from a company official in Pakistan indicates that the Beneficiary's title was "Business Analyst." According to job descriptions provided by the Petitioner, business analysts have different responsibilities than management consultants, and are subordinate to them. The Petitioner neither acknowledged nor explained this discrepancy, which has clear implications for the actual nature of the Beneficiary's duties and responsibilities abroad.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

² See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).