



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

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

In Re: 21563600

Date: AUG. 15, 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. Section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 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 with to work temporarily in the United States in a managerial or executive capacity.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that: (1) the Beneficiary was employed abroad in a managerial capacity, and (2) it would employ the Beneficiary in the United States in a managerial 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 by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. See *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**

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. EMPLOYMENT ABROAD

The primary issue we will address is whether the Petitioner established that the Beneficiary was employed abroad in a managerial capacity. The Petitioner has consistently claimed that the Beneficiary's position with its foreign affiliate was managerial in nature, and that it involved both supervision and control of subordinate professional employees and management of an essential function. The Petitioner does not claim that the Beneficiary was employed abroad in an executive or specialized knowledge capacity.

Section 101(a)(44)(A) of the Act defines "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervision, professional or managerial employees, or manages an essential function within the organization or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

Based on this definition, "managerial capacity" includes employees who act as "personnel managers" and those that serve as "function managers." Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. If a beneficiary directly supervises such employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. *See* sections 101(a)(44)(A)(ii) and (iii) of the Act. The term "function manager" applies generally when a beneficiary does not primarily 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.

To support its claim that a beneficiary has been employed abroad in a managerial capacity, a petitioner must show that the beneficiary has performed the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If the petitioner establishes that the foreign position meets all elements set forth in the statutory definition, it must prove that the beneficiary was *primarily* engaged in managerial duties, as opposed to operational activities alongside the company's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

In determining whether a given beneficiary's duties were 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.

#### A. Job Title and Duties

As a preliminary matter, we observe that there is an unresolved inconsistency in the record regarding the Beneficiary's job title (and her associated responsibilities) during her period of employment abroad.

The Petitioner stated on the petition and in its supporting letters that the Beneficiary was employed by its Chinese affiliate in the position of "Management Consultant" from August 2016 until June 2019, prior to taking an educational leave of absence to complete a master's degree program in the United States. However, the record also includes a letter from a senior human resources administrator at the Petitioner's affiliate in [REDACTED]. The foreign affiliate confirms that beneficiary was a full-time employee of the company during the stated period, but states that "her last position was Business Analyst."

Based on the evidence submitted with the petition, we find that the Beneficiary's formal job title is critical to understanding her position's level of authority and the types of duties assigned to her during her employment abroad. In this regard, we observe that the offered position in the United States is "Associate (Management Consultant)." The Petitioner indicates that this position supervises employees with the job title "Business Analyst (Management Consultant)," which, based on the employment letter from the foreign entity, appears to be the last position the Beneficiary held in China. Therefore, the Petitioner's statements and evidence reflect that there are multiple position titles, with differing responsibilities and levels of seniority, that the organization deems to be "management consultant" roles, and it is evident that not all such roles involve managerial responsibilities within the meaning of section 101(a)(44)(A) of the Act.

Although the Petitioner states that the Beneficiary's position as a "Management Consultant" abroad was essentially identical to the offered position of "Associate (Management Consultant)" in the United States, the record does not support a determination that both positions involve the same level of authority. The record does not demonstrate that the Beneficiary was employed at the "Associate" level, rather than the "Business Analyst" level abroad. As noted, the foreign entity indicates she was last employed as a "Business Analyst." In the brief submitted on appeal, the Petitioner states that Associates "possess at least a Master's degree." The Beneficiary did not have a Master's degree when she was employed by the foreign entity; rather, she took a leave of absence in 2019 to attend graduate school in the United States and was nearing completion of her master's degree when this petition was filed in April 2021.

Further, the duties of a "Business Analyst" or "Business Analyst (Management Consultant)" are described in the record and do not match the duties of an "Associate (Management Consultant)." For example, the Petitioner indicated that the Business Analysts (Management Consultants) the Beneficiary would supervise in the United States perform duties that include validating and compiling client-specific data; working with client's data personnel to understand and assess data availability and integrity; developing project databases under the supervision of an associate or engagement manager; populating databases with client data and performing analyses; estimating the impact of

proposed recommendations on the client's performance and reviewing initial findings; and presenting findings to associates for approval before including them in client reports. The Petitioner did not attribute any supervisory duties to the position or describe it as one which has function management responsibilities. Rather, the Petitioner's supporting letters consistently indicate that the firm's "Business Analysts" are professionals who work under the supervision of an Associate or Engagement Manager.

The Petitioner's foreign affiliate has confirmed that the Beneficiary's job title was "Business Analyst" while the Petitioner has used the more general "Management Consultant" job title. The Petitioner nevertheless indicates that the Beneficiary's duties as a "Business Analyst" or "Management Consultant" with its Chinese affiliate were identical to those she will perform in the United States as an "Associate" despite evidence in the record indicating that the positions of "Business Analyst" and "Associate" are distinct roles within the organization. The Petitioner does not indicate that a "Business Analyst" or "Business Analyst (Management Consultant)" is a managerial position within its organization, but concurrently claims that the Beneficiary herself, while employed as a "Business Analyst," performed the duties of a personnel or function manager. The Petitioner did not attempt to resolve this discrepancy with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Based on this unexplained inconsistency alone, the Petitioner did not meet its burden to establish the Beneficiary's employment abroad in a managerial capacity.

Nevertheless, we will address the Petitioner's claims on appeal. Specifically, the Petitioner asserts in its brief that the Beneficiary held "both functional managerial responsibilities, in the form of project planning, project management and resource deployment management as well as management of professional-level subordinate employees in the form of managing and leading [company] consulting teams to achieve the goal of providing sophisticated management consulting services."

## B. Function Manager

If a petitioner claims that a beneficiary managed an essential function, it must clearly describe the duties 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 primarily *managed*, as opposed to *performed*, the function; (4) the beneficiary acted at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary exercised discretion over the function's day-to-day operations. *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

For the reasons already discussed above, the Petitioner did not consistently identify the Beneficiary's job title in the record. The record indicates that the Petitioner's organization has a clearly delineated career ladder that is consistent throughout the firm's operations, such that a person's job title is indicative of their level of authority and the types of duties they are assigned.<sup>1</sup> Therefore, the

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<sup>1</sup> The record contains redacted personnel data for individuals claimed to be members of the Beneficiary's team abroad. This data indicates that each employee has an assigned skill code, title, impact level, job role category and sub-category, path, and department. Within the consulting job category, for example, the evidence indicates that Engagement Managers have a "green" impact level, Associates have a "yellow" level, Business Analysts and Junior Associates have an "orange" level and summer associates have a "red" level. These tiered "impact levels" appear to relate to a position's level of responsibility.

unresolved information regarding the Beneficiary's job title, associated duties and placement within that structure undermines the Petitioner's claim that her position was at a managerial level.

Further, although the Petitioner uses the phrase "project planning, project management, and resource deployment management" to describe the essential function the Beneficiary managed, this phrase does not describe a function with sufficient specificity. While these activities may convey a general sense of the Beneficiary's broad job responsibilities, they do not represent a "clearly defined activity" in a management consulting organization, where presumably many of the company's consultants plan and manage projects, or workstreams within larger projects, for the company's clients. *Id.* In addition, as noted above, we cannot overlook the foreign entity's statement that the Beneficiary's position abroad was that of a "Business Analyst," as well as evidence in the record, including the Petitioner's own statements, indicating that the firm's business analysts are not typically assigned responsibility for "project planning, project management, and resource deployment management."

In addition, although fulfillment of client consulting engagements is undoubtedly at the core of the services provided by a management consulting firm, it is insufficient to state that each individual client engagement or project, or each discrete work stream or study within such a project, of which there are likely many, is an essential function of the organization. Based on the submitted evidence, many employees within the organization's consulting career path, despite having different titles and levels of authority, are deemed to be "management consultants" and have some mentoring or leadership responsibilities and a certain degree of independence over their own research activities or "work stream" within a given project or engagement. They cannot all be considered managers of the same project, engagement, or "function" at a senior level. As the Petitioner has not adequately defined the function the Beneficiary was claimed to manage, we need not address the other element of this criterion, which requires the Petitioner to establish that the function managed was essential, or core to the organization.

Finally, despite claiming that the Beneficiary functioned at a senior level within the organization, the Petitioner has not provided an organizational chart that depicts her placement within the foreign entity's management hierarchy. The submitted charts show only her position, the employees she was claimed to lead or supervise within a given engagement, and a job title for her direct supervisor (an engagement manager). As the Petitioner has not provided a more expansive organizational chart of the broader organization, or even a complete chart for a specific client engagement, we cannot determine the Beneficiary's level of seniority within the organization as a whole or within a client engagement. The Petitioner has not provided evidence demonstrating that the Beneficiary's position was at a senior level either within the organization or with respect to the function she is claimed to have managed. For these reasons, we cannot determine that the Beneficiary was employed abroad as a function manager.

### C. Personnel Manager

The Petitioner also claims that the Beneficiary was employed abroad in a managerial capacity based on her "management of professional-level subordinate employees." *See* section 101(a)(44)(A)(ii) of the Act. As discussed, the foreign entity indicates that the Beneficiary was employed abroad as a "Business Analyst," while the Petitioner indicates that she was a "Management Consultant" who performed the same duties she will perform in the offered "Associate" role in the United States. The

Petitioner has described the “Business Analyst (Management Consultant)” position as a non-supervisory role. If she was in fact employed in a “Business Analyst” position as stated by the foreign affiliate, it is more likely than not that she did not have supervisory responsibilities that would fall within the statutory definition of “management capacity.”

Nevertheless, we acknowledge that the Petitioner’s own statements have consistently indicated that the Beneficiary supervised professional staff within the scope of different client engagements. A beneficiary who is claimed to directly supervise other employees 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). Although the Petitioner states that the Beneficiary oversaw the work of teams of professional employees and had discretion over their work assignments, the Director emphasized that it did not provide sufficient evidence to demonstrate her authority over personnel actions. The Petitioner stated that she “was responsible for evaluating . . . team members on the engagement, which directly informs decisions relating to hiring, firing, year-end performance, and bonus/compensation.” We agree with the Director’s determination that these general statements alone are insufficient to establish that the Beneficiary held the authority over personnel actions required by 8 C.F.R. § 214.2(l)(1)(ii)(B)(3), particularly considering the unresolved inconsistencies in the record regarding her position title within the foreign entity.

To support its claim that the Beneficiary was employed abroad in a managerial capacity, the Petitioner must show that she performed the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. Due to the inconsistencies in the record, the Petitioner did not establish that the Beneficiary supervised and controlled the work of supervisory, professional, or managerial employees as required by section 101(a)(44)(A)(ii) of the Act. Further, the Petitioner has not established that the Beneficiary had the authority to hire, fire, or recommend those as well as other personnel actions as required by section 101(a)(44)(A)(iii) of the Act. Therefore, the record does not support a finding that the Beneficiary was employed in a managerial capacity based on her supervision of professional personnel. Because the Petitioner did not overcome the Director’s adverse determination with respect to the Beneficiary’s employment abroad in a managerial capacity, we will dismiss the appeal.

### III. RESERVED ISSUE

Although the Director also determined that the Petitioner did not establish that the Beneficiary would be employed in the United States in a managerial capacity, we will reserve this issue and will not address the Petitioner’s appellate arguments regarding the Beneficiary’s proposed U.S. employment. *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”).

For the reasons discussed, the Petitioner has not established that the Beneficiary was employed abroad in a managerial capacity. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.