



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

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

In Re: 19828632

Date: MAY 5, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a management consulting firm, seeks to temporarily employ the Beneficiary in the United States as a 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 the Beneficiary has been employed abroad in a qualifying 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 the Beneficiary has been employed abroad in a qualifying capacity (managerial, executive, or involving specialized knowledge). The Petitioner specifies that the Beneficiary's position abroad was managerial. Therefore, we restrict our analysis to whether the Beneficiary has been 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.

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 2018 to work for the Petitioner in L-1B nonimmigrant status. After studying for a master’s degree as an F-1 nonimmigrant student, the Beneficiary is currently in the United States working for the Petitioner in H-1B nonimmigrant status.

The Petitioner’s foreign affiliate employed the Beneficiary in Nigeria as a management consultant (also called a business analyst) from September 2016 to December 2017. The Petitioner asserts that this position meets the requirements of a managerial capacity. The Petitioner states:

As a Management Consultant, the beneficiary worked . . . conducting relevant research and performing technical analyses of information affecting the clients’ operations and industries; interpreting and summarizing data; and making recommendations to the consulting team. She provided technical support and research in performing basic industry and company analyses of performance trends. . . .

. . . The beneficiary’s responsibilities included project planning, project management, and resource deployment management. . . .

. . . [T]he beneficiary’s managerial job duties consisted of the following:

- Managed key, discrete parts of consulting projects and performance of all required analyses, research, computations and problem-solving syntheses;
- Developed and implemented analytical approach and project plans for work streams;

- Supervised the work of Junior Associates, Business Analysts and Research Analysts and developed external/internal data requests;
- Led and identified innovative data sources and data collection approaches to be used in more advanced data analyses;
- Managed collection of required client and industry data and performance of required analyses and syntheses of findings and the development of client-ready recommendations;
- Oversaw the syntheses of work completed by Junior Associates, Business Analysts and Research Analysts into a set of findings or recommendations and structured the overall final written and oral presentation to client;
- Organized and led client interviews on behalf of the engagement team;
- Oversaw writing of parts or chapters of client reports and other documentation based on own analyses as well as the analyses performed by Business Analysts and others; and
- Directed the development of data charts illustrating client performance trends and supporting the proposed recommendations.

The Director requested more details about the Beneficiary's employment abroad, stating that the original job description was "vague and general." In response, the Petitioner submitted the same list of responsibilities shown above, and asserted that the Beneficiary "exercised direct personnel management authority" by supervising subordinates; directing their assignments; providing guidance; defining objectives; and evaluating performance. The Petitioner also described some past projects and stated that the Beneficiary had managerial authority over those projects.

The Director denied the petition, concluding that the Petitioner had not shown that the Beneficiary was employed abroad in a qualifying capacity. The Director determined that the Petitioner had relied on "generalized summaries" of the Beneficiary's responsibilities, without supporting evidence.

On appeal, counsel for the Petitioner adds further claimed details about the Beneficiary's work abroad, stating, for instance, that she undertook "[o]ne-on-one coaching and overseeing of direct reports" and "[l]eading and managing daily team problem solving sessions." Assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel cites no corroborating evidence and does not claim to have direct, personal knowledge of the Beneficiary's activities in Nigeria.

The Petitioner contends that the Beneficiary worked both as a personnel manager, by supervising and controlling the work of professional subordinates, and as a function manager. The Petitioner has not shown that the Beneficiary was either a personnel manager or a function manager.

The Petitioner has not articulated a specific function that the Beneficiary will manage. 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 states that the Beneficiary "functioned at a senior level with respect to the essential client engagement workstreams under her purview." While client engagement overall might constitute an essential function, the record does not establish that each individual client engagement project is an essential function in its own right.

With respect to personnel management, the Petitioner asserts that the Beneficiary "supervised and controlled the work of professional employees," but the record is inconsistent about the positions supervised. The Petitioner states that "[t]hese professional employees included Junior Management Consultants, Research Analysts, Visual Aids/Graphics Specialists, and administrative personnel." But the same letter lists the subordinate positions as "Analytics Analysts," "Junior Management Consultants," "Research Analysts," and "Graphic/Information/Analytical Services Specialists." An organizational chart lists the subordinate titles as "Analytics Analysts," "Business Analysts," "Research Analysts," and "Visualization Experts."

On appeal, the Petitioner provides another different list of job titles under the Beneficiary's supervision, stating that "she oversaw the work of . . . Analytics Analysts, Research Analysts, Visualization Experts (Graphic/Information/Analytical Services Specialists), Data Scientists, Research Experts, Fellows (Management Consultants) and Fellow Interns, among others." The Petitioner did not attempt to resolve this discrepancy in the record with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

It appears, from the available evidence, that the Beneficiary was not so much a manager with formal authority over designated subordinates as a team leader, steering the team's work but also actively participating in its operational tasks. Supporting this conclusion, descriptions of example projects indicate that different staff members worked on each project, consistent with *ad hoc* teams rather than a formal hierarchical structure. This conclusion is also consistent with the Beneficiary's (interchangeable) titles of "management consultant" and "business analyst," and the Petitioner's initial assertion that the Beneficiary's own work entailed "conducting relevant research and performing technical analyses of information affecting the clients' operations and industries; interpreting and summarizing data; and making recommendations to the consulting team," as well as "provid[ing] technical support and research in performing basic industry and company analyses of performance trends."

Overall, based on the inconsistencies addressed above, the evidence provided does not consistently describe the Beneficiary's duties or level of authority, nor has the Petitioner identified the placement of the Beneficiary's position within the company's overall organizational hierarchy. These deficiencies support a conclusion that the Petitioner did not meet its burden to establish the Beneficiary's employment abroad in a managerial capacity.

For the above reasons, we conclude that the Petitioner has not established that the Beneficiary was employed abroad in a managerial capacity. We will therefore dismiss the appeal.

**ORDER:** The appeal is dismissed.