



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

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

In Re: 21562217

Date: SEP. 09, 2022

Appeal of California Service Center Decision

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

The Petitioner, describing itself as a distributor of automobile parts, seeks to temporarily employ the Beneficiary in the United States as a sales manager 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 Director of the California Service Center denied the petition, concluding the record did not establish that the Beneficiary was employed abroad in a managerial or executive capacity. The Director further determined that the Petitioner did not demonstrate the Beneficiary would be employed in a managerial or executive capacity in the United States. On appeal, the Petitioner contends that the Director overlooked and misapplied the submitted evidence. The Petitioner asserts that the provided evidence establishes that the Beneficiary qualified as a personnel manager abroad and that he would act in the same capacity in the United States.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal as the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. Since this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its appellate arguments regarding the Director's other basis for denying the petition. 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).

I. LEGAL FRAMEWORK

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. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The sole issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in a managerial capacity in the United States. The Petitioner does not claim on appeal 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.

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. *See* 8 C.F.R. § 214.2(l)(3)(ii).

A. Duties

To be eligible for the L-1A nonimmigrant visa classification as a 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 it was established to increase the foreign employer's presence in North America selling automobile parts it manufactures and to "improve delivery times...and provide faster and better sales support." The Petitioner indicated that the Beneficiary was being transferred from the foreign employer for this purpose, to act as a sales manager overseeing its sales and marketing department. The Petitioner submitted the following duties for the Beneficiary:

I. Training the sales team– 25% of her time:

- Give the sales team an understanding of what our factories are capable of, in terms of volume, services, and custom designed products,
- With this understanding, the sales team will be able to address specific client's product designs,
- Provide intimate knowledge of the foreign employer's specific vertically integrated capabilities and train the sales team staff to understand and present this to clients.

II. Managerial authority to hire and fire employees who are professionals– 50% of her time:

- Exercise the authority to hire and fire outsourced sales companies consisting of professionals in the automotive sales industry in the interests of the Petitioner's objectives,
- Work with regional managers of the outsourced sales/marketing companies to optimize the sales teams,
- Tasked with expanding our outsourced sales/marketing team to cover regions that are currently not covered, and
- Research and find sales/marketing companies best suited for regions that are not currently serviced.

III. An example of a daily operation which relies on her management decisions, Targeted Sales Campaign– 15% of her time:

- Execute a sales campaign to cement a relationship with Good Year belts and Continental, and
- Fulfill prospective client needs in the water pump and vacuum pump SKUs.

IV. High Level Bridge between Clients and our Factories– 10% of her time:

- Serve as a high-level bridge between clients and our factories,
- Directly relay client requirements and any special demands with our factories, and
- Act in a decision-making role to greatly reduce the length of time it takes to communicate and obtain approval of many details to complete the sale.

The Petitioner submitted a duty description for the Beneficiary that leaves substantial uncertainty as to whether she would devote a majority of her time to qualifying managerial duties. The Beneficiary's duty description includes several non-qualifying operational tasks indicating her involvement in the direct provision of goods and services to clients or her performance of these duties alongside her independent contractor colleagues. For instance, the duty description states the Beneficiary would be responsible for assisting the independent sales representatives in addressing specific client product design needs, coordinating with foreign employer engineers abroad to work with client engineers, and assisting in the design, modeling, revision, manufacturing, packaging, and delivery of client solutions. Likewise, the Petitioner indicated that the Beneficiary would personally research areas for expansion and identify independent contractors for certain sales areas, "work with clients from design to delivery," and "fulfill specific client's specific needs in water pump and vacuum SKUs." The

Petitioner further explained that the Beneficiary would be tasked with “directly relaying client requirements and any special demands with our factories.”

The discussed operational duties, included throughout the Beneficiary’s duty description, indicate that she would more likely be engaged in primarily performing duties directly related to the provision of goods and services to clients, rather than delegating these tasks to subordinates. Beyond these customer support and service-related duties, the Petitioner provides few duties that would not be considered managerial, and it does not sufficiently articulate how she would be primarily relieved of these tasks. Again, the Petitioner must prove that the Beneficiary will 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.

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. Here, the Petitioner does not credibly document what proportion of the Beneficiary’s duties would be managerial functions and what proportion would be non-qualifying. The Beneficiary’s duties include mostly administrative or operational tasks, but the Petitioner does not sufficiently quantify the time she would spend on these duties as opposed to qualifying managerial tasks. For this reason, we cannot determine whether the Beneficiary would primarily perform the duties of a manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). Although we do not expect the Petitioner to articulate and document every managerial task to be performed by the Beneficiary, it is reasonable to expect that it would provide sufficient detail and documentation to corroborate her primary performance of qualifying duties.

Even though the Beneficiary holds a position with a managerial title within the organization, the fact that he will manage or direct a portion of the business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section 101(a)(44)(A) of the Act. By statute, eligibility for this classification requires that the duties of a position be “primarily” managerial in nature. *Id.* The Beneficiary may exercise discretion over some of the Petitioner’s day-to-day operations and possess some requisite level of authority with respect to discretionary decision-making; however, the position descriptions alone are insufficient to establish that her actual duties would be primarily managerial in nature.

B. Staffing

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 the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

On appeal, the Petitioner emphasizes that the Beneficiary would hold the authority to hire and fire subordinates; specifically, independent contractor sales representatives it engages to sell and distribute the foreign employer’s automobile parts in the United States. 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. 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. § 214.2(l)(1)(ii)(B)(3).

The Petitioner submitted an organizational chart reflecting that the Beneficiary would oversee the "outsourced sales/marketing" department shown to include five regional managers covering the following territories: 1) Puerto Rico, Guatemala, Guam, and the Bahamas, 2) [redacted] and [redacted], 3) [redacted] Texas, 4) [redacted] Florida, and 5) Venezuela and Panama. The regional managers were reflected on the organizational chart as working for independent companies and were not offered as employees of the Petitioner.

The Petitioner does not specifically articulate how the Beneficiary's employment would qualify as a managerial position as defined by law, whether as a personnel or function manager. Further, with only first-line subordinates, the Beneficiary could not qualify as a personnel manager based on her supervision of subordinate managers or supervisors, since her subordinates are not shown to have their own subordinates despite their "regional manager" titles. The Petitioner provides no explanation as to how the Beneficiary's subordinates could be classified as supervisors or managers.

In the alternative, the Petitioner does not substantiate that the Beneficiary had personnel authority over subordinate professionals. To determine whether a beneficiary managed professional employees, we must evaluate whether the subordinate positions required a baccalaureate degree as a minimum for entry into the field of endeavor. *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"). Section 101(a)(32) of the Act, states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." Therefore, we must focus on the level of education required by the position, rather than the degree held by the subordinate employee. 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.

Here, the Petitioner provided no evidence to establish that the Beneficiary's independent contractor subordinates hold bachelor's degrees. The Petitioner only provided a generic duty description applying to all the "outsourced companies" indicating that they would be tasked with conducting market research and demand analysis, attending trainings hosted by the sales manager, visiting and communicating with customers, and following up on part orders. The duty description provided for the Beneficiary's subordinates indicates that they would perform the duties of sales representatives, and there is no indication that a bachelor's degree would be required to perform these tasks, nor has the Petitioner articulated that such a degree is required to these positions.

Furthermore, the Petitioner provided a 2020 IRS Form 1120, U.S. Corporation Income Tax Return reflecting that it paid only \$16,100 in commissions and \$10,464 to "outside services" during that year, leaving substantial uncertainty as to the level at which it engages independent sales contractors and whether they could be considered subordinates to the Beneficiary.¹ On appeal, the Petitioner submits

¹ The petition was filed on November 30, 2021.

two checks in the amount of \$489.74 and \$581.34 paid to two individuals for “commissions.” However, neither of these individuals are listed in its organizational chart nor asserted as subordinates of the Beneficiary. The Petitioner also provides an asserted commission check paid to its claimed regional sales manager covering [] and [] in the amount of \$1120.81 and dated in January 2022. A single check paid to one of the Petitioner’s claimed independent contractor sales representatives in a nominal amount after the date the petition was filed does not sufficiently establish that the Beneficiary would oversee several professional subordinates on a fulltime basis. The Petitioner otherwise provides little evidence to substantiate regular payments to its claimed regional sales managers or to demonstrate that the Beneficiary would have personnel authority over these independent contractors. 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). 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). Therefore, the Petitioner has not established that the Beneficiary would qualify as a personnel manager based on her supervision of subordinate supervisory, professional, or managerial employees.

As noted, the statutory definition of “managerial capacity” also allows for “function managers.” See section 101(a)(44)(A) of the Act. 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. 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).

However, the Petitioner does not specifically articulate how the Beneficiary would qualify as a function manager. The Petitioner does not clearly describe and define the Beneficiary’s function, nor does it indicate how it would be essential. In addition, as we have discussed, the Beneficiary’s duty description included numerous non-qualifying operational duties, such as her assisting independent sales representatives in addressing specific client product design needs, coordinating with foreign employer engineers abroad to work with client engineers, assisting in the design, modeling, revision, manufacturing, packaging, and delivery of client solutions, amongst others. As such, the Petitioner has not sufficiently demonstrated that the Beneficiary would be primarily responsible for managing a function, assuming this function had been clearly defined, rather than performing it. Further, as stated, the Petitioner provides little detail and supporting documentation to substantiate that the Beneficiary would have a function to manage; namely, an asserted team of regional sales managers devoted to a certain essential function. Therefore, the Petitioner has not established that the Beneficiary would be employed as a function manager.

For the foregoing reasons, the evidence reflects that the Director was correct in denying the petition as the Petitioner did not sufficiently establish that the Beneficiary would be employed in a managerial capacity in the United States.

ORDER: The appeal is dismissed.