



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

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

In Re: 22648576

Date: APR. 4, 2023

Appeal of Texas Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a management consulting firm, seeks to employ the Beneficiary temporarily as its “Associate (Management Consultant)” under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity. Regarding the Beneficiary’s employment abroad, the Director reasoned that because the Beneficiary held two positions – first as “management consultant” followed by “associated (management consultant)” – in the relevant three-year period that preceded this petition’s filing, the Petitioner must therefore establish that both positions were in a managerial or executive capacity.¹ The Director noted, however, that the Petitioner did not address each position individually and determined that the record lacked sufficient evidence establishing that the Beneficiary managed an essential function and occupied a senior-level position with respect to an essential function, as required of a function manager, or that he had the authority to hire, fire, or recommend such actions, as required of a personnel manager.² See section 101(a)(44)(A)(ii)-(iii) of the Act. 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 because the Petitioner did not establish that the Beneficiary was employed abroad was in a managerial capacity. Because the identified basis for denial is dispositive of the

¹ The petition’s date of filing – in this case was July 30, 2021 – is the proper reference point for determining the three-year period during which the foreign employment must have occurred. In this case that three-year period is between July 30, 2018, and July 30, 2021. Although the Beneficiary’s employment abroad commenced on October 3, 2016, only the employment that falls within the relevant three-year period is relevant for the purpose of determining whether the Beneficiary meets the foreign employment requirement. See 8 C.F.R. § 214.2(l)(3)(iii). In this instance, because the Beneficiary’s employment abroad ceased on August 2, 2019, the Petitioner must establish that the Beneficiary’s employment from July 30, 2018, until July 30, 2019, was in a managerial or executive capacity.

² The Petitioner claims that the Beneficiary was employed in a managerial capacity and does not claim that the foreign employment was in an executive capacity.

Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Beneficiary's proposed employment in the United States. *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).

We adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

On appeal, the Petitioner asserts that the Beneficiary's position abroad involved responsibilities that required him to manage both a function and a staff of professionals. *See Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017) (listing the five-prong criteria for an essential function). However, the Petitioner refers to the Beneficiary's foreign employment by the generic position title of "Management Consultant," even though two of the three organizational charts submitted in response to the request for evidence depict the Beneficiary as "Associate (Management Consultant)," which is shown as subordinate to "Engagement Manager (Management Consultant)." Because the Petitioner makes no distinction between the two positions the Beneficiary held during the relevant three-year period, it has not established that both positions were in a managerial capacity.

The Petitioner also highlights the Beneficiary's "independent autonomy and discretion" over each assigned project, pointing to the Beneficiary's role as a "senior team leader" who was charged with overseeing four to nine professionals in subordinate positions, such as junior management consultant, visualization expert, designer, and research and analytics analysts. However, the Petitioner does not establish that the individual client engagements over which the Beneficiary is claimed to have had autonomy and discretion were tantamount to an essential function, either individually or collectively; nor does the Petitioner provide an understanding of the organizational placement of the Beneficiary's individual client projects within the broader scope of the organization. The previously submitted organizational charts depicted staffing hierarchies of individual projects the Beneficiary previously worked on, but such charts offer only a limited view of the team that comprised a specific client project, and they provide no contextual information about the broader organizational hierarchy to show the respective placements of the Beneficiary's specific projects within that hierarchy.

Although the record indicates that the foreign organization employed thousands of employees and serviced many clients, the Petitioner did not indicate that there was a hierarchy among those clients or demonstrate that the Beneficiary's projects, which were staffed with four to nine subordinates, were particularly critical to the organization and would have been deemed "essential" within the organization, or a department or subdivision of the organization. Accordingly, the Petitioner did not establish that the Beneficiary was employed abroad in a managerial capacity.

ORDER: The appeal is dismissed.