



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

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

In Re: 27831538

Date: AUG. 10, 2023

Appeal of California Service Center Decision

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

The Petitioner, a cruise company, seeks to continue¹ its employment of the Beneficiary temporarily as its "Fleet Supervisor, [REDACTED]" 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 California Service Center denied the petition, concluding that the record did not establish that the Beneficiary attained the required one year of employment abroad or that he was employed abroad and would be employed in the United States in a managerial capacity.² 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 the Beneficiary's position abroad was in a managerial capacity. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether the Beneficiary met the remaining requirements pertaining to his foreign employment and his proposed position 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).

¹ The Beneficiary initially entered the United States to work for the Petitioner under an approved blanket L-1 petition. We are not bound to approve a subsequent petition where eligibility has not been demonstrated strictly because of a prior approval and make our determination of a petitioner's eligibility based on the evidence of record on a case-by-case basis. See 2 *USCIS Policy Manual* A.4(B)(1), <https://www.uscis.gov/policymanual>.

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.

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity, or in a position requiring specialized knowledge for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(1). 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. 8 C.F.R. § 214.2(l)(3)(ii).

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term “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 supervisory, 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. 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.

II. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

A. Function Manager

The primary issue to be addressed in this decision is whether the Petitioner provided sufficient evidence to support its claim that the Beneficiary's position abroad as assistant cruise director (ACD) was in a managerial capacity.³

To be eligible for immigrant visa classification as a multinational manager, the Petitioner must show that the Beneficiary performed 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 Beneficiary's proposed position meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

³ We note that the record contains inconsistencies concerning the Beneficiary's employment history. We will list those inconsistencies later in this decision, following a comprehensive analysis addressing the Petitioner's claim that the Beneficiary's position abroad as ACD was in a managerial capacity.

If the Petitioner establishes that the position in question meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary *primarily* performed managerial duties, as opposed to ordinary operational activities alongside other employees within the foreign entity. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's duties are primarily managerial, we consider that beneficiary's job duties, the employer'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.

In this matter, the Petitioner referred to the Beneficiary's role abroad as that of a function manager, claiming that the Beneficiary managed the "onboard Entertainment Operations function and associated personnel" and underscoring the entertainment department's critical role as an essential function "for the entirety of the cruise line industry." As noted above, the Petitioner would need to show that the Beneficiary, "manages an essential function within the organization, or a department or subdivision of the organization," and that "if no other employee is directly supervised, [the Beneficiary] functions at a senior level within the organizational hierarchy or with respect to the function managed." 8 U.S.C. § 1101(a)(44)(A)(ii)-(iii). The Petitioner stated that it owns 104 ships and has over 120,000 employees worldwide and aboard its ships, pointing out that the Beneficiary had been working for its organization for over a decade and that in his position as ACD he learned to improve guest experiences and streamline entertainment productions onboard individual ships that hosted as many as 3,100 guests at a time. In other words, the Petitioner highlighted the Beneficiary's role "onboard each ship he was assigned to," thereby indicating that his authority as ACD applied exclusively to the entertainment staff and activities onboard the individual ship to which he was assigned and did not extend more broadly to the entertainment function organization wide. Nothing the Petitioner submitted indicates that his role applied more broadly to direct the entertainment function for a larger segment of ships, rather than an individual ship.

The record also contains an organizational chart illustrating the staffing hierarchy of the "entertainment operations – shipboard" division, which is comprised of seven organizational tiers. The captain is depicted at the top of the hierarchy, followed by the hotel general manager, an associate hotel general manager, an entertainment director, a cruise director, five ACDs alongside a production manager, a company performance manager, a youth activity manager, and a music manager, and lastly, two junior ACDs at the bottom of the hierarchy. In other words, the Beneficiary, as one of five ACDs, was subordinate to five levels of management within the entertainment operations hierarchy. Given that the Beneficiary occupied a position that was second from the bottom of that division's reporting structure, the evidence does not demonstrate that he can be deemed to have primarily managed a department, subdivision, function, or component of the organization pursuant to section 101(a)(44)(A)(i) of the Act, nor can we conclude that he managed an essential function within the organization, or within a department or subdivision of the organization pursuant to section 101(a)(44)(A)(ii) of the Act.

Further, the record contains the Beneficiary's job duty breakdown, which lists various customer service and operational job duties that do not qualify as managerial. Namely, the breakdown shows that 60% of the Beneficiary's time as an ACD was allocated to customer satisfaction and product

delivery and involved duties such as hosting guest events and activities, engaging in guest interaction “through organized meet & greets as well as spontaneous walk arounds,” “facilitating guest experience and revenue announcements [and] relaying any safety information” per ship’s command, conveying the importance of guest satisfaction “to every guest” by becoming “a trusted face” and “sounding board to all guests,” and creating and managing training for the entertainment staff.

The job duty breakdown shows that another 10% of the Beneficiary’s time was allocated to communication and safety and compliance, which include providing entertainment to the guests “in a likeable and professional manner,” hosting “all significant entertainment and other revenue/non-revenue events,” managing “all performances,” promoting “all revenue areas without interfering with guests’ enjoyment,” and creating “a memorable and enjoyable experience for each guest.”

We note that an employee who “primarily” performs the tasks necessary to produce a product or to provide services is not considered to be “primarily” employed in a managerial or executive capacity. *See, e.g.,* sections 101(a)(44)(A) and (B) of the Act (requiring that one “primarily” perform the enumerated managerial or executive duties); *Matter of Church Scientology Int’l*, 19 I&N Dec. 593, 604 (Comm’r 1988).

Here, despite serving as a key member of the ship’s staff, the Beneficiary’s job duties primarily involved serving the ship’s guests, conveying the ship’s safety information, and training the ship’s entertainment staff. And because the Beneficiary’s position involved primarily performing, rather than managing an essential function, it was not indicative of someone who occupied a senior placement within the organization or with respect to a function, nor do the Beneficiary’s job duties indicate that he was responsible for managing an essential function. *See* sections 101(a)(44)(A)(i)-(ii) of the Act; *see also Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017) (stating that a function manager must primarily *manage*, as opposed to *perform*, the underlying duties of the essential function and they must occupy a position that is at a senior level within the organizational hierarchy or with respect to the function).

B. Foreign Employment History

Lastly, we note that there are numerous inconsistencies in the record regarding the Beneficiary’s employment history with the petitioning organization, particularly concerning the positions he held during his employment abroad and which of those positions should serve as the basis for claiming that the Beneficiary satisfied the foreign employment requirement. *See* 8 C.F.R. § 214.2(l)(1).

In a supporting cover letter, the Petitioner discussed the Beneficiary’s employment abroad under the heading titled, “The Position Abroad and [the Beneficiary]’s Qualifications.” The Petitioner stated that the Beneficiary commenced his employment with its organization abroad in 2010, listing his first position as that of bartender, a position he is said to have held from September 2010 until April 2013. The Beneficiary’s position as ACD was listed next, from June 2013 until April 2018, followed by “Fleet Supervisor, Entertainment Experience Rollouts,” which he is claimed to have held from June 2018 until February 2019, and ending with the most recent position as “Fleet Supervisor, [redacted] [redacted] from 2019 until the present. Although the Petitioner referred to these positions collectively as “the managerial positions abroad,” it discussed only the two most recently held positions, briefly listing the Beneficiary’s respective responsibilities in each one and identifying the

latter as “his current managerial position.” Confusingly, the cover letter contains a job duty breakdown for “Fleet Corporate Executive Chef,” a position that the Petitioner had not previously mentioned.

Furthermore, the record includes the Beneficiary’s résumé, which contains yet another iteration of the Beneficiary’s employment history. Although the résumé also shows that the Beneficiary held positions as a bartender, an ADC, and two fleet supervisory positions in the course of his employment with the petitioning organization, it shows that the Beneficiary held the position of the “Fleet Supervisor, Entertainment Experience Rollouts” from 2018 until 2021, which is inconsistent with dates listed in the Petitioner’s initial supporting statement. Likewise, while the résumé states that the Beneficiary assumed the position of “Fleet Supervisor, [REDACTED]” in 2021, the initial support letter states that the Beneficiary assumed that position two years earlier – in 2019.

In a response to the Director’s request for evidence (RFE), the Petitioner sought to “clarify” the Beneficiary’s employment history, claiming that it “inadvertently used the [Beneficiary’s] intermittent L-1 position instead of the Assistant Cruise Director role [as] the qualifying employment abroad.” The Petitioner did not, however, explain its initial reference to the Fleet Corporate Executive Chef position for which it also provided a job duty breakdown. Although the RFE response includes an employment verification letter on the petitioning organization’s letterhead, that letter contains yet another iteration of the Beneficiary’s employment history with this organization. Namely, the employment letter shows that the Beneficiary held the position of Junior ACD from June to November 2013 and that he also held a “Corp Staff” position from June 2018 until April 2019 and again from June until August 2019; yet, neither the Beneficiary nor the Petitioner listed either of these positions in their respective accounts of the Beneficiary’s employment history. The employment letter includes no information as to what the “Corp Staff” position entailed, nor does it list the Fleet Supervisor, [REDACTED] position, which was included in the Beneficiary’s résumé, the Petitioner’s initial support letter, and in the RFE response statement. Without independent, objective evidence resolving these discrepancies concerning the Beneficiary’s employment abroad, we are unable to ascertain precisely which positions the Beneficiary held and of those positions, which is the one he held during the relevant three-year period that preceded his admission into the United States. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Although our analysis is based on the Petitioner’s claim that the Beneficiary’s position as an ACD is the basis for the function manager claim in this matter, the Petitioner must, in any future proceedings where the Beneficiary’s foreign employment is material to eligibility, address and resolve the discrepancies listed above.

III. CONCLUSION

For the reasons previously discussed, the Petitioner did not establish that the Beneficiary’s position abroad as an ACD was in a managerial capacity as defined in the statute governing this classification.

ORDER: The appeal is dismissed.