



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

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

In Re: 25691170

Date: JAN. 30, 2023

Appeal of California Service Center Decision

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

The Petitioner, a subscription-based service provider for multimedia content, seeks to temporarily employ the Beneficiary as a Technical IT Lead 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 (1) the Beneficiary had at least one continuous year of full-time employment abroad with a qualifying entity during the relevant three-year period preceding the petition's filing; (2) the Beneficiary was employed abroad in a managerial capacity; and (3) the Beneficiary will be employed in the United States in a managerial capacity. 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.

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). The prospective U.S. employer must also be a qualifying organization that seeks to employ a beneficiary in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(i).

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The Petitioner claims that the Beneficiary has been continuously working abroad in Ukraine for its organization in the position of technical lead since November of 2019, and that he will continue to work in that same position in the United States. In denying the petition, the Director determined that

the Petitioner did not establish that the Beneficiary would be employed in a managerial capacity in the United States. The Petitioner did not claim, in the alternative, that it would employ the Beneficiary in an executive capacity as defined at section 101(a)(44)(B) of the Act.

The term “managerial capacity” means work “primarily” involving:

- Managing an organization or its department, subdivision, function, or component;
- Supervising and controlling the work of other supervisory, professional, or managerial employees, or managing an essential function within the organization or its department or subdivision;
- Having authority to hire and fire or recommend those and other personnel actions if directly supervising another employee or employees, or functioning at a senior level within the organizational hierarchy or regarding the managed function; and
- Exercising discretion over the daily operations of the authorized activity or function.

Section 101(a)(44)(A) of the Act.

As the statutory definition indicates, an L-1A manager may manage either people or an “essential function” within an organization. Section 101(a)(44)(A)(ii) of the Act. Although the Petitioner claims that the Beneficiary’s position will involve supervising subordinate employees, it also claims that he will be responsible for managing the Petitioner’s software platforms and technical infrastructure. We will therefore evaluate the managerial nature of his proposed role as both a personnel manager and a function manager.

A. Duties

To be eligible for 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 initially described the Beneficiary’s proposed U.S. position as follows:

As our Technical IT lead working out of the United States, [the Beneficiary] will remain responsible for managing a team of IT professionals in [the Petitioner's] back-end and front-end software development functions. This includes continuing to provide and oversee internal employees with timing and complexity of tasks concerns per assignment, as well as providing an IT road map of the technologies to be used and/or developed per project. He shall continue to further develops strategies to deliver efficient, scalable and maintainable long-term solutions for [the Petitioner's] software development functions and he will continue to act as the principal point of contact for internal personnel and outside stakeholders on calls and other communication channels to provide information regarding possible software development ideations and of implementations, as well as on calls with senior executives to discuss the weekly development plans of his team.

The Petitioner further indicated that the Beneficiary will continue to supervise a team of five IT professionals as well as the Petitioner's new hires, noting that the Beneficiary will be responsible for interviewing, hiring, mentoring, and training these upcoming hires for various technical IT positions.

The Petitioner also provided the following approximate breakdown of the percentage of time the Beneficiary would devote to each of his duties in the proposed position:

- Working directly with [the Petitioner's] CEO and other executives to make key strategic decisions that affect the overall profitability and functionality of the company and its software and IT-based applications and user acceptance approval (10%);
- Developing business and IT strategies to deliver efficient, scalable and maintainable long-term software development solutions (5%);
- Ensuring development plans and organizational alignment of the teams, including all integrations and transitions with [the parent company's] IT infrastructure, platform, and software applications (60%);
- Ensuring fast-paced product release cycle to shorten and improve the feedback loop (25%).

In a request for evidence (RFE), the Director noted that the submitted documentation was insufficient to establish that the Beneficiary would be employed in a managerial capacity. The Director observed that the Beneficiary's duties did not appear consistent to those of a manager, and suggested that the Beneficiary would be performing non-qualifying duties on a day-to-day basis. The Director also noted that the Petitioner's staffing, as reflected in the organization chart, did not sufficiently demonstrate how the Petitioner's staff members would support its operation routines and support the Beneficiary in a managerial position. Consequently, the Director instructed the Petitioner to provide evidence to support its assertion that it would employ the Beneficiary in a capacity that was primarily managerial.

In response, the Petitioner asserted that the Beneficiary would continue to perform the same analogous duties to those performed in his position abroad, noting that his transfer to the United States "will allow for both a continuity and consistency in [its] software development including [its] front-end,

back-end, and quality assurance software operations with the intent that this function and department will continue to transition and grow in the future within the United States.” The Petitioner further noted that the Beneficiary’s job duties would be performed more efficiently by being closer to managers and executive who work out of the Petitioner’s Florida office, and emphasized that his relocation to the United States would allow him to assist in the development and training of its newly hired IT professionals.

The Petitioner also amended the original job duty breakdown as follows:

- Working directly with the [Petitioner’s] CEO and other executives/managers to make key strategic decisions that affect the overall profitability and functionality of the company and its software and IT-based applications and user acceptance approval (10%);
- Working directly with the petitioners CEO and other senior managers to make key strategic decisions related to the offering and mechanisms for staff performance, staff implementation and staff hires, promotions, evaluations, terminations, etc. (10%);
- Developing business and IT strategies to deliver efficient, scalable and maintainable long-term product development and software development solutions (5%);
- Preparing and optimizing budgets to ensure timely execution and quality products (5%);
- Ensuring development plans and organizational alignment of the teams to carry out business and IT strategies (10%);
- Supervising and managing all integrations and transitions with [the parent company’s] IT infrastructure, platform, and software applications by using his authority to direct the day-to-day job duties and responsibilities of his subordinate team members to allow [the Beneficiary] to perform his management level duties while his support staff relieves him from performing operational and administrative duties (20%);
- Building and improving department efficiency and effectiveness utilizing regular employee meetings and performance evaluations (15%);
- Ensuring the fast-paced product release cycle to shorten and improve the feedback loop by using his authority to direct the day-to-day job duties and responsibilities of his group under management (25%).

Upon review, we agree with the Director’s determination that the job descriptions do not provide sufficient insight into the nature of the Beneficiary’s day-to-day duties. For example, the Petitioner claims that the Beneficiary will supervise and manage all integrations and transitions within the parent company’s IT structure, ensure development plans and the organizational alignment of teams to carry out the company’s strategies, and make key strategic decisions. These identified responsibilities appear to overlap and the description does not identify the specific tasks that will occupy the

Beneficiary's time. Moreover, while the Petitioner claims that the Beneficiary will use his authority to direct the day-to-day job duties and responsibilities of his subordinate team members, and claims that this will allow the Beneficiary to perform his management-level duties, no further details regarding the actual day-to-day duties to be performed, and their manner of delegation, was provided. Reciting the Beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the Beneficiary's daily job duties. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The Petitioner has not provided sufficient detail or explanation of the Beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *See id.*

B. Personnel Manager

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Section 101(a)(44)(A)(ii) of the Act. 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 stated that the Beneficiary will serve as a personnel manager, claiming that "he shall continue to manage his IT product development team within [the Petitioner's organization], he will supervise and control the work of his team, he will continue to have the authorization to recommend personnel actions and he shall still exercise day-to-day control over his group's operations as well as his team's activities." In this matter, however, the Petitioner has not established that the Beneficiary is primarily a personnel manager.

The Petitioner indicated that the Beneficiary will oversee a team of five subordinate employees as well as oversee the hiring and training of new IT employees upon his transfer to the U.S. position. The Petitioner did not initially provide a breakdown of the percentage of time the Beneficiary would devote to personnel management, and its response to the RFE only vaguely stated that 20% of his time would be devoted to directing the day-to-day job duties and responsibilities of his subordinate team members to allow him to perform his managerial duties while his subordinates "relieve him from performing operational and administrative duties." Although the Petitioner indicates that the Beneficiary will also engage in remote telephone call and video conference calls with his staff and conduct performance evaluations, no further details regarding the level of interaction with and supervision of staff was provided. Consequently, absent a clear breakdown of his supervisory duties and the percentage of time he would devote to each duty, we are unable to determine whether he will primarily supervise others in the capacity of a personnel manager.

Moreover, as noted by the Director, the Beneficiary's subordinate employees perform services pursuant to consulting agreements, copies of which were submitted in support of the petition. According to these agreements, each of the Beneficiary's subordinate employees perform services remotely for the Petitioner as independent contractors, and each individual is solely responsible for determining when and how their services are performed. Based on these documents, the extent of the Beneficiary's authority over these individuals, if any, is unclear.

Nevertheless, even if the Petitioner established that the Beneficiary's duties are primarily supervisory in nature, which it did not, it has not demonstrated that he would direct subordinate supervisory, professional, or managerial employees. The Petitioner's organizational chart, which shows a two-tiered structure within the product development department, does not support a finding that any of the Beneficiary's subordinates supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. Nor does the Petitioner assert that any of the Beneficiary's subordinates hold managerial or supervisory positions.

The Petitioner indicates that the Beneficiary's subordinates hold professional positions. In evaluating whether a beneficiary manages professional employees, we must evaluate whether the subordinate positions require 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 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. The record indicates that the Beneficiary oversees a back-end developer, a front-end developer, a back-end engineer, and two quality assurance specialists. The Petitioner claimed that the back-end developer holds a master's degree in economics, the front-end developer has an unspecified degree in the field of computer science, and the remaining three employees possess either specialist degrees or a form of higher education. In addition to not corroborating the educational backgrounds of these individuals with documentary evidence, the Petitioner has not shown that any of these positions require a bachelor's degree in a specific relevant area of study. We cannot determine based on the information submitted whether a bachelor's degree is required for any of the subordinate positions in order for them to perform the "operational and administrative duties" of the product development department.

C. Function Manager

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. 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).

The Petitioner claims that the Beneficiary will oversee its technology platform through his leadership position in its product development department. Regarding the Beneficiary's role as a function manager, the Petitioner stated that he would remain responsible for managing the Petitioner's back-end and front-end software development functions, including the following:

- Providing and overseeing employees with timing and complexity of tasks concerns per assignment, as well as providing an IT road map of the technologies to be used and or developed per project;
- Developing strategies to deliver efficient, scalable and maintainable long-term solutions for locals software development functions, and
- Acting as the principal point of contact for internal personnel and outside stakeholders on calls and other communication channels to provide information regarding possible software development ideations and of implementations, as well as on actively participating calls with senior executives to discuss the weekly development plans of his team.

The Petitioner also claimed that the Beneficiary would remain responsible for managing the continued transition and integration of its platform and software into the parent company. Specifically, the Petitioner stated:

The functions that [the Beneficiary] will continue to oversee shall remain essential to [the Petitioner] as they provide the fundamental elements of [the Petitioner's] technology platform, which is at the core of [the Petitioner's] scope of business which includes research, product offerings, and operations tools such as management utilities, reporting, and billing. [The Beneficiary] will continue to be responsible for delivering production software as defined by the product management team. As such, in his sole discretion, he still will be tasked (through his subordinate team members on a daily basis) to meet these deliverables and he will remain solely responsible for the quality of the code delivered and meeting the agreed upon schedules.

The Petitioner did not, however, establish that the Beneficiary's position would be at a senior level either within the organization or with respect to the function. It also did not establish that the Beneficiary would primarily manage, as opposed to perform, the function. *See id.*

With regard to the Beneficiary's placement within the Petitioner's management hierarchy, the Petitioner provided an organizational chart depicting the staffing structure of the product development department. According to the chart, the product development department, which reports directly to the Petitioner's president, has four subdivisions, and each subdivision is overseen by a product manager, a technical lead (the Beneficiary's position), a solutions architect, and a mobile team lead, respectively. Although the Petitioner asserts that the Beneficiary is primarily responsible for overseeing the Petitioner's technology platform, the Petitioner provides no explanation with regard to the role of the other three individuals in the product development department that appear to hold supervisory or managerial roles on the same level as the Beneficiary. There is likewise no discussion of the roles and contributions of the employees in the other subdivisions, which include the three

supervisory employees as well as flutter developers and a designer. While the organizational chart depicts five subordinate employees at an organizational tier directly below the Beneficiary, the Petitioner did not provide evidence to support the claim that the Beneficiary would occupy a position that will be senior with respect to all the staff within the product development department.

Further, although the Petitioner provided the Beneficiary's job duty breakdown highlighting his discretionary authority over certain aspects of the oversight of the Petitioner's technology platform, including software development and product development, the job description is primarily comprised of vague statements that do not disclose the Beneficiary's actual tasks in the routine course of the product development department's daily or weekly activities. For instance, the Petitioner claimed that the Beneficiary will spend 25% of his time "ensuring the fast-paced product release cycle to shorten and improve the feedback loop by using his authority to direct the day-to-day job duties and responsibilities of his group under management." However, it is unclear what actual tasks the Beneficiary would perform on a daily or weekly basis or that he would primarily perform tasks that are indicative of overseeing the Petitioner's technology platform. Moreover, as noted above, the Beneficiary's role, and the role of his subordinates, comprise only one subdivision of the product development department, and the record contains insufficient evidence to demonstrate how the employees of the other subdivisions within the department contribute to the performance of non-qualifying duties, if at all, to relieve the Beneficiary from performing such tasks. We rely on specific information about a beneficiary's actual daily tasks as an important indication of whether their duties are primarily managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1103, *aff'd*, 905 F.2d 41. Here, given the generalized overview of the Beneficiary's job duties as a function manager, it is unclear precisely how the Beneficiary would oversee the Petitioner's technology platform with the assistance of remotely based subordinate employees and other onsite employees within the product development department whose specific roles are not sufficiently defined.

The Petitioner also stated that the Beneficiary will spend 10% of his time working with its CEO and other managers to "make key strategic decisions related to the offering and mechanisms for staff performance, staff implementation and staff hires, promotions, evaluations, [and] terminations." However, the Petitioner did not establish that recruiting, hiring, and training IT personnel is consistent with overseeing the Petitioner's technology platform. The Petitioner also stated that the Beneficiary will develop business and IT strategies "to deliver efficient, scalable and maintainable long-term product development and software development solutions" and will continue to be responsible for delivering production software as defined by the product development team, meeting deliverables, and "will remain solely responsible for the quality of the code delivered." It is not clear that delivering software according to deliverables, and ensuring and verifying the quality of the products developed, are consistent with overseeing the Petitioner's technology platform, as opposed to performing the duties of that function. Moreover, the assertion by the Petitioner that the Beneficiary will deliver software "as defined by the product development team" implies that the Beneficiary will receive direction from others within the product development department, thus raising questions regarding the extent to which he oversees, rather than performs essential duties required to manage and maintain the Petitioner's technology platform. While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the Beneficiary as long as those tasks are not the majority of the Beneficiary's duties, the Petitioner still has the burden of establishing that the Beneficiary is "primarily" performing managerial duties. Section 101(a)(44) of the Act. 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.*, section 101(a)(44)(A) of the Act (requiring that one “primarily” perform the enumerated managerial duties); *Matter of Church Scientology Int’l*, 19 I&N Dec. 593, 604 (Comm’r 1988).

On appeal, the Petitioner asserts that the Director failed to apply the preponderance of the evidence standard and contends that it is clear that the Beneficiary will manage “an essential and extremely profitable function of [the Petitioner], namely its technical IT platform and infrastructure through the oversight of [the petitioner’s] product development group. . . .” However, the Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. As discussed above, the Petitioner did not demonstrate that the Beneficiary’s role will be senior with respect to the function he is claimed to manage. Furthermore, despite the Petitioner’s assertions to the contrary on appeal, the job descriptions the Petitioner offered contain deficiencies and generalities that preclude a meaningful assessment of the Beneficiary’s actual tasks in the course of the Petitioner’s daily operation.

In light of the deficiencies described above, we cannot conclude that the Beneficiary will primarily allocate his time to performing managerial job duties.

III. RESERVED ISSUES

As noted, the Director denied the petition on multiple grounds and further concluded that the record did not establish that the Beneficiary had one continuous year of employment abroad with a qualifying entity during the relevant three-year period that preceded the filing of the petition and that his claimed foreign employment was in a managerial or executive capacity. Since the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner’s appellate arguments regarding the remaining grounds for denial. *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”).

IV. CONCLUSION

The Petitioner has not met its burden to establish that the Beneficiary will be employed in a primarily managerial capacity in the United States. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.