



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

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

In Re: 24216333

Date: MAR. 21, 2023

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 as an associate (management consultant) under the L-1A nonimmigrant classification for intracompany transferees. *See* 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 that the Beneficiary was employed abroad, and will be employed in the United States, in a qualifying 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 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 Petitioner asserts that the Beneficiary has been and will be employed in a managerial capacity, rather than an executive 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 statutory definition of “managerial capacity” allows for both “personnel managers,” with authority over supervisory, professional, or managerial employees, and “function managers,” with authority over an essential function within the organization. *See* sections 101(a)(44)(A)(i) and (ii) of the Act. At various times in this proceeding, the Petitioner has asserted that the Beneficiary would be both a function manager and a personnel manager.

In the denial notice, the Director stated that the Petitioner had not established that it would employ the Beneficiary as a personnel manager or as a function manager. We agree with the Director that the Petitioner has not established that the Beneficiary’s intended position in the United States would meet each of the requirements for either type of managerial capacity.

A. Personnel Manager

Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Personnel managers must have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. Sections 101(a)(44)(A)(ii)-(iii) of the Act; 8 C.F.R. §§ 214.2(l)(1)(ii)(B)(2)-(3).

The Petitioner stated:

[T]he beneficiary will manage workstreams for client engagements, drawing on his experience with [the Petitioner’s affiliate] abroad, to ensure that the team’s deliverables align with the client’s objectives. The beneficiary’s responsibilities will include project planning, project management, and resource deployment management. In addition, he

will have supervisory authority over a team of . . . professionals supporting each study, including Business Analysts (Management Consultants), Research Analysts, and other members of the consulting team.

The Petitioner asserted that the Beneficiary would “supervise and control” teams comprising “1-2 Analytics Analysts, 1-3 Business Analysts, 1-3 Research Analysts, and Visualization Specialists/Experts.” The Petitioner did not establish how these teams fit into the company’s overall organizational structure, or specify the layers of authority above the Beneficiary.

The Petitioner did not indicate that the teams are fixed structures within the organization. Rather, “[t]he Firm forms an engagement team for each client assignment. The organization and size of the team depend upon many factors including the nature, complexity and diversity of the problem being solved.” Thus, the Beneficiary would not have exclusive authority over any subordinates.

Under section 101(a)(44)(A)(iii) of the Act, direct supervision of other employees must entail “the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization).” Initially, the Petitioner did not directly state that the Beneficiary would have such authority. Instead, the Petitioner stated that “the beneficiary will be responsible for evaluating . . . team members . . . , which will directly inform decisions relating to hiring, firing, year-end performance, and bonus/compensation.” Evaluations that do not involve recommendations for specific personnel actions do not satisfy the statutory and regulatory criteria for a managerial capacity.

The Director requested more information showing the employment of professionals who would be subordinate to the Beneficiary and demonstrating the Beneficiary’s authority related to hiring and firing and other personnel actions.

In response, the Petitioner stated: “the beneficiary will generally lead a team staffed by Analytics Analysts, Business Analysts, Research Analysts, and Visualization Specialists/Experts,” but “his subordinate team will vary depending on upon the size and complexity of the project.” The Petitioner stated that the Beneficiary “will supervise and control his team members’ work, specifically by organizing their workload, overseeing the quality of their output, guiding team members on their respective pieces/analyses as well as training and developing the knowledge of consultants staffed on the team.” The Petitioner added: “No single employee at [the petitioning company] has direct hiring or firing authority for management consulting roles. Instead, individuals in managerial positions provide strategic input on decisions that directly influence these outcomes, and they further contribute directly to subordinate employees’ performance reviews.”

In the denial notice, the Director concluded that the Petitioner did not adequately establish that the Beneficiary would have managerial authority over specific professional employees. The Director also stated that the Petitioner “did not provide evidence of [the Beneficiary’s] input or influence in the process of individuals being hired or fired.”

On appeal, the Petitioner asserts that the Beneficiary’s “supervisory duties over the professional employees” would include “the authority to contribute to their formal evaluation process based on their performance, which impacts hiring, firing and compensation.” The Petitioner has not established the extent or weight of these contributions. In this respect, it is particularly significant that the

Beneficiary would not have fixed authority over any particular employees. The available information indicates, instead, that the Petitioner would lead ad hoc teams, each assembled temporarily for the duration of a particular project.

The Petitioner has not shown that the Beneficiary would have all the required responsibilities of a personnel manager.

B. Function Manager

To establish that a beneficiary will manage an essential function, the Petitioner 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 stated:

[T]he beneficiary’s position in the U.S. will entail the management of an essential function within our business operations. Specifically, the beneficiary will manage specialized and critical workstreams by leading and guiding various projects teams and supervising analysts . . . [and] will manage these workstreams by leading his teams to validate data, create potential solutions based on that data, build portfolio models, and highlight subsequent implications of such models. The beneficiary will be brought in to lead these specific client engagements.

The Petitioner has not established that each individual project or workstream – as opposed to the wider orchestration or coordination of all such projects – is an essential function of the organization.

The Petitioner asserted that the Beneficiary “will function at a senior level with respect to the essential client engagement workstreams under his purview.” But the Petitioner has not fully documented the organizational structure relating to these workstreams. Partial organizational charts in the record show only two layers of employees, with the Beneficiary alone at the top, and all the stated subordinates below. The record does not show to whom the Beneficiary would report, or establish the responsibilities of the Beneficiary’s superior(s) with regard to the various projects. The record also does not specify whether the Beneficiary would select the members of project teams or if they would be assigned by higher-ranking officials. If one or more individual superior to the Beneficiary would have the authority to select the projects and participants, and assign them to the Beneficiary, then it is not evident that the Beneficiary’s authority would rise to a “senior level” as asserted.

The Beneficiary's discretion and authority, as described, appears to be limited to individual projects, rather than to any essential function of the petitioning entity.

We conclude that the Petitioner has not established that it would employ the Beneficiary in the United States as a function manager.

Because the above discussion is sufficient to determine the outcome of the appeal, we need not discuss the issue of the Beneficiary's previous employment abroad, and we therefore reserve appellate argument on that issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).

III. CONCLUSION

The Petitioner has not established that it will employ the Beneficiary in the United States in a managerial capacity. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.