



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

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

In Re: 19993236

Date: MAR. 04, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an international management consulting firm, seeks to temporarily employ the Beneficiary as an Associate (Management Consultant) under the L-1A nonimmigrant classification for intracompany transferees. Section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 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 with to work temporarily in the United States in a managerial or executive capacity.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that: (1) the Beneficiary was employed abroad in a managerial capacity, and (2) it would employ the Beneficiary in the United States in a managerial capacity. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. See *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. EMPLOYMENT ABROAD

The primary issue we will address is whether the Petitioner established that the Beneficiary was employed abroad in a managerial capacity. The Petitioner has consistently claimed that the Beneficiary's position with its foreign subsidiary was managerial in nature, and that it involved both supervision and control of subordinate professional employees and management of an essential function. The Petitioner does not claim that the Beneficiary was employed abroad in an executive or specialized knowledge capacity.

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 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 managed an essential function, it must clearly describe the duties 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 primarily *managed*, as opposed to *performed*, the function; (4) the beneficiary acted at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary exercised discretion over the function's day-to-day operations. *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

To support its claim that a beneficiary has been employed abroad in a managerial capacity, a petitioner must show that the beneficiary has performed the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If the petitioner establishes that the foreign position meets all elements set forth in the statutory definition, it must prove that the beneficiary was be *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the company's other employees. See *Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

In determining whether a given beneficiary's duties were 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.

A. Job Title and Duties

As a preliminary matter, we observe that are unresolved inconsistencies in the record regarding the Beneficiary's job title and associated responsibilities during his period of employment abroad.

The Petitioner stated on the Form I-129S, Nonimmigrant Petition Based on Blanket L Petition, that the Beneficiary worked for its Russian subsidiary as a “Business Analyst (Management Consultant)/Management Consultant” from March 2016 until June 2019.

In a supporting letter included with its initial submission, the Petitioner does not use the “Business Analyst” job title and instead states that the Beneficiary’s job title was simply “Management Consultant” for the full duration of his foreign employment. However, we note that the Beneficiary’s formal job title may be critical to understanding his position’s level of authority and the types of duties assigned to him during his employment abroad. In this regard, we observe that the offered position in the United States is “Associate (Management Consultant).” The Petitioner indicates that this position supervises employees with the job title “Business Analyst (Management Consultant),” which, according to the Form I-129S, is the same role the Beneficiary held while employed by the Petitioner’s group in Russia. Therefore, the Petitioner’s statements reflect that there are multiple position titles, with differing responsibilities and levels of seniority, that the organization deems to be “management consultant” roles, and it is evident that not all such roles involve managerial responsibilities within the meaning of section 101(a)(44)(A) of the Act.

We acknowledge that the Petitioner included a lengthy narrative description of the Beneficiary’s position with the foreign entity in its initial supporting letter. However, that description contains internal discrepancies which raises further questions regarding his position title and associated responsibilities while employed abroad. The letter includes the following summary of the Beneficiary’s former position:

As a Management Consultant, the beneficiary worked in conjunction of [*sic*] both [company] and client personnel in conducting relevant research and performing technical analyses of information affecting the clients’ operations and industries; interpreting and summarizing data; and making recommendations to the consulting team. He provided technical support and research in performing basic industry and company analyses of performance trends using both electronic and print data sources. He also received [company]-specific training and experience in the basic areas of problems solving, interviewing, communications, and client and . . . team interaction. Further he obtained a basic working knowledge of functional skills such as finance, operations, organizational effectiveness and strategy, and the consulting process in general.

This description does not demonstrate that the Beneficiary performed duties consistent with the statutory definition “managerial capacity,” either as a personnel manager or as a function manager. Rather, it reflects that he served in a professional position that involved contributing research, analysis, and support to his team’s overall efforts, while developing his skills as a consultant. As noted, the Petitioner indicated on the petition that the Beneficiary’s role in Russia was that of a “Business Analyst.” The Petitioner’s supporting letters consistently indicate that the firm’s “Business Analysts” are professionals who work under the supervision of an Associate or Engagement Manager, “provide critical data collection and analysis for the specific engagement,” and present their findings and make recommendations to more senior members of the consulting team. This description is consistent with the duties quoted above.

The Petitioner's initial description of the Beneficiary's foreign duties continued and proceeded to attribute a significantly different set of responsibilities to the same position, without explanation. Specifically, the Petitioner indicated that he "managed critical workstreams for client engagements to ensure that the team's deliverables align with the client's objectives," and held responsibilities that included "project planning, project management, and resource deployment management," along with "supervisory authority over teams of [company] professionals supporting each study, including Junior Management Consultants, Research Analysts and other members of the consulting team."

The Petitioner listed the Beneficiary's "managerial job duties" but those responsibilities were also inconsistent with the job duties quoted above from the same letter. These include managing "key discrete parts of consulting projects"; developing and implementing "analytical approach and project plans for work streams"; supervising "Junior Associates, Junior Management Consultants and Research Analysts"; managing the collection of client and industry data; overseeing the synthesis of work completed by lower-level staff; leading client interviews on behalf of the engagement team; overseeing the writing of client reports; and "directing the development of data charts." These duties were the same provided for the Beneficiary's proposed U.S. position as an "Associate" despite evidence in the record indicating that the positions of "Business Analyst" and "Associate" are distinct roles within the organization. The Petitioner did not attempt to resolve this discrepancy 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's initial supporting letter also provided short descriptions of seven studies or work streams the Beneficiary led as a member of various client engagement teams during his tenure abroad, but these brief overviews did not provide further insight into his specific tasks or the managerial nature of those tasks. The descriptions indicated that, depending on the project, he led teams of one to three people including interns, data analysts and junior consultants. In response to a request for evidence (RFE), the Petitioner provided a letter with lengthier descriptions of some of the same client engagements but revised the details regarding the size and composition of the teams. For example, both letters indicate that the Beneficiary was assigned to a "product lifecycle management" project for a large mobile operator in Russia. In its initial description of this project, the Petitioner stated that the Beneficiary managed two "intern Management Consultants" in connection with this assignment, but, in response to the RFE, the Petitioner stated that the team led by the Beneficiary included two business analysts, two data analysts, three visualization experts and two research analysts. The Petitioner did not provide any explanation for the changes made to descriptions of these past engagements or the staff composition of the Beneficiary's claimed teams. Further, although the Petitioner submitted organizational charts for four separate engagements, the charts depicted only the Beneficiary and the team members he was claimed to lead within the scope of a specific engagement; they did not identify the Beneficiary's supervisor or their job title and position within the company's management hierarchy.

Overall, based on the inconsistencies addressed above, the evidence provided does not clearly or consistently describe the Beneficiary's job title within the foreign entity, his duties or level of authority, nor did it identify the placement of his position within the company's overall organizational hierarchy. These deficiencies alone support a conclusion that the Petitioner did not meet its burden to establish the Beneficiary's employment in a managerial capacity.

Nevertheless, we will address the Petitioner's claim on appeal that the Beneficiary was employed abroad in a capacity that involved both managing a function of the organization and managing professional personnel. Specifically, the Petitioner asserts in its brief that he held "both functional managerial responsibilities, in the form of project planning, project management and resource deployment management as well as management of professional-level subordinate employees in the form of managing and leading [company] consulting teams to achieve the goal of providing sophisticated management consulting services."

A. Function Manager

As noted, if a petitioner claims that a beneficiary managed an essential function, it must clearly describe the duties 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 primarily *managed*, as opposed to *performed*, the function; (4) the beneficiary acted at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary exercised discretion over the function's day-to-day operations. *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

For the reasons already discussed above, the Petitioner did not consistently describe the Beneficiary's job duties in its initial submission and therefore did not clearly explain the duties he performed in managing an essential function.

Further, although the Petitioner uses the phrase "project planning, project management, and resource deployment management" to describe the essential function the Beneficiary managed, this phrase does not describe the function with sufficient specificity. While these activities may convey a general sense of the Beneficiary's broad job responsibilities, they do not represent a "clearly defined activity" in a management consulting organization, where presumably many of the company's consultants plan and manage projects for the company's clients. *Id.* In addition, as noted above, we cannot overlook the Petitioner's statement on the petition that the Beneficiary's position abroad was that of a "Business Analyst," as well as evidence in the record indicating that the firm's business analysts are not typically assigned responsibility for "project planning, project management, and resource deployment management."

In addition, although fulfillment of client consulting engagements is undoubtedly at the core of the Petitioner's management consulting firm, it is insufficient to state that each individual client engagement or project, or each discrete work stream or study within such a project, of which there are likely many, is an essential function of the organization. Based on the submitted evidence, many employees within the organization - except for interns and those with "junior" in their job titles - are deemed to be "management consultants" and have some mentoring or leadership responsibilities and a certain degree of independence over their own research activities or "work stream" within a given project or engagement. They cannot all be considered to be managing the same project, engagement or "function" at a senior level. As the Petitioner has not adequately defined the function the Beneficiary was claimed to manage, we need not address the other element of this criterion, which requires the Petitioner to establish that the function managed was essential, or core to the organization.

Finally, despite claiming that the Beneficiary functioned at a senior level within the organization, the Petitioner has not provided an organizational chart that depicts the Beneficiary's placement within the foreign entity's management hierarchy. The submitted charts show only his position and the employees he was claimed to lead or supervise within a given engagement. In fact, the Petitioner has not even identified the title or position of his immediate supervisor. As the Petitioner has not provided a more expansive organizational chart of the broader organization, we cannot determine the Beneficiary's level of seniority within the organization as a whole or with respect to any given client engagement. The Petitioner has not provided evidence demonstrating that the Beneficiary's position was at a senior level either within the organization or with respect to the function he is claimed to have managed. For these reasons, we cannot determine that the Beneficiary was employed abroad as a function manager.

C. Personnel Manager

The Petitioner also claims that the Beneficiary was employed abroad in a managerial capacity based on his "management of professional-level subordinate employees." *See* section 101(a)(44)(A)(ii) of the Act. As discussed, the Petitioner's initial letter included inconsistent descriptions of the nature of the Beneficiary's role with the foreign entity, and not all descriptions of the Beneficiary's duties reflected that his position involved responsibility for leading or supervising subordinate staff. If he was in fact employed in a "Business Analyst" position as stated on the submitted petition, it is more likely than not that he did not have supervisory responsibilities that would fall within the statutory definition of "management capacity."

Further, although we acknowledge that portions of the Petitioner's initial supporting letter and its response to the Director's RFE indicate that the Beneficiary supervised professional staff within the scope of different client engagements, the information it provided regarding the number and type of staff he led or managed was inconsistent. The initial letter indicated that the Beneficiary led or coached small teams of one to three interns, junior staff, and analysts, while the Petitioner's response to the RFE indicated that he supervised significantly larger teams of more experienced employees. As noted, no explanation was provided for these changes to the Petitioner's descriptions of his past assignments, and the Petitioner did not submit documentation to resolve the inconsistency and corroborate the number and types of employees he supervised during his period of employment abroad.

A beneficiary who is claimed to directly supervise other employees 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). Although the Petitioner states that the Beneficiary oversaw the work of a professional team of employees and had discretion over their work assignments, the Director emphasized that it did not provide sufficient evidence to demonstrate his authority over personnel actions. The Petitioner initially stated that he "was responsible for evaluating . . . team members on the engagement, which directly informs decisions relating to hiring, firing, year-end performance, and bonus/compensation." In response to the RFE, the Petitioner explained that the Beneficiary "had feedback sessions for team members . . . to provide a performance review and coaching" and that he "contributed to their formal evaluation process." We agree with the Director's determination that these general statements alone are insufficient to establish that the Beneficiary held the authority over personnel actions required by 8 C.F.R. § 214.2(l)(1)(ii)(B)(3), particularly considering the

inconsistencies in the record regarding the nature of his role and supervisory responsibilities during his employment with the foreign entity.

To support its claim that the Beneficiary was employed abroad in a managerial capacity, the Petitioner must show that he 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 position abroad meets all four of these elements, we cannot conclude that it is a qualifying managerial position. Due to the inconsistencies in the record, the Petitioner did not establish that the Beneficiary supervised and control the work of supervisory, professional, or managerial employees as required by section 101(a)(44)(A)(ii) of the Act. Further, the Petitioner has not established that the Beneficiary had the authority to hire, fire, or recommend those as well as other personnel actions as required by section 101(a)(44)(A)(iii) of the Act. Therefore, the record does not support a finding that the Beneficiary was employed in a managerial capacity based on his supervision of professional personnel. Because the Petitioner did not overcome the Director's adverse determination with respect to the Beneficiary's employment abroad in a managerial capacity, we will dismiss the appeal.

III. RESERVED ISSUE

Although the Director also determined that the Petitioner did not establish that the Beneficiary would be employed in the United States in a managerial capacity, we will reserve this issue and will not address the Petitioner's appellate arguments regarding the Beneficiary's proposed U.S. employment. *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).

IV. CONCLUSION

For the reasons discussed, the Petitioner has not established that the Beneficiary was employed abroad in a managerial capacity. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.