



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

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 9183868

Date: SEPT. 8, 2020

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, describing itself as a transportation, import, and export logistics company, seeks to permanently employ the Beneficiary as its comptroller in the United States under the first preference immigrant classification for multinational executives or managers. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Texas Service Center denied the petition concluding that the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. On appeal, the Petitioner asserts the submitted evidence sufficiently demonstrates that the Beneficiary would be employed as a function manager.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

## **I. LEGAL FRAMEWORK**

An immigrant visa is available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

The Form I-140, Immigrant Petition for Alien Worker, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. See 8 C.F.R. § 204.5(j)(3).

## **II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY**

The sole issue to address is whether the Petitioner established that the Beneficiary would be employed in a managerial capacity in the United States. The Petitioner does not claim that the Beneficiary would

be employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary would be employed in a managerial 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, 8 U.S.C. § 1101(a)(44)(A).

When examining the managerial capacity of a given beneficiary, we will review the petitioner’s description of the job duties. The petitioner’s description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in a managerial capacity. 8 C.F.R. § 204.5(j)(5). Accordingly, we will discuss evidence regarding the Beneficiary’s job duties along with evidence of the nature of the Petitioner’s business, its staffing levels, and its organizational structure.

#### 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 indicated that it is a “freight transport company serving in all states in the U.S.” moving “around 5000 shipments annually” with a fleet of “tractor trucks” and “40 independent owner operated.. [redacted] trailers.” In response to the Director request for evidence (RFE), the Petitioner provided the following duties for the Beneficiary as its comptroller:

##### Accounting and Financial Controls–25%

- ∑ Responsible for managing the financial information provided by the accounting department and other departments,
- ∑ Review and analyze the financial status of accounts receivable, accounts payable and payroll to ensure the ratios are profitable,

- Σ Plays a critical role in upholding financial controls and audits,
- Σ Perform random audits of payroll and expenses submitted by the accounting department to ensure that verification and authorization controls are enforced in reconciling driver logbooks and reimbursable expenses, and
- Σ Calculate the different pay scales for local drivers by salary or mileage, including differing pay rates for mileage, downtime and trailer unloading which are submitted for review to the executive officers and stockholders.

#### Financial Risk Management–10%

- Σ Analyze the financial needs of [the Petitioner] to recommend preferable financial options and address financial risks,
- Σ Perform cost-benefit analysis on capital investments and inventory to determine whether to run an in-house maintenance department or outsource truck and trailer maintenance,
- Σ Negotiate partnership agreements with fuel suppliers,
- Σ Compare and ensure the best rates and make sure [the Petitioner] has the right type and amount of insurance, and
- Σ Review and analyze fleet operations, expenses, staffing levels, equipment investment and inventory.

#### Analyze and Manage Costs–10%

- Σ Develop logistics best practices and procedures which is a step forward toward effective cost control,
- Σ Create loading and unloading best practices and establishing optimal driving routes, and
- Σ Analyze load delivery performance reports, as it affects the financial impact of unloading hold-ups at the destination and recommend streamlining of process and efficiencies to be applied to improve customer service delivery time and load tracking.

#### Delivery Logistics Data Analysis–10%

- Σ Analyze and review data input from the different logistics points and departments to improve and facilitate best practices to improve profitability,
- Σ Audit and analyze how, when and where goods are packaged, trucked and delivered, alternate route calculations, etc.,
- Σ Factor in cycle time, lead time and insurance needs and coordinate with distribution centers and trucking hubs, travel routes, fueling stops, determine approaches that allow drivers to maximize time and space accommodations, and
- Σ Develop standard operating procedures to be implemented when maintenance, repairs or delays are necessary.

#### Budgeting and Oversight–15%

- Σ Develop revenue forecasts and analysis and report to the executive directors,
- Σ Responsible for budgetary planning, goals, outcomes, cost projections and general financial oversight,

- Σ Ensure that overhead operating costs are maintained and reduced and that the company is staying on track with order fulfillment, meeting deadlines, and customer satisfaction, and
- Σ Ensure financial operating parameters are maintained and improved.

#### General Financial Reports–20%

- Σ Generate regular financial reports detailing company cash flow, accounts payable and accounts receivable as well as assets capital improvements, inventory and liabilities to be reviewed by executives and stockholders, and
- Σ Analyze and audit any bank transactions for financial forecasting as needed.

#### Liaison with US and Mexico

- Σ Liaise and cooperate with other divisions within the company and its affiliates to ensure smooth financial operations, and
- Σ Propose and promote to the executive team and stakeholders streamlining of processes or technology/software improvements across departments.<sup>1</sup>

However, now on appeal, the Petitioner submits a materially different duty description, leaving uncertainty as to the Beneficiary's actual proposed duties. For instance, the new duty description indicates that the Beneficiary would devote 30% of his time to "analyz[ing] and manag[ing] costs," whereas the previous description reflected he would spend only 10% of his time on this task. Likewise, the appeal duty description emphasizes that the Beneficiary would devote 25% of his time to "accounting and financial controls," while the previous one stated he would spend 30% of his time on this responsibility. Lastly, the RFE duty description stated that the Beneficiary would spend 10% of his time on "financial risk management," yet the newer description indicates he would devote only 20% of his time to this duty.

In addition, the two duty descriptions include substantial other differences that leave further question as to the Beneficiary's claimed duties. For example, the appeal duty description states that the Beneficiary would dedicate 10% of his time to "regulatory compliance, including monitored operations thru the Safety Coordinator to ensure that staff members comply with administrative policies and procedures" as well as coordinate "with the Safety Dept. and IT to have monthly and quarterly reports." However, the Beneficiary's former duty description did not mention this coordination with the safety or information technology departments, but only indicated that he would verify the timely filing of regulatory paperwork with the accountant. The Petitioner also stated that the Beneficiary would spend 10% of his time on "financial decisions at [the] senior level." However, the Beneficiary's earlier duty description does not reflect this level of senior discretionary authority, stating only that he would develop revenue forecasts and other recommendations and report to the company's executive directors. The Petitioner must resolve inconsistencies and discrepancies 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).

Furthermore, the Beneficiary's duty descriptions included several apparent non-qualifying operational tasks leaving uncertainty as to whether he would devote a majority of his time to qualifying managerial

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<sup>1</sup> We note that the percentages allocated to the Beneficiary's duties amount to only 90%.

duties. For instance, the Beneficiary's RFE duty description indicated he would be tasked with reviewing and analyzing accounts receivable and payable, performing random audits of payroll and expenses, and calculating pay scales for local drivers. Similarly, the Petitioner also stated that the Beneficiary would be responsible for performing cost-benefit analysis on capital investments and inventory, creating loading and unloading best practices and driving routes, and auditing and analyzing how goods were packaged, trucked, and delivered. It also explained the Beneficiary would be responsible for avoiding regulatory fines and penalties, monitoring and tracking operating costs, generating financial reports for executive and stockholder review, and analyzing and auditing bank transactions. Overall, these duties reflect more of an operational and advisory role on the part of the Beneficiary, rather than one where he would exercise discretionary authority over an essential function. To illustrate, the Beneficiary's RFE duties reflected that he would calculate pay scales for drivers, develop revenue forecasts and financial reports, propose streamlining of processes and technology, and submit this information to managers tasked with deciding these issues. The duties were further indicative of a duty to review, track, and analyze, rather than receive information from others and exercise discretionary authority.

In contrast, the new duty description provided on appeal appears modified to emphasize more managerial functions, such as the Beneficiary "overseeing" budgetary planning, operating costs, and reports from an accountant manager, as well as him providing strategic guidance to the payroll department. However, the Beneficiary's first duty description indicated that the Beneficiary would be directly performing these analysis, auditing, and data collection functions, rather than overseeing others performing these tasks. Further, the Beneficiary's duty description provided on appeal also lists several apparent operational tasks, indicating his direct involvement in performing cost benefit analyses on truck lending and purchasing, "selecting the best equipment according to rates and functionality," evaluating "e-log devices," monitoring compliance with safety regulations, and ensuring that license plates and permits are renewed. In sum, the Beneficiary's appeal duty description also suggests that the Beneficiary would primarily act in an operational and advisory role, rather than a managerial capacity, including reviewing and analyzing reports and "KPIs" and sharing this information with "the Company owners and the Terminal Manager."

Whether the Beneficiary is a managerial employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial. See sections 101(a)(44)(A) of the Act. Here, the Petitioner does not document what proportion of the Beneficiary's duties would be managerial functions and what proportion would be non-qualifying. The Petitioner lists the Beneficiary's duties as including both managerial tasks and administrative or operational tasks but does not quantify the time he spends on these different duties. For this reason, we cannot determine whether the Beneficiary would primarily perform the duties of a manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Even though the Beneficiary holds a senior position within the organization, the fact that he will manage or direct a portion of the business does not necessarily establish eligibility for classification as a multinational manager within the meaning of section 101(a)(44)(A) of the Act. The Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making; however, the position description alone is insufficient to establish that his actual duties would be primarily managerial in nature.

## B. Staffing and Function Manager

If staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, we take into account the reasonable needs of the organization, in light of its overall purpose and stage of development. See section 101(a)(44)(C) of the Act.

The Petitioner submitted an organizational chart reflecting that the Beneficiary, as comptroller, reported to the president and that he acted at a level within the organization equal to that of the terminal manager. Below the Beneficiary and the terminal manager, the chart reflected various managers, including “Northbound Dispatch,” a customer service representative, “Southband Dispatch,” a trailer mechanic, accountant manager, and a safety coordinator. These departments were shown to include various operational employees, such as drivers, an assistant mechanic, accountant assistant, a driver recruiter, and a safety assistant. The chart did not indicate that the Beneficiary directly supervised or oversaw any of these employees.

The statutory definition of “managerial capacity” allows for both “personnel managers” and “function managers.” See section 101(a)(44)(A) of the Act. On appeal, the Petitioner exclusively asserts that the Beneficiary qualifies as a function manager. Therefore, since the Petitioner only contends that the Beneficiary qualifies as a function manager, we will not analysis whether he would qualify as a personnel manager. The term “function manager” applies generally when a beneficiary does not 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 contends that the Beneficiary manages an essential function of the organization; specifically, its “financial planning and analysis.” The Petitioner stated that the Beneficiary’s function is “critical for the organization in order to maintain and improve the service contracts and personnel,...ensure that costs are managed, and [his] ability to oversee financial controls are essential for the company’s sustainability and profitability.”

The Petitioner provided supporting documentation on the record leaving substantial uncertainty as to whether the Beneficiary acted, and would act, as a function manager, primarily relieved from performing non-qualifying operational tasks. For instance, in response to the RFE, the Petitioner submitted a support letter from its terminal manager stating that the Beneficiary “is in charge to supervise all administrative areas to be sure the proper functioning of the business be profitable.” Again, similar to the Beneficiary’s submitted duties, this support letter suggests that he acts in an advisory and operational role within the front office handling all manner of administrative matters within the business. In fact, the letter lists these operational tasks, such as the Beneficiary performing cost analysis, making projections, and sharing progress on “KPIs;” and in turn, reporting this information to the terminal manager. Further, the Beneficiary’s administrative role is also reflected

in provided supporting documentation. For instance, several documents dated near to the date the petition was filed<sup>2</sup> list the Beneficiary as its “office manager” rather than comptroller, including a “monthly account holder agreement” from July 2018, two carrier agreements from September 2018, an “EFS OTR Business Account Application and Agreement” dated in September 2017, a “carrier profile” from June 2018, and a quote for staffing services dated in June 2018. Further, as we have discussed, the Beneficiary’s duty descriptions include several non-qualifying operational tasks suggesting his wide engagement in performing a variety of administrative tasks within the Petitioner’s front office, rather than his discretionary management of a specific function. In contrast, there is little supporting documentation on the record demonstrating the Beneficiary acting as the Petitioner’s comptroller or reflecting his delegation of non-qualifying duties to others.

As discussed by the Director, the evidence provided in this matter can be distinguished from the facts of Matter of G-, Inc., Adopted Decision 2017-05 (AAO Nov. 8, 2017). In that matter, the Petitioner provided sufficient evidence to support that the beneficiary primarily developed and directed revenue forecasts and analysis for that petitioner’s worldwide organization, led mergers and acquisitions, and oversaw strategic pricing analysis. In addition, that petitioner demonstrated with evidence that the beneficiary directed the work of various teams across its worldwide business units and that he oversaw a team processing and collecting financial data from delivery leads and global sales teams. In Matter of G-, the petitioner established that support staff relieved the beneficiary from performing day-to-day administrative and reporting tasks, allowing him to primarily manage his function rather than perform it himself. *Id.* at 5.

However, in this matter, the Petitioner has provided little supporting documentation to substantiate that the Beneficiary is primarily relieved from performing non-qualifying operational tasks within its front office. In fact, as noted, the supporting documentation appears to indicate that the Beneficiary acts as its office manager and that he handles a wide variety of operational duties, such as cost-benefit analysis on capital investments and inventory, creating loading and unloading best practices and driving routes, auditing and analyzing how goods are packaged, trucked, and delivered, avoiding regulatory fines and penalties, monitoring and tracking operating costs, generating financial reports for executive and stockholder review, and analyzing and auditing bank transactions. However, the record includes no supporting evidence to corroborate that the Beneficiary is primarily overseeing and delegating these functions rather than performing them himself. This lack of supporting documentation is noteworthy as the Petitioner asserts the Beneficiary has been acting in his claimed role as a function manager with the Petitioner for approximately two years. As such, the Petitioner did not sufficiently establish that the Beneficiary would primarily manage a function, rather than perform it. Therefore, it has not demonstrated that the Beneficiary would be employed as a function manager.

Lastly, the Petitioner has not clearly defined the Beneficiary’s function, but only generically identifies it as “financial planning and analysis.” The Beneficiary’s duties and the supporting evidence reflect his involvement in a wide variety of administrative matters within the company’s front office such as financial matters and analysis, dispatching, truck purchasing and leasing, regulatory and safety compliance, software, fuel pricing, insurance, amongst other tasks. As such, the Petitioner has not sufficiently defined the Beneficiary’s function and his discretionary authority. Indeed, the evidence

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<sup>2</sup> The petition was filed on September 25, 2018.

indicates it is more likely that the Beneficiary is employed as an “office manager” supporting a wide range of administrative matters within the company, rather than managing a specific and clearly defined essential function.

For the foregoing reasons, the Petitioner has not demonstrated that the Beneficiary would be employed as a manager in the United States.

ORDER:      The appeal is dismissed.