



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

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

In Re: 8427564

Date: JULY 7, 2020

Appeal of California Service Center Decision

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

The Petitioner, an IT services provider and “seller of related equipment,” seeks to continue the Beneficiary’s temporary employment as its general manager 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 Petitioner did not establish, as required, that the Beneficiary would be employed in a managerial or executive capacity.¹ The matter is before us on appeal.²

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

I. LEGAL FRAMEWORK

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

¹ The Director referred to a request for evidence (RFE) that corresponds to this petition, quoting findings that were made in a notice of revocation associated with the Petitioner’s previously filed I-129. However, the decision in this matter concerns a filing that is separate from that of the revoked Form I-129. Further, in the instant decision, the Director did not include an affirmative finding regarding points made in the notice of revocation and instead based the denial on an analysis of the evidence contained in the instant record. Therefore, we will not address either the findings from the revocation decision or arguments that the Petitioner now makes regarding those findings, as each filing constitutes a separate proceeding with a separate record and in making a determination of statutory eligibility, U.S. Citizenship and Immigration Services (USCIS) is limited to the information contained in that individual record of proceedings. *See* 8 C.F.R. § 103.2(b)(16)(ii).

² The Petitioner includes a brief summary of the issues it seeks to address on appeal, stating that those issues include the following: (1) whether the Petitioner is a qualifying organization pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G); (2) whether the Beneficiary “was an alien employed in a managerial capacity”; and (3) whether the Petitioner’s “first and second petition [*sic*] for Non-Immigrant Worker” can be amended and approved “as regular L1A.” Because the sole basis for the Director’s decision was that the Petitioner did not establish that it would employ the Beneficiary in a managerial or executive capacity, this is the only issue we will address on appeal. As noted above, issues pertaining to other petitions

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).

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The issue in this proceeding is whether the Petitioner has established that it would employ the Beneficiary in a managerial capacity.³

“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.

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).

On the other hand, 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).

A. Duties

In order to determine whether the Beneficiary will be employed in a managerial capacity, we will first discuss his assigned duties with the petitioning entity. The actual duties themselves reveal the true

are not part of this record and therefore are not subject for review in this proceeding. See 8 C.F.R. § 103.2(b)(16)(ii).

³ The Petitioner does not claim that the Beneficiary would be employed in an executive capacity.

nature of the employment. *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).

In a supporting cover letter the Petitioner stated that the Beneficiary's "most important" job duties would include the following: (1) establishing goals "based on strategic planning and growth projections"; (2) improving production costs by leveraging relationships with suppliers; (3) developing "the distribution of other complementary product lines"; (4) implementing agreements to promote products and expand sales; (5) developing "research processes for new products"; (6) participating in fairs and expeditions; (7) making sales projections; and (8) improving "the organization of the company" by making sure that the corporate manual is consistent with the Petitioner's goals and objectives. The Petitioner did not elaborate on the goals and "strategic planning" or explain how establishing those goals is part of the Beneficiary's daily or weekly activity. It also did not elaborate as to how the Beneficiary would develop product line distribution or how he would use the corporate manual to improve "the organization of the company." Furthermore, the Petitioner did not establish that leveraging supplier relationships, implementing agreements, developing "research processes," and participating in fairs and expeditions are managerial job duties.

In a separate letter, the Petitioner provided another job duty breakdown allocating time to a number of the Beneficiary's "essential daily duties" over a period totaling 160 hours.⁴ However, this breakdown indicates that the Beneficiary would allocate his time primarily to operational job duties and broadly stated responsibilities that cannot be readily identified as managerial in nature. For instance, the Petitioner allocated 45 hours, or approximately 28%, of the Beneficiary's time to duties that include developing policies, processes, and strategies to increase revenue, deciding which products and services to offer, and setting and communicating annual and monthly sales goals and budgets. The Petitioner did not elaborate on these vague responsibilities or explain how they translate to job duties the Beneficiary would perform daily or weekly in the course of routine business within an IT service and retail operation.

The Petitioner also allocated 16 hours, or approximately 10%, of the Beneficiary's time to administrative and operational duties, such as signing checks and interacting with clients to obtain customer feedback and although it allocated 11 hours, or approximately 7%, of the Beneficiary's time to approving sales and marketing strategies, it did not state who would carry out the marketing function. Lastly, the Petitioner allocated 24 hours, or approximately 15%, of the Beneficiary's time to supervising and interacting with the company's managers, despite identifying a financial manager as the Beneficiary's only managerial subordinate. Although the Petitioner indicated that it's organization will employ a sales manager, this position was not depicted as directly subordinate to the Beneficiary. Furthermore, the sales manager position was shown as "to be hired" and was therefore vacant at the time this petition was filed. We note that the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

In an RFE, the Director asked the Petitioner to provide a more detailed account of the Beneficiary's job duty breakdown explaining how his assigned duties fit the four-prong statutory definition. The

⁴ Although not specified, we will assume that the hourly breakdown, which totals 160 hours, represents a four-week period in which each week is comprised of 40 hours.

Petitioner's response includes two statements, one of which reiterates the job duty breakdown discussed above and includes identical time allocations, while the other statement addresses the Beneficiary's job duties within the four-prong statutory definition of managerial capacity.

Turning to the first prong – manages the organization, department, subdivision, function, or component – the Petitioner stated that the Beneficiary “managed and directed all operations of the company” and summarized actions the Beneficiary took in the course of managing the organization. The Petitioner emphasized the Beneficiary's discretionary authority over policies and matters concerning the company's operations, finances, and personnel and stated that the Beneficiary consistently seeks out “valuable business opportunities” and meets with the finance manager to approve marketing strategies, such as attending industry trade shows and posting client testimonials to YouTube, for the purpose of “broadening the brand's influence in the market.” The Petitioner also stated that the Beneficiary would oversee the development of business plans, contracts, and “commercial terms” and communicate with the company's president and finance manager to ensure “compliance with established controls.”

In support of the second prong of the statutory definition, the Petitioner stated that the Beneficiary oversees and directs supervisory and professional employees and referred to an organizational chart, which depicted the Beneficiary subordinate to the company's president and overseeing the finance manager as his direct subordinate. As noted earlier, the chart depicts a vacant sales manager position, thus leading us to question whether some of the Beneficiary's time would be spent in a supervisory role overseeing the sales representative and a programmer/sales representative, who are depicted as the sales manager's subordinates. In any event, it is unclear how the organizational chart supports the claim that the Beneficiary would oversee supervisory and professional employees when the chart depicts the Beneficiary with only one subordinate and does not depict other supervisory or professional employees for the Beneficiary to oversee. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The Petitioner also stated that the Beneficiary approves hiring and other personnel actions, such as salary raises and a commission and bonus structure for the sales representatives. However, these activities are intermittent and unlikely to be among the job duties the Beneficiary would regularly perform in the course of daily or weekly business operation. Likewise, although the Petitioner stated that the Beneficiary meets the third prong of the statutory definition by virtue of having discretionary authority over personnel matters, it is unclear that the Beneficiary's daily or weekly activities would involve instructing personnel, assigning job responsibilities, or approving works hours, financial statements, or bonuses and commissions.

Further, the Petitioner claimed that the Beneficiary satisfies the fourth prong of the statutory definition because he has discretionary authority over the above matters and “represents the company and approves interactions and quotations to current and prospective corporate clients.” However, the Petitioner did not identify actual tasks the Beneficiary would carry out to explain how he “represents the company,” nor did it establish that such representation is done in a managerial, rather than in a sales, capacity. Likewise, although the Petitioner stated that the Beneficiary engages in credit negotiation as a capital-raising or financial strategy, it is not clear that this, or other such activities, would be deemed managerial in nature. 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). Further, despite highlighting the Beneficiary’s authority to oversee fund allocations and approve documents, such as financial statements and “management-formatted reports for shareholders,” the Petitioner did not establish that these matters occur on a daily or weekly basis, as opposed to being infrequent intermittent concerns.

In denying the petition, the Director found that the Petitioner offered a deficient job description that did not allow for an understanding of the Beneficiary’s actual job duties. The Director therefore determined that the Petitioner did not adequately demonstrate that the Beneficiary would be employed in a managerial capacity, as claimed.

On appeal, the Petitioner does not provide evidence or otherwise pursue its original claim that the Beneficiary will manage the organization by overseeing supervisory and professional employees. Instead, the Petitioner states that the issue in this proceeding is whether the Beneficiary will primarily manage an essential function, claiming that a function was clearly defined in keeping with the criteria set forth in *Matter of G- Inc.* However, the Petitioner does not describe a specific function and instead offers a confusing statement listing multiple activities, thereby precluding us from being able to discern which activity it claims is the “essential function.” Namely, the Petitioner claims that the Beneficiary’s role “is to generate business as [sic] the same time execute the action plans to delivered [sic] on the promise of the initials [sic] service agreements and implement procedures and protocols and makes [sic] sure the staff will be able to execute the action plan when a client calls for IT support or services” It is unclear which of these activities – generating new business, executing “action plans” to implement service agreements, or making sure that staff address clients’ needs for IT support or services – is claimed as the essential function the Beneficiary would manage. The Petitioner also makes a parallel claim that the Beneficiary’s “role of general manager is ‘essential’ to the Organization as a whole,” which detracts from the claim that the Beneficiary would manage a specific function within the organization.

Further, although the Petitioner claims that the Beneficiary will “establish and implement processes and protocols” to ensure execution of service agreements, it does not identify specific “processes and protocols” that will ensure the Petitioner is able to meet that goal. Rather, the Petitioner contends that the Beneficiary will “need to create” a quality control “system,” yet it does not describe such a system or elaborate on the underlying process or duties that would allow such a system to be created. Moreover, the Petitioner does not explain how it currently operates if a quality control system is not yet in place. Although the Petitioner continues to emphasize the Beneficiary’s “ample discretion” and his “senior level within the organization or with respect to the function managed,” these factors do not clarify precisely what the Beneficiary would do on a daily basis either to manage the organization or alternatively to manage an essential function within that organization. The Petitioner must resolve this ambiguity 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).

In any event, by statute, eligibility for this classification requires that the duties of a position be “primarily” managerial in nature. Sections 101(A)(44)(A) of the Act. While 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, these elements alone are insufficient to

establish eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section 101(a)(44)(A) of the Act, unless the Petitioner establishes that the tasks performed were “primarily” managerial in nature. In other words, without a detailed description of the Beneficiary’s job duties we are unable to ascertain how the Beneficiary manages either the organization or an essential function within the organization, nor can we determine whether the duties performed would be primarily managerial in nature. Specifics are clearly an important indication of whether a beneficiary’s duties are primarily executive or 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 1108. Here, the Petitioner did not state with clarity whether the Beneficiary is claimed to assume the role of a personnel or a function manager, nor did the Petitioner adequately describe the duties to be performed such that a determination can be made that managerial, rather than operational or administrative, duties would comprise the primary portion of the Beneficiary’s proposed position.

B. Staffing

In addition to the above analysis, we also examine the staffing of the employing organization. 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.

As stated earlier, the Petitioner’s supporting evidence included an organizational chart that shows a five-tier organizational hierarchy where a single position comprises each of the first four tiers while a sales representative⁵ and a programmer/sales representative comprise the bottom tier. The president is depicted as the senior-most position, followed by the Beneficiary overseeing a finance manager, the vacant position of a sales manager at the next tier, and the sales representative and sales representative/programmer at the last tier. As noted earlier, although this hierarchy indicates that the Beneficiary would oversee a financial manager, it does not demonstrate that the Beneficiary would oversee supervisory and professional personnel, as claimed.

Furthermore, the Petitioner provided its 2018 tax return in which its finance manager, [REDACTED] and the firm [REDACTED] are listed as “Paid Preparer” of the tax return, thus indicating that at the time of filing [REDACTED] was employed by an entity other than the Petitioner. Given this ambiguity, it is possible that [REDACTED] may have been working for the Petitioner in a more limited capacity than previously claimed, thus leading us to question whether she has been working for the Petitioner on a full-time basis and whether she actually performs the services listed in her job duty breakdown. For instance, [REDACTED]’s job duty breakdown indicates that she will coordinate and control the work of “the [a]dministrative personnel”; however, the Petitioner’s organizational chart does not show “administrative personnel” as part of the Petitioner’s organizational hierarchy at the time of filing. Rather, the chart indicates that [REDACTED]’s direct subordinate would be a sales manager, a position that was shown as vacant at the time of filing, thus leading us to question who, if anyone, she would oversee. Although the organizational chart shows a programmer/sales representative and a sales representative below [REDACTED] in the organizational hierarchy, neither of these positions was identified as “administrative.” It is therefore unclear who, if any, [REDACTED]

⁵ Although two sales representative positions are depicted, one is shown as “to be hired” and thus is assumed to have been vacant at the time of filing, this indicating that two, rather than three, employees comprise the bottom tier.

would oversee, particularly given her apparent employment at [] the Petitioner's tax preparer. The Petitioner must resolve these incongruities in the record with independent, objective evidence pointing to where the truth lies. *Ho*, 19 I&N Dec. at 591-92.

In sum, the record contains numerous critical evidentiary deficiencies that preclude a meaningful understanding of the Beneficiary's job duties and also cause us to question whether the Petitioner's staffing at the time this petition was filed would adequately support the Beneficiary by relieving her from having to allocate her time to performing primarily non-managerial the job duties. As such, we cannot conclude that the Beneficiary would be employed in a managerial capacity.

ORDER: The appeal will be dismissed.