



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

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

In Re: 9301751

Date: SEP. 01, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Petition for Multinational Manager or Executive

The Petitioner seeks to permanently employ the Beneficiary as its IT [information technology] director under the first-preference, immigrant classification for multinational managers or executives. See Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Nebraska Service Center denied the petition. The Director concluded that, contrary to the Petitioner's claims, the company did not demonstrate its proposed U.S. employment of the Beneficiary, or his prior work for its Mexican affiliate, in a managerial capacity.

The Petitioner bears the burden of establishing 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. MULTINATIONAL MANAGERS AND EXECUTIVES**

A petition for a multinational manager or executive must demonstrate that, in the three years before a beneficiary's U.S. entry as a nonimmigrant, the petitioner, or a subsidiary or affiliate of it, employed the beneficiary abroad for at least one year in a managerial or executive capacity. 8 C.F.R. §§ 204.5(j)(3)(B), (C). Also, the petitioner must have been doing business in the United States for at least one year and must offer the beneficiary a U.S. position in a managerial or executive capacity. 8 C.F.R. §§ 204.5(j)(3)(D), (5). Further, U.S. Citizenship and Immigration Services (USCIS) may request additional evidence. 8 C.F.R. § 204.5(j)(3)(ii).

## **II. THE PROPOSED POSITION IN THE UNITED STATES**

The term "managerial capacity" refers to a position that would primarily: 1) manage the organization or a department, subdivision, function, or component of it; 2) supervise and control the work of other supervisory, professional, or managerial employees, or manage an essential function of the organization, department, or subdivision; 3) have authority to hire and fire or recommend those and other personnel actions, or, if supervising no employees, function at a senior level within the organizational hierarchy or regarding the managed function; and 4) exercise discretion over the daily operations of the activity or function for which the employee has authority. 8 C.F.R. § 204.5(j)(2) (defining the term "managerial capacity").

As the term's definition indicates, managerial capacity may involve management of personnel or an essential function. The Petitioner does not assert the Beneficiary's proposed management of a function in the United States, or his prior management of one in Mexico. We will therefore consider both his proposed and prior employment as a personnel manager. Personnel managers must primarily supervise and control the work of other supervisory, professional, or managerial employees. 8 C.F.R. § 204.5(j)(2). "A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional." 8 C.F.R. § 204.5(j)(4)(i).

In evaluating the managerial nature of an offered position, USCIS examines the position's job duties. See 8 C.F.R. § 204.5(j)(5) (requiring a petitioner to "clearly describe the duties to be performed by the alien"). USCIS may also consider: the organizational structure of a petitioner; the nature of its business; the existence of other employees who may relieve a beneficiary from performing operational activities; and the duties of a beneficiary's subordinates.

Here, the Petitioner states its employment of the Beneficiary in the offered position of IT director in nonimmigrant visa status as an intracompany transferee since September 2016. The Petitioner's business involves providing information to the global automotive industry about parts, diagnostics, repairs, and collisions, as well as business tools and support services. The company's initial organizational chart indicates that the Beneficiary would directly supervise eight professionals, with an additional 16 employees under them.

The Petitioner initially stated that the Beneficiary would devote the following percentages of his time to the following "primary accountabilities:"

- Σ 15%. Personnel development, staffing, resource allocation.
- Σ 15%. Strategic, operating, budget planning and plan execution.
- Σ 25%. Demand Manager between business functional unit and technology department.
- Σ 15%. Conducts, designs, reviews and monitors status of development projects.
- Σ 10%. Vendor relationships, contract negotiations.
- Σ 10%. Evaluation of new technology.
- Σ 10%. Communication of direction, strategy, vision to the organization.

In response to the Director's written request for additional evidence (RFE), however, the Petitioner described the Beneficiary's proposed performance of the following duties:

- Σ 10%. Managing profit and loss planning, strategic planning, and financial planning.
- Σ 15%. Conducting design review and monitoring the status of development projects through the oversight of professional team members.
- Σ 15%. Recruiting and assisting Managers, R&D, and technical staff and career planning for IT Managers, Solutions Architects, Lead Business Analysts.
- Σ 20%. Architectural and infrastructure implementation planning.
- Σ 10%. Allocating training resources.
- Σ 30%. Communicate the direction, strategy, and vision to the organization via the VP of technology.

The Petitioner's RFE response includes new descriptions of many of the Beneficiary's areas of responsibility, apparently emphasizing duties previously subsumed in his primary accountabilities. The information also includes changes to the amount of time he would devote to certain duties. For example, the Petitioner initially stated that the Beneficiary would spend 10% of his time on "[c]ommunication of direction, strategy, vision to the organization." The updated information, however, indicates that those same duties would comprise 30% of his time. In addition, the Petitioner initially stated that the Beneficiary would spend 15% of his time on "[p]ersonnel development, staffing, resource allocation." The updated information indicates he would devote 15% of his time to "[r]ecruiting and assisting Managers, R&D, and technical staff and career planning for IT Managers, Solutions Architects, Lead Business Analysts," plus an additional 10% of his time "[a]llocating training resources."

These discrepancies cast doubt on the true job duties of the offered position and the actual amounts of time the Beneficiary would devote to them. See *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies). Moreover, a petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed in an effort to conform to requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (AAO 1998).

On appeal, the Petitioner does not resolve the discrepancies in the job duties of the offered position or in the percentages of time the Beneficiary would devote to them. The Petitioner provides a new letter with more detailed, proposed job duties. But these descriptions correspond to the information the company provided in its RFE response. The new letter does not explain the discrepancies between the information initially provided and the information in the RFE response. See *Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record).

Even if the Petitioner's RFE response correctly describes the offered job duties, the response would not demonstrate the Beneficiary's proposed employment in primarily a managerial capacity. The record does not demonstrate how the Beneficiary's duties of communicating the direction, strategy, and vision to the organization via the VP of technology (30%), architectural and infrastructure implementation planning (20%), and managing profit and loss planning, strategic planning, and financial planning (10%) would involve supervising and controlling the work of other supervisory, professional, or managerial employees. See 8 C.F.R. § 204.5(j)(2) (defining the term "managerial capacity"). The record indicates that those supervised by the Beneficiary would work on software development, rather than on planning and communications activities. The RFE response therefore would not establish the Beneficiary's proposed duties in primarily a managerial capacity.

Unresolved inconsistencies cast doubt on the job duties of the offered position and the amounts of time the Beneficiary would purportedly spend on them. Thus, the Petitioner has not demonstrated its proposed employment of the Beneficiary primarily in a managerial capacity. We will therefore affirm the petition's denial.

### III. THE POSITION IN MEXICO

The record indicates the Beneficiary's employment by the Petitioner's Mexican affiliate as a technical manager from March 2013 until September 2016. The organizational chart of the foreign entity shows

the Beneficiary's direct supervision of 10 software professionals, with another nine employees beneath them.

The Petitioner initially stated that the Beneficiary spent the following percentages of time on the following job duties as technical manager in Mexico:

- Σ 30%. Mentoring team leads and developers.
- Σ 40%. Managing day-to-day activities of the software development team.
- Σ 20%. Architectural and design duties.
- Σ 10%. Research on new technologies and industry standards.

In response to the Director's RFE, however, the Petitioner described the Beneficiary's most recent duties in Mexico, as follows:

- Σ 10%. Lead, coach, and mentor software developers and provide oversight to their work product.
- Σ 10%. Train, onboard, and develop new hires.
- Σ 30%. Guide his software development team in performance improvements and design improvement.
- Σ 30%. Provide oversight to the employees developing corporate applications for business groups.
- Σ 5%. Develop IT budgets and participate in fiscal planning to allocate resources.
- Σ 15%. Provide oversight to teams who are responsible for maintaining and supporting software platforms used by internal and external customers.

As with the Beneficiary's proposed U.S. duties, the Petitioner provided two inconsistent sets of information regarding the Beneficiary's purported managerial activities in Mexico. The RFE response adds job duties not initially mentioned by the Petitioner, including: training, onboarding, and developing new hires; and developing IT budgets and participating in fiscal planning to allocate resources. The RFE response also omits duties initially stated by the company, such as: architectural and design duties; and research on new technologies and industry standards. In addition, the RFE response indicates that the Beneficiary spent much more time supervising others than the Petitioner initially stated. The company initially indicated that the Beneficiary spent 40% of his time managing the daily activities of the software development team. But the RFE response states that he devoted 30% of his time to guiding the software development team, 30% of his time to overseeing employees developing corporate applications, and 15% of his time overseeing teams maintaining and supporting software platforms.

These unresolved inconsistencies cast doubt on the true job duties of the Beneficiary in Mexico and the amounts of time he spent on them. See *Matter of Ho*, 19 I&N Dec. at 592 (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies). Also, as previously indicated, a petitioner may not make material changes to a petition that has already been filed in an effort to conform to requirements. *Matter of Izummi*, 22 I&N Dec. at 175.

On appeal, the Petitioner provides a letter detailing additional duties that the Beneficiary purportedly performed in Mexico. But these descriptions correspond to the information in the Petitioner's RFE

response and do not explain the inconsistencies between the company's initial statements and its RFE response. Because of the unresolved discrepancies in the Beneficiary's job duties and the percentages of time he devoted to them, the record does not establish his employment abroad in primarily a managerial capacity.

Also, although unaddressed by the Director, copies of an IRS Form W-2, Wage and Tax Statement, and payroll records indicate that a company other than the Petitioner pays the Beneficiary's wages in the United States. Without resolution, the W-2 and payroll records raise questions regarding the Beneficiary's proposed employment. If the other company would employ the Beneficiary in the United States, the Petitioner must document, in any future filings in this matter, a qualifying relationship between the other company and the Beneficiary's foreign employer and explain the inconsistency in the petition.

#### IV. CONCLUSION

Contrary to the Petitioner's claims, the company has not demonstrated its proposed U.S. employment of the Beneficiary, or his prior work abroad, in the claimed managerial capacity. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.