U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-E-S-, INC.

DATE: AUG. 20, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR NONIMMIGRANT WORKER

The Petitioner, a software solutions provider, seeks to employ the Beneficiary as a technical manager under the L-1A nonimmigrant classification for intracompany transferees. 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 business to transfer a qualifying foreign employee to the United States to temporarily work in a managerial or executive capacity.

The Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary was employed abroad in a managerial or executive capacity, or that the Beneficiary would be employed in the United States in a managerial or executive capacity.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary was employed abroad by its wholly-owned subsidiary in a managerial capacity, and that it would employ the Beneficiary in the United States in a managerial capacity.

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.*

II. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

On appeal, the Petitioner claims that the Beneficiary has been employed in a managerial capacity. It does not assert that the Beneficiary was employed in an executive capacity. Therefore, our analysis will address whether the Beneficiary's position abroad was 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.

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 performed by the beneficiary and indicate whether such duties are in a managerial capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a 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.

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. 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 the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

A. Duties

Based on the statutory definition of managerial capacity, the Petitioner must first show that the Beneficiary performed certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). The Petitioner must also prove that the Beneficiary was *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); *Champion World*, 940 F.2d 1533.

The Petitioner asserts that it and its foreign subsidiary, [redacted], provide enterprise applications solutions ranging from implementation, business, consulting support, maintenance, and managed operations, and that they have developed solutions for numerous PeopleSoft applications. In a letter supporting the initial petition, the Petitioner stated that the Beneficiary had been employed in a managerial capacity by its wholly-owned subsidiary, [redacted] in India since January 30, 2014.[1] The Petitioner indicated that the

[1] An offer letter dated January 17, 2014, in the record indicates that the Beneficiary will be employed with [redacted] as a senior consultant starting on February 20, 2014. It is not clear if [redacted] changed its name to [redacted] after the offer letter was issued, or if the Beneficiary started working earlier than stated in the letter. A nonimmigrant visa application submitted by the Beneficiary in 2014 shows that he was employed by [redacted] at that time. The Petitioner must resolve this inconsistency 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).

Beneficiary's current position was technical manager and that he allocated his time in the position as follows:

- Review customer's Statements of Work, Project Plans, Project Deliveries, set delivery priorities, and make schedule adjustments to meet timely delivery goals– 25%;
- Oversee daily activities of delivery team based out of multiple time zones/locations and provide direction, guidance and mentoring as needed – 15%;
- Serve as primary contact for customer inquiries, concerns and escalations– 15%;
- Participate in Business Meetings and Solutions Presentations with Customers– 15%;
- Customer and Management Reporting– 15%;
- Evaluate performance of team members and determine training needs to ensure team maintains high level of competence and operational excellence – 10%; and
- Develop process improvements to achieve cost effectiveness and time saving- 5%.

In a request for evidence (RFE), the Director stated that the duties indicated that he was primarily involved with performing tasks necessary to provide a service or product. The Director noted that the Beneficiary's paystubs indicated that he was employed as a senior consultant from May 2016 to March 2017, and that he was employed as a lead consultant from April 2017 to May 2017.[2] He requested additional evidence regarding the Beneficiary's duties abroad.

In response, the director of [redacted] provided a letter stating that the Beneficiary's initial designation was senior consultant, and he was later promoted to lead consultant (technical manager).[3] He stated that "[b]oth of these positions are managerial in nature, requiring [the Beneficiary] to be involved in the hiring, motivation, retention, goal setting, evaluating, addressing career paths, and training the needs of his team members." He restated the job duties and percentages listed above,[4] and clarified the Beneficiary's duties as follows:

> [The Beneficiary's] position requires a combination of managerial and technical skills and performs tasks related to company systems, including troubleshooting technical issues. The position oversees the development and implementation of all systems

[2] This petition was filed on December 7, 2018. According to his ratings in the file, he served as a senior consultant in 2015 and 2016, and as a lead consultant (technical manager) in 2017 and 2018. His payslips show that he was employed as a lead consultant from April 2017 through the date of filing the petition.

[3] It appears that the Petitioner uses these titles interchangeably for the same position.

[4] These duties do not appear to include his duties as a senior consultant. In its supporting letter with the petition, the Petitioner stated that the duties of senior consultant include contributing to projects; gathering requirements, designing, developing, deploying and supporting small to medium complex work; working independently at Petitioner or at customer location; and defining and managing schedule, deliverables, and customer expectations. The description did not include a specific description of the Beneficiary's managerial duties as a senior consultant, and the record does not include an organizational chart reflecting the Beneficiary's position in the company as a senior consultant. In its RFE response, the Petitioner stated that the position of senior consultant is a managerial position which acts as a contact person between the Petitioner and its clients. The Petitioner emphasized the managerial aspect of the position in response to the RFE, while its original description was not managerial in nature. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Because the Petitioner's primary description of the Beneficiary's job duties relate to his job as lead consultant (technical manager), we will focus our discussion on the managerial aspects of that job.

through all steps of the process, and ensures that all members of the team are fully trained and able to perform their job. The position is the point person for technical issues that arise within the team, and is responsible for making key decisions for those issues related to the company after considering everything from cost to quality of hardware or software. Furthermore, the position provides guidance for all members of the team when it comes to designing, implementing and updating software and constantly evaluates company platforms and networks and search for ways to improve them. The position is responsible for addressing faults within any company system, and ensuring those faults are corrected. The technical manager makes sure that all procedures are documented for reference and that all of the members of the IT team are trained to handle any situation. The position is the communication source between clients and upper management of the company, and performs management tasks for the team. These duties include conducting employee reviews, handling employee complaints, and dividing the workload among members of the team.

In his decision, the Director stated that many of the Beneficiary's job duties are not consistent with those typically performed by someone in a managerial or executive position, including serving as primary contact for customer inquiries, concerns and escalations; participating in business meetings and solutions presentations with customers; customer and management reporting; and reviewing customer's statements of work, project plans, and project deliveries, setting delivery priorities, and making schedule adjustments to meet timely delivery goals. He stated that the duties indicated that the Beneficiary was primarily involved with performing tasks necessary to provide a service or product.

On appeal, a member of the human resources department of [redacted] provided a letter further detailing the Beneficiary's duties:

- Review customer's Statements of Work, Project Plans, Project Deliveries, set delivery priorities, and make schedule adjustments to meet timely delivery goals (25%).
    - Preparation of the templates to capture the functional design documents, technical documents and migration documents.
    - Provide a necessary support to customers in preparing the requirements and deployments.
    - Gather Statement of Work from Customers on Informatica, Oracle Warehouse Builder, Oracle, Oracle Analytical Cloud etc, and review them.
    - Prepare detailed Project Plan defining roles, responsibilities, scope, cost and staffing plan. Discuss the key components with key stakeholders.
    - Keep track of deliverables, Monitor, review, and set delivery priorities, milestones, and schooled plan.
    - Establish strict change control, detail the deliverables, and adjust plan and resource count to achieve timely delivery goals.
    - Provide in-depth and board functional knowledge to business whenever its necessary.

- Oversee daily activities of delivery team based out of multiple time zones/locations and provide direction, guidance and mentoring as needed (15%).

  - Schedule consistent meetings to oversee everyday activities for onsite and offshore to bring both together on a regular rhythm.
  - Improve the agile capabilities of team by building business knowledge-oriented teams at distributed locations.
  - Mentor the team regularly and help the teams grow their technical and functional skills.
  - Develop training strategy for Offshore and Onsite team which includes customer needs and future upgradations.
  - Preparation of end user questionnaires and test strategies.

- Serve as primary contact for customer inquiries, concerns and escalations (15%).
  - Be the primary or key resource for the customers for their all queries, inquires, concerns and escalations.
  - Be the first person to receive any concerns or escalations.
  - Be available at customers time zones for any priority escalations and concerns.
  - Guide the team and take required decisions to resolve customer concerns/escalations.
  - Provide functional expertise on concerns/escalations as a first step of solution.

- Participate in Business Meetings and Solutions Presentations with Customers (15%).
  - Meet the customer personally for solution presentation, new updates in software, new functionalities etc.
  - Involve in all Business meetings to bridge the technical and functional gap between teams and Customers.
  - Present updates on the work progress or completion every time to time to customers.
  - Present Solutions to Customers in case of any issues faced in the project.

- Customer and Management Reporting (15%).

- Evaluate performance of team members and determine training needs to ensure team maintains high level of competence and operational excellence (10%).
  - Continuously mentor each team member and help them improve their competencies.
  - Set goals for each team member to improve their technical skills and soft skills.
  - Involve in Quarterly and Annual appraisal meetings with all team members and evaluate their ratings accordingly.
  - Make sure that each team member maintains high level competency and operational excellence.
  - Keep team updated with new software in market demand, and change in customer interests.

- Develop process improvements to achieve cost effectiveness and time saving (5%).
  - Set goals to each team member to provide at least 1 Process Improvement which can save time and cost.
  - Review the PIPs provided and team members and coordinate with higher Management to implement the same.
  - Provide Process improvements to achieve cost effectiveness and time saving.

On appeal, the Petitioner asserts that the Beneficiary worked in a managerial capacity abroad; that he exercised control over the day-to-day activities of his team members who were located in India and the United States; and that he had authority to hire, fire, and recommend other personnel actions.

Like the Director, we find that the Beneficiary's job duties are not consistent with those typically performed by someone in a managerial position. The job description focuses mainly on the Beneficiary's interaction with customers, but says little about how those interactions qualify as managerial. He spends 45% of his time participating in business meetings and solutions presentations with customers; handling customer and managerial reporting; and serving as the primary contact for customer inquiries, concerns and escalations. However, the task of taking part in business meetings and solutions presentations with customers does not describe the meetings or the Beneficiary's role in them or how that is a managerial duty. The task of handling customer and management reporting does not describe the reporting or indicate how it is a managerial task. 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Further, it appears that the position is not managerial because the Beneficiary primarily performs the tasks necessary to provide services to its customers. The Petitioner provides enterprise applications solutions to its customers. 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). For example, the Beneficiary spends 25% of his time reviewing customers' statements of work, project plans, and project deliveries; setting delivery priorities; and making schedule adjustments to meet timely delivery goals. These duties are not managerial, but instead reflect the operational functions of the Petitioner's business. For example, preparing technical templates; providing customer support regarding technical requirements and deployments; gathering and reviewing statements of work from customers on technical issues; keeping track of deliverables; and monitoring, reviewing, and setting delivery priorities are operational duties related to the Petitioner's provision of technical services, not managerial duties.

Additionally, in response to the RFE, the Petitioner stated that the Beneficiary performs tasks related to company systems, including troubleshooting technical issues; that he is the point person for technical issues that arise within the team; that he evaluates company platforms and networks and search for ways to improve them; and that he addresses faults within company systems and ensures those faults are corrected. These duties indicate that the Beneficiary is providing technical support rather than serving in a managerial position.

Further, the job description states that the Beneficiary develops process improvements to achieve cost effectiveness and time saving, including setting goals and implementing PIPs with upper management. However, it does provide examples of the goals, PIPs, or process improvements or explain how upper management is involved in the process. In the RFE, the Director requested an organizational chart

showing the foreign entity's organizational structure and staffing levels, but it did not provide one.[5] As the record does not contain an organizational chart identifying the company's "upper management," the Beneficiary's role in the PIP process cannot be determined. While it is clear that the Petitioner had several clients in the United States, the Beneficiary's role in the overall organization, both in India and the United States, is unclear.

Moreover, although the Beneficiary's job description indicates that the Beneficiary exercises some discretion over day-to-day operations of the "delivery team," the record does not demonstrate that the lower level personnel relieve the Beneficiary from performing non-qualifying day-to-day operational duties. At the time of filing, the Petitioner stated that the Beneficiary managed seven professionals, based both in India and the United States. They included a senior consultant in the United States, a consultant in the United States, two consultants in India, and three trainee developers in India. In response to the RFE, the Petitioner stated that it "purposefully" reduced that number from seven to four "at the time of filing," but it does not indicate whether anyone in India or the United States took over the duties of the departed employees.[6] As noted above, the Beneficiary's position includes many technical duties, and the Beneficiary's seven subordinates also had primarily technical duties. Even with seven subordinates handling technical issues, the Beneficiary still appears to have primarily provided substantial technical support. The record therefore does not demonstrate that the Beneficiary's duties were "primarily" managerial in nature. Sections 101(A)(44)(A) and (B) of the Act.

Based on the foregoing, the record does not demonstrate that the Beneficiary was primarily engaged in managerial duties abroad.

B. Staffing and Organizational Structure

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* sections 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. The statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(*4*). If a petitioner claims that a beneficiary directly supervises other employees, those subordinate employees must be supervisory, professional, or managerial, and the beneficiary 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 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"

[5] Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

[6] The new chart submitted in response to the RFE shows that the Beneficiary managed two U.S.-based employees, a senior consultant and a consultant. It shows that the U.S.-based senior consultant oversees a consultant in India, and that the U.S. based consultant oversees a trainee developer in India. The same chart is provided on appeal. In the description of their duties, the four employees have solely technical duties and do not appear to have any managerial duties.

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 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).

As previously indicated, the initial organizational chart submitted with the petition shows that the Beneficiary had seven subordinate employees, and a Director oversaw the Beneficiary. In the RFE, the Director stated that Petitioner did not provide sufficient evidence confirming the employment of subordinate employees, that their positions require a baccalaureate degree as a minimum for entry, or evidence that they will relieve the Beneficiary from performing non-qualifying tasks.

In response to the RFE, the Petitioner stated that the Beneficiary's global teams were purposefully reduced to four from seven at the time of filing and that upon his arrival in the United States, he would assemble new global teams. The Petitioner indicated in response to the RFE that the four "resources" currently managed by the Beneficiary included one senior consultant, two consultants, and a trainee developer. It provides evidence of employment of one of the consultants and the trainee developer by the Petitioner, and the other consultant and senior consultant by the Beneficiary's foreign employer. It also provides evidence of their degrees and lists their duties. To establish that the subordinate positions are professional positions requiring bachelor's degrees, it stated that each employee employed in a similar position has, at a minimum, a bachelor's degree or its equivalent.

In the denial decision, the Director found that other than its support letter, the Petitioner did not provide corroborating documentary evidence to suggest that the Beneficiary supervises and controls the work of other supervisory, professional, or managerial employees. On appeal, the Petitioner asserts that the Beneficiary managed seven "professional resources" who each had a bachelor's degree, and that the Beneficiary served as a function manager.

Here, the Petitioner has not demonstrated that the Beneficiary will be employed either as a personnel manager or a function manager. Although a beneficiary is not required to supervise personnel, if a petitioner claims that a beneficiary's duties involve supervising employees, then a petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* section 101(a)(44)(A)(ii) of the Act.

The Petitioner asserts that the subordinate positions are professional because the Petitioner normally requires a degree or its equivalent for the positions. In evaluating whether a beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent

is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

Therefore, we must focus on the level of education required by the position, rather than the degree held by subordinate employee. While the record contains copies of the subordinates' degrees, the possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity. Here, the Petitioner has not provided credible evidence establishing that a bachelor's degree is actually necessary to perform the duties of the positions of senior consultant, consultant, or trainee developer. For example, the Beneficiary served as a senior consultant, but he has a diploma that has not been established to be equivalent to a bachelor's degree. The Petitioner has also not shown that the Beneficiary's subordinates can be classified as managers or supervisors. Thus, the Petitioner has not shown that the Beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

Further, the evidence does not demonstrate that the Beneficiary has authority over personnel actions. Although the job description states that he evaluates the performance of team members, the duties of the Director who oversees the Beneficiary are not listed. Thus, the Director's authority over the Beneficiary and his subordinates, including personnel actions, is not clear. Further, the record contains no evidence of evaluations or other personnel actions performed by the Beneficiary. A petitioner's unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Additionally, it appears that the Beneficiary is one of over 20 technical managers in the organization. The Beneficiary's performance ratings indicate "Employee Distribution by Grades." His 2018 rating states that he was employed as a technical manager (grade T5), and that there were 23 other employees employed at the same grade. His 2017 rating shows that he was employed as a lead consultant (grade T5) and that there were 21 other employees employed at the same grade. The record does not contain a chart detailing the organizational structure of the employees serving outside of the Beneficiary's team. Instead, it contains a listing of 80 employees' names, the education they received, and their titles, including 24 lead consultants, 26 senior consultants, 28 consultants, and one developer. With so many individuals in the purportedly managerial roles of lead consultant and senior consultant, and without an overall organizational chart, it is not clear how their duties related to personnel actions are divided across the organization. The record also contains employment tax records for the U.S.-based employees for 2016 to 2018, but these documents do not show the organizational structure of the company or demonstrate that the Beneficiary has authority over personnel actions.

Finally, the initial organizational chart showed that the Beneficiary oversaw two U.S.-based employees - a senior consultant and a consultant. The chart showed that the U.S.-based senior consultant oversaw two consultants and a trainee developer in India; the U.S. consultant oversaw a trainee developed in India; and that trainee developer oversaw another trainee developed in India. However, the job duties of senior consultant and consultant do not mention any personnel oversight. The job description of the trainee developers state that they "work under close guidance provided by

a supervisor," but it does not identify the supervisors. The Petitioner did not provide credible evidence to show how the Beneficiary supervised and controlled the work of subordinates employed by the Petitioner in the United States, or how his subordinates supervised the work of trainee developers in India. In light of the deficiencies described above, the Petitioner has not established that the Beneficiary will be employed as a personnel manager.

On appeal, the Petitioner also asserts that the Beneficiary served as a function manager abroad. Here, the Petitioner has not sufficiently described the function to show that it is "a clearly defined activity." *Matter of G- Inc.*, Adopted Decision 2017-05. Instead, it broadly states that the Beneficiary was "focused on customer engagement" without adequately describing a specific function or component of the organization that the Beneficiary managed. In the absence of the requested company organizational chart, it is not clear where the Beneficiary and his team fit in the company as a whole. Further, whether a beneficiary is an "activity" or "function" manager turns in part on whether the Petitioner has sustained its burden of proving that the duties of that beneficiary are "primarily" managerial. *See Matter of Z-A-*, Inc., Adopted Decision 2016-02 (AAO Apr. 14, 2016). As discussed above, the Petitioner has provided a deficient job description that neither defines an essential function, nor conveys an understanding of how the Beneficiary managed the function. The deficient job description, coupled with a lack of understanding of how the Beneficiary's team fits into the overall hierarchy of the company, also precludes us from finding that the Beneficiary served as a function manager.

In sum, the Petitioner has not established that the Beneficiary was employed in a managerial capacity abroad.

III. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

In its initial submission, the Petitioner asserted that the Beneficiary is being transferred to the United States as part of a "global strategic reintegration program" with requires the Beneficiary to manage his projects and teams in the United States. The Director found that the Petitioner did not establish that the Beneficiary would be employed in the United States in a managerial or executive capacity. On appeal, the Petitioner asserts that the Beneficiary's position in the United States is identical to his position abroad and that because his position abroad is managerial, his position in the United States would be managerial. As discussed above, the Petitioner has not established that the Beneficiary was employed in a managerial capacity abroad. Because the Beneficiary's job duties and the nature of the Petitioner's business, its staffing levels, and its organizational structure will remain the same, we agree with the Director that the Beneficiary would not be employed in the United States in a managerial capacity.

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. A petitioner bears the burden of proving eligibility for a requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner here has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of S-E-S-, Inc.*, ID# 5462842 (AAO Aug. 20, 2019)