U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 14735677

Date: FEB. 10, 2021

Appeal of California Service Center Decision

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

The Petitioner, a consultancy services company, seeks to extend the temporary employment of the Beneficiary in the position of Director of Operations 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 Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that: (1) the Beneficiary would be employed in a managerial or executive capacity in the United States, and (2) the Beneficiary has been employed abroad in a managerial or executive capacity. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. See Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal because the Petitioner did not establish that the Beneficiary's employment in the United States would be in a managerial or executive capacity. Since the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding the remaining issue pertaining to the Beneficiary's employment abroad. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

I. LEGAL FRAMEWORK

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 their services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. Id. The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in a managerial capacity. The Petitioner does not claim that it will employ the Beneficiary in an executive 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 proposed position, which must clearly describe the duties to be performed by the beneficiary. 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.

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 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).

The Petitioner stated that it was founded in 2000 to design and implement financially efficient country-wide telecom networks in developing nations, and that it has since expanded its business operations into other domains such as power and energy, biotechnology, and secure data and analytics. Regarding the Beneficiary, the Petitioner stated that she has been employed as its operations director since 2017, and listed her primary duties as follows:

- ∑ Continue to support and understand the operational feasibility of a market expansion strategy in EMEA, APAC and South America to further our companies whole business target;
- ∑ Develop and earn high-value key foreign government executive relationships while based in the USA. This location (rather than China) allows for a better and trusted positioning of our services by the clients;
- ∑ Develop concrete measures to support the above tactics given the diverse nationality and country of domicile of several of the vendors that we deal with;

- ∑ Provide guidance on business and human capital requirements and lead the organization to succeed in this market segment;
- ∑ Inspire company performance, instill the mission and goals, and set the stage for the acquisition, retention, and management of superior talent throughout the organization;
- ∑ Sole responsibility for the management of the Chinese vendors, banks and government institutions providing financial risk and political risk insurance for infrastructure projects to be deployed under the guidance and on behalf of [the Petitioner] within the territory;
- ∑ Responsible for the end to end implementation of any project by managing staff within our organization and staff within the Chinese corporations to deliver client side requirements from the country's relative Ministerial departments;
- ∑ Responsible for ensuring that payments are made by clients to vendors and manufacturers following each milestone completion.

The Petitioner further stated that the Beneficiary "will continue to spend a full 100% of her time on the Company's operations and managing professionals, who in turn manage professional staff employed by both the vendor and the client." In support of this assertion, the Petitioner provided the following chart that listed her day-to-day duties:

Day-today job duties	Percentage of time 100%
Review and recommend changes to labor contracts with [redacted] to be acquired by [redacted] in [redacted]	7%
Assign to [redacted] law group staff the investigation of the labor and commercial laws and contractual obligations	10%
Review the labor relations rules in a German corporate entity with labor unions	10%
Review and analyze with [other employees] the results of the due diligence carried out on the partners and the companies hired by the investment firm offering the loan to acquire [redacted]	5%
Analyze and recommend successful strategy to commercialize the products of [redacted] Building this into the future revenue forecast of [redacted]	10%
Review with CEO the above strategy	5%
Approve the strategy – with all my direct reports	3%
Negotiate and review the terms of the loan agreements ensuring the separation of defense related projects from commercial business with [redacted] Law Firm as well as [redacted] Investment Company	20%
Review the loan agreement terms with CEO; Negotiate the changes to the terms of the loan Agreement with [redacted] Law Firm and [redacted] Investment Company	15%

Reviewing and approving the LOI and negotiating the purchase price with L3 to acquire	15%

The Petitioner also claimed that the Beneficiary's subordinates were all professional employees, and provided the following information (in relevant part) regarding these individuals:

Title	Tasks	Location
Operations Executive	Operations Support	
Finance Compliance Assistant	Ensures that loan documentation and processing complies with Chinese financial reporting	
Computer Systems Analyst	Technical support for the designed network	Middle East
Computer Network Architect	Ensure design and seamless integration of the Solution and Documentation	Middle East
Computer and Information Systems Manager	Located in China but traveling regularly to GCC is the liaison to ensure execution	
Market Research Analyst	Daily work inspection, daily/monthly/weekly report	

In a request for evidence (RFE), the Director requested additional evidence demonstrating that the Beneficiary would be performing primarily managerial duties, noting that the Petitioner did not specifically articulate whether the Beneficiary's employment was primarily managerial or executive.

In response, the Petitioner submitted a letter and additional evidence, and clarified that the Beneficiary's position was primarily managerial in nature. The Petitioner clarified that the Beneficiary and her team were responsible for two consultancy contracts; namely the acquisition of the operations of the in Ghana by the group and the merger and acquisition of the German group on behalf of a Chinese investment group. The Petitioner further claimed that the Beneficiary re-signed a continuation of consultancy contract with , under which the Beneficiary on behalf of the Petitioner will expand the client's ownership structure.

The Petitioner also provided clarification on some discrepancies noted by the Director in the titles and positions of the Beneficiary's subordinates within the organizational hierarchy, which will be discussed in further detail below. The Petitioner claimed that while the Beneficiary has not hired any full-time staff in the U.S. or China since 2017, she has the authority to hire and fire staff, in accordance with Chinese labor laws, and that "HR executes this process." The Petitioner further stated that the Beneficiary matches staff to the consultancy tasks required in each client proposal, thereby

demonstrating her authority to manage the work of her subordinates. Finally, the Petitioner claimed that it utilized an outside company, Paychex, to manage its payroll.

The Director denied the petition, concluding that the Petitioner had not demonstrated that the Beneficiary would be employed in a primarily managerial capacity. The Director noted that the overview of the duties provided, both initially and in response to the RFE, were too general and vague to identify with specificity the tasks that the Beneficiary would perform, thus precluding a finding that the position is primarily managerial in nature. The Director also noted that, while it claimed the Beneficiary had the authority to hire and fire employees, and take other personnel actions such as the hiring of employees, the transfer of a full-time intern, and selecting foreign consultants, the Petitioner had not submitted evidence to corroborate these claims.

On appeal,[1] the Petitioner asserts that the Director's findings were erroneous. The Petitioner asserts that the Beneficiary is employed as a function manager, and submits arguments and additional evidence in support of this contention. The Petitioner asserts that it offers vulnerability assessment consultancy services and resells pertinent Network Security products to solve identified vulnerability issues, and that the Beneficiary's role as functional manager of its telecom and biotech projects is a clearly defined activity that demonstrates her employment is primarily managerial in nature.

After reviewing the record and the assertions of the Petitioner on appeal, we concur with the Director's conclusions. Preliminarily, we note that the Petitioner abandons its previous assertion that the Beneficiary was acting as a personnel manager based on her supervision of subordinate professionals, and provides arguments solely in support of its assertion that the Beneficiary will serve as a function manager. The Petitioner indicates that the Beneficiary's primary responsibilities will be divided equally between developing key foreign government relationships to support and understand the operational feasibility of Telecom and Biotech market expansion (50%) and managing the end to end implementation of all Telecom and Biotech projects. (50%). It also provides a revised statement of duties along with a new chart of duties that introduces new tasks and alters the percentages of time the Beneficiary would devote to day-to-day responsibilities. The Petitioner also provides a new organizational chart on appeal, which modifies its claimed organizational structure.

On appeal, a petitioner cannot offer a new position to a beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. A petitioner must establish that the position offered to a beneficiary, when the petition was filed, merits classification as a managerial or executive position. See Matter of Michelin Tire Corp., I7 I&N Dec. 248, 249 (Reg'l Comm'r 1978). The Petitioner attempts to revise the associated duties of the Beneficiary's position on appeal in an apparent attempt to overcome the deficiencies noted by the Director. 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). We note that the Petitioner was afforded the opportunity to supplement the record with additional details regarding the position in response to the RFE; however, the Petitioner simply resubmitted its prior statement of duties with additional clarifications regarding the duties of the

[1] We note that the Petitioner's submission on appeal is entitled "Motion to Reopen and/or Reconsider." The Petitioner, however, indicated on the Form I-290B, Notice of Appeal or Motion, that it was filing an appeal of the Director's adverse decision dated August 4, 2020. Therefore, we will treat the submission as an appeal despite the title used by the Petitioner.

Beneficiary's subordinates. We therefore have evaluated the record based on the duties of the position and the Petitioner's organizational structure as stated in the record prior to the Director's adverse decision and, upon review, determine that its organizational structure, coupled with the generalized list of the Beneficiary's duties, does not support a finding that the Beneficiary will be employed in a primarily managerial capacity.[2]

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). A beneficiary that supervises others may also qualify as a function manager. Id.

In this matter, the Petitioner has not provided sufficient evidence that the Beneficiary manages an essential function. In its initial supporting documentation, the Petitioner indicated that the Beneficiary would be acting as a personnel manager by virtue of her oversight of six professional employees (four in China and two in the Middle East). The Petitioner stated that the Beneficiary would supervise these employees by assigning them to specific projects that required consultancy tasks that matched their level of proficiency. Upon review of the stated duties, however, we note the Petitioner's claims that the Beneficiary would "negotiate and review the terms of the loan agreements," "review the loan agreement terms with the CEO" and negotiate changes to the loan terms, and negotiate the purchase price for the acquisition of [redacted]. The Petitioner also claimed that the Beneficiary would exercise "sole responsibility for the management of the Chinese vendors, banks and government institutions providing financial risk and political risk insurance for infrastructure projects" to be implemented by the Petitioner. The duties suggest that the Beneficiary is directly engaged in the acquisition and negotiation of contracts and loans on behalf of both the Petitioner, its vendors, and its clients. Based on these statements alone, it appears that the Beneficiary will be performing the tasks necessary to negotiate and acquire its telecom and biotech projects as opposed to managing the function that is responsible for the projects.

Further, while the stated duties of the Beneficiary provide a general overview of the requirements of her position, it is unclear exactly what the Beneficiary will do on a day-to-day basis, and how she will

[2] The new organizational chart submitted on appeal modifies the organizational structure of the Petitioner. According to the new chart, the Beneficiary directly supervises seven subordinate employees, some of whom supervise subordinate staff beneath them. The new chart introduces a logistics manager, an associate director, a senior project manager, and a project manager, and eliminates the previously identified positions of computer systems analyst/architect, computer network architect, and computer and information systems manager. This new chart, however, will not be considered. As discussed above, a petitioner cannot materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities on appeal, and must establish that the position offered to a beneficiary, when the petition was filed, merits classification as a managerial or executive position. See Matter of Michelin Tire Corp., 17 I&N Dec. at 249.

primarily manage the various contracts of the Petitioner as opposed to engaging in tasks that equate to performing or contributing to the Petitioner's acquisition of such projects. The Petitioner indicates that there are no U.S. employees to support the Beneficiary, and that all of the individuals that will relieve her from performing non-qualifying operational duties are based abroad. While the Petitioner identified the subordinate employees by title and tasks, we note the absence of personnel in the areas of sales, clerical, and human resources, thus raising questions regarding the manner in which the administrative and operational tasks of the Petitioner will be accomplished. Although the Petitioner claims that it utilizes the outside company Paychex for payroll management, no documentation to support this assertion was submitted, and the presence of such a company within the Petitioner's organization appears moot given the U.S. office has no employees other than the Beneficiary.

The Petitioner's description of duties is insufficiently detailed to understand the Beneficiary's role within the U.S. organization and that the actual duties are managerial functions and not primarily administrative and operational tasks. As noted above, the Petitioner indicated that the Beneficiary will negotiate and review the terms of loan agreements and purchase pricing for the Petitioner's acquisitions, which are not representative of tasks associated with a function manager that manages, rather than performs, the tasks necessary to manage a company's portfolio of projects. Moreover, the Petitioner's U.S. organizational structure is devoid of subordinate employees, and the overall organizational structure of the Petitioner does not identify any individuals responsible for sales or contract negotiations. For example, in response to the RFE, the Petitioner clarified that it employed an operations executive, a financial compliance assistant, a computer systems analyst, a computer network architect, a computer and information systems manager, and a market research analyst, all of whom are based abroad either in [redacted] or the Middle East. Based on this organizational structure, it does not appear that the Petitioner employs sufficient personnel to relieve the Beneficiary from performing non-qualifying duties. For example, three of the six identified employees provide computer-based services, but the manner in which such services support the Beneficiary and relieve her from performing non-qualifying duties is unclear.

Here, despite abandoning its claim that the Beneficiary is a personnel manager, the claim that she qualifies as a function manager relies heavily on the services of subordinate employees to carry out the business development function of the Petitioner. Although the Petitioner claims that the foreign-based employees will carry out the operational and administrative tasks of the company, these staff members are not in the United States performing these tasks, and the extent to which they support the U.S. entity either administratively and/or operationally has not been clearly defined. As recognized in Matter of Z-A-, Inc., Adopted Decision 2016-02 (AAO Apr. 14, 2016), personnel employed by a related entity may be considered in the analysis of whether the Beneficiary is relieved from performing day-to-day non-managerial tasks. In this matter, however, the Petitioner does not provide sufficient evidence to establish that the individuals on the foreign teams relieve the Beneficiary from performing the basic operational and administrative tasks necessary to continue the operations of the Petitioner. The Petitioner does not provide sufficient evidence establishing that the foreign-based employees perform the U.S. sales, administrative, and/or operational tasks necessary for the Petitioner's business development. Moreover, the Petitioner does not articulate who actually performs the routine day-to-day operational and administrative tasks of the business. Further, the Petitioner has not sufficiently corroborated how the Beneficiary supervises or delegates duties to these subordinates to establish that the Beneficiary is relieved from performing non-qualifying tasks. The Petitioner has not demonstrated that the Beneficiary will primarily manage an essential function. Moreover, the

Petitioner has not established that the Beneficiary will manage, as opposed to perform, the operational and administrative tasks of the organization.

It is the Petitioner's burden to clearly describe the proposed duties and to establish that the Beneficiary's actual duties would be primarily managerial in nature. Reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The actual duties themselves will reveal the true nature of the employment. Fedin Bros.,724 F. Supp. at 1108 (E.D.N.Y. 1989), aff'd, 905 F.2d 41 (2d. Cir. 1990). Here, the Petitioner has not provided the necessary detail or an adequate explanation of the Beneficiary's proposed activities in the course of her daily routine, in light of the Petitioner's current organizational structure.

Further, although we do not expect the Petitioner to detail and document every managerial task performed by the Beneficiary, the lack of detail and credible documentation related to her asserted managerial duties is noteworthy since it claims she has been acting in this role in the United States for approximately three years prior to the date the petition was filed. Specifics are clearly an important indication of whether a beneficiary's duties are primarily managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. Id. While it appears that managing the various projects of the Petitioner is an essential function, the Petitioner's description of the Beneficiary's duties, coupled with the deficiencies in its organizational structure, do not establish that she will primarily manage that function, as opposed to engaging in sales, contract negotiation, vendor oversight, and other non-managerial services related to that function. Again, the Petitioner indicated that a typical task of the Beneficiary included loan term and purchase price negotiations for various acquisitions, as well as management of the Chinese vendors. The claim that she will directly engage in such tasks, and the absence of employees to perform or assist with these underlying tasks, suggests that she will be directly involved in the work required to secure new contract and projects and achieve the Petitioner's business goals. The actual duties themselves reveal the true nature of the employment. Id.

While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify a beneficiary as long as those tasks are not the majority of a beneficiary's duties, a petitioner still has the burden of establishing that a beneficiary will "primarily" perform managerial duties. See section 101(a)(44)(A) of the Act. Whether a beneficiary is a "function" manager turns in part on whether the petitioner has sustained its burden of proving that their duties are "primarily" managerial. See Matter of Z-A-, Inc., Adopted Decision 2016-02.

The record as constituted does not demonstrate that the Beneficiary will primarily perform the claimed duties stated by the Petitioner, and the current organizational structure of the Petitioner strongly suggests that the Petitioner does not possess the organizational complexity to effectively support the Beneficiary in a primarily managerial position. The Petitioner's description of duties and supporting documentation suggests her primary involvement in the non-qualifying operational aspects of the business, such as direct involvement in negotiation with clients and lenders. By comparison, there is no supporting documentation to corroborate that the Beneficiary primarily manages an essential function or that she primarily delegates non-qualifying tasks to her claimed subordinates. Therefore, the Petitioner did not adequately demonstrate that the Beneficiary primarily manages a function rather

than performed it. The Petitioner has not sufficiently established that the Beneficiary qualifies as a function manager.

The claim that a beneficiary will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive or managerial. Here, the Petitioner indicates that the Beneficiary will exercise discretion over the Petitioner's various contracts in the areas of telecom and biotech, and possesses the requisite level of authority with respect to discretionary decision-making and personnel matters. However, due to the deficiencies discussed, the submitted position descriptions do not establish that her actual duties would be primarily managerial in nature.

Overall, the record does not contain sufficient evidence regarding the Beneficiary's proposed role or the roles of her subordinates to establish that she would primarily perform qualifying managerial duties. Accordingly, the Petitioner has not established that she would be employed in a managerial capacity as defined at section 101(a)(44)(A) of the Act.

ORDER: The appeal is dismissed.