U.S. Citizenship and Immigration Services

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

In Re: 12243698

Date: OCT. 26, 2020

Appeal of California Service Center Decision

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

The Petitioner, an information technology consulting services company, seeks to employ the Beneficiary temporarily as its "Senior Manager – QA" 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 L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish, as required, that: (1) the Beneficiary was employed abroad in a managerial or executive capacity; and (2) the Beneficiary's proposed position in the U.S. would be 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.

## 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).

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) 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;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. 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.

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

The primary issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in a managerial capacity.[1] The Petitioner does not claim that it will employ the Beneficiary in an executive capacity.

To be eligible for L-1A nonimmigrant visa classification as a manager, a petitioner must show that the beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)–(iv) of the Act. If the record does not establish that the offered position meets all four of these elements, we cannot conclude that it is a qualifying managerial position. If a petitioner establishes that the offered position meets all four elements of the applicable statutory definition, it must prove that the beneficiary will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a beneficiary's duties will be primarily managerial or executive, we consider the petitioner's description of the job duties, the company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding the beneficiary's actual duties and role in the business.

Therefore, we will first determine whether the Petitioner established that the Beneficiary's position of "Senior Manager - QA" meets all elements of the statutory definition of "managerial capacity" at section 101(a)(44)(A) of the Act.

[1] As explained below, we decline to reach and hereby reserve the Petitioner's arguments regarding whether the Beneficiary was employed abroad in a managerial or executive capacity.

The Petitioner, established in 1997, is engaged in information technology consulting, and seeks to employ the Beneficiary in the position of Senior Manager – QA. The Petitioner claims that it has been providing services to [redacted] including developing and delivering a project entitled '[redacted]' and indicates that the Beneficiary will manage a team of professional employees assigned to this account. The Petitioner provided a general breakdown of the areas in which the Beneficiary would devote his time, as follows:

1. QA Management (40%)
    - Supervise and review requirements gathering and analysis performed by Lead Consultant (5%)
    - Guide consultants with test strategy/plans for testing [redacted] project/feature (10%)
    - Oversee the deployment and management of the test environment performed by consultants (5%)
    - Review the analysis of risk and mitigation/contingency plans prepared by Consultants (5%)
    - Review the result of testing of defect tracking and use scenarios performed by consultants and engineers (5%)
    - Guide consultants and engineers with automation integration test strategy for the support and maintenance of web-based and mobile applications for both [redacted] and server-side architectures (10%)
2. Delivery Management (25%)
    - Provide technical and thought leadership to consultants and engineers in the assigned projects (20%)
    - Guide consultants and engineers with realistic expectations and timelines for deliverables (5%)
3. Resource Management and Development (35%)
    - Monitor the status, coverage reports of [redacted] of [the Petitioner] through weekly meetings, finalize weekly review reports, and submit it to senior management (5%)
    - Allocate and coordinate the daily tasks among team members and provide them with leadership and guidance (5%)
    - Manage resources of [redacted] with evaluation of performance of activities (10%)
    - Manage process framework for increasing delivered-value over successive reporting periods (10%)
    - Ensure to implement Process and Cost Optimization (5%)

The Petitioner also submitted an organizational chart demonstrating that the Beneficiary would oversee a total of 19 subordinate employees, composed of a lead consultant, a lead technology consultant, 10 senior technology consultants, two technology consultants, an associate delivery manager, a technology engineer, and three senior QA consultants.

In a request for evidence (RFE), the Director requested additional details regarding the Beneficiary's proposed position and the manner in which his subordinate employees would relieve him from performing non-qualifying duties. In response to the RFE, the Petitioner stated that the Beneficiary

will "not be engaged in technical duties, as his professional subordinates will relieve him from those duties." It further stated that he will manage the [redacted] project team by "primarily spending his time on performing evaluation of performance of his subordinates, allocating work to appropriate team members, reviewing their work products, communicating with the client as a point of contact, providing guidance and mentoring, and authorizing personnel and projects activities." In addition, the Petitioner stated that the Beneficiary "will assign his subordinates to design and develop the project, plan and conduct tests, gather requirements, perform coding, and implement changes for his review." As a result, the Petitioner claims that these subordinates will "relieve the beneficiary from performing technical job duties, which are necessary to deliver the project to the client."

The Petitioner further stated that the Beneficiary will have the authority to hire and fire as well as approve other personnel actions for his subordinate employees, such as managing unplanned leave and implementing mitigation plans to keep the project on track. On a daily basis, the Petitioner stated that the Beneficiary will conduct status scrum calls, review project backlogs and progress, and update project plans. On a weekly basis, the Petitioner stated that he will conduct weekly meetings with his team as well as the client, lead discussions with consultants, and review and approve employee timesheets. On a monthly basis, the Petitioner stated that the Beneficiary will conduct business reviews with client managers, meetings with senior managers to review client feedback, prepare reports for billing, and approve invoices. The Petitioner also provided an overview of quarterly and annual duties, which include performance reviews, training, and appraisals for team members as well as budget reviews.

In denying the petition, the Director noted that despite providing an extensive description of the proffered position, the Petitioner did not explain in detail how the Beneficiary will supervise and control the work of other supervisory, professional, or managerial employees. On appeal, the Petitioner asserts that the statements contained in its initial supporting documents and its RFE response establish eligibility for the benefit sought.

Upon review of the record in its entirety, the Petitioner has not established that the Beneficiary "supervises and controls the work of other supervisory, professional, or managerial employees," consistent with section 101(a)(44)(A)(ii) of the Act.

The definition of "managerial capacity" allows for both "personnel managers" and "function managers." Here, the Petitioner states that the Beneficiary will be employed in a managerial capacity based on his proposed supervision and control of subordinate personnel and does not claim that he will be employed as a function manager. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," 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."[2] *Id.*

[2] To determine 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."

The Petitioner claimed to employ 475 employees at the time of filing, and indicated that 19 of those individuals will be directly supervised by the Beneficiary as part of the [redacted] project for [redacted] the Petitioner's client. Specifically, the chart indicates that the project team is composed of a lead consultant, a lead technology consultant, 10 senior technology consultants, two technology consultants, an associate delivery manager, a technology engineer, and three senior QA consultants. The direct chain of supervision is somewhat unclear based on the chart's composition, but it appears, at a minimum, that the Beneficiary will directly oversee the lead consultant, several senior technology consultants, and various other technology and QA consultants.[3] Regarding the organizational hierarchy of the Beneficiary's team, the Petitioner stated that the senior and lead consultant positions are entry-level management positions "wherein employees are responsible for managing both subordinate professionals and functions."

The Petitioner did not sufficiently establish that the Beneficiary qualifies as a personnel manager based on his supervision of subordinate managers or supervisors. Although the petitioner's RFE response described in further detail the duties of the Beneficiary's subordinates, and the manner in which they would conduct work on the project for [redacted] the Petitioner did not submit sufficiently detailed duty descriptions for the Beneficiary's claimed supervisory subordinates to substantiate that they act in their claimed roles, and the inconsistencies in the hierarchical levels on the organizational chart render it difficult to determine which subordinate employees, if any, exercise control over their fellow team members.

In the alternative, the Petitioner did not demonstrate that the Beneficiary qualifies as a personnel manager based on his supervision of professional subordinates. In evaluating whether the Beneficiary manages professional employees, we review evidence of the subordinate positions and whether they 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 the subordinate employee. The possession of a bachelor's degree by subordinate employees does not automatically lead to the conclusion that an employee is employed in a professional capacity. The Petitioner submitted copies of the diplomas held by the Beneficiary's subordinate employees; however, it has not explained in detail why the duties of the Beneficiary's subordinate employees require them to hold a bachelor's degree. As discussed, the Petitioner provided generic duty descriptions for the Beneficiary's claimed professional subordinates that do not sufficiently corroborate their roles, nor do they demonstrate that these positions would require bachelor's degrees. While we note that all team members are involved in various forms of software consulting, there is no indication that a bachelor's degree is required to perform their duties. In addition, the Petitioner

[3] The organizational hierarchy of the Beneficiary's team is not clearly defined in the organizational chart. The chart demonstrates that the Beneficiary directly supervises some technology consultants, while simultaneously indicating that similar technology consultants are subordinate to senior technology consultants that are not directly listed under the Beneficiary's chain of supervision. It appears, generally, that the Beneficiary collectively supervises the team in its entirety without sub-tiers of managerial or supervisory employees.

provided no supporting documentation to support his personnel authority over, or his delegation of duties to, professional subordinates. As such, the Petitioner has not established that the Beneficiary will act as a personnel manager based on his management of subordinate professionals.

As previously noted, the definition of "managerial capacity" contains four elements. The Petitioner must show that the position meets each of the four elements. In looking at the second element alone, the evidence of record does not show that the Beneficiary "supervises and controls the work of other supervisory, professional, or managerial employees" as required to meet the first part of the definitional element of "managerial capacity" at section 101(a)(44)(A)(ii) of the Act. As noted above, the Petitioner does not allege that the Beneficiary "manages an essential function," which is the second part of the definitional element of "managerial capacity" at section 101(a)(44)(A)(ii) of the Act. As the record does not establish that the Beneficiary meets either part of the definitional element at section 101(a)(44)(A)(ii) of the Act, the Petitioner has not established that the offered position meets all four of the elements at section 101(a)(44)(A) of the Act.

The fact that the Beneficiary will manage a department or team of a business as a senior employee does not necessarily establish eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section 101(a)(44)(A) of the Act. While the Beneficiary may exercise discretion over the day-to-day operations of assigned projects and possess the requisite level of authority with respect to discretionary decision-making within the scope of those projects, the Petitioner must still establish that the position meets all elements of the statutory definition of managerial capacity. As the Petitioner did not meet that burden, the appeal will be dismissed.

## III. EMPLOYMENT ABROAD

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its arguments regarding whether the Beneficiary was employed abroad in a managerial or executive capacity. *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).

**ORDER:** The appeal is dismissed.