



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

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

MATTER OF B-A-, INC.

DATE: MAY 22, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a manufacturer of tires and rubber products, seeks to permanently employ the Beneficiary as a technical services manager under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Beneficiary would be employed in a managerial or executive capacity.

On appeal, the Petitioner asserts that the Beneficiary is relieved from operational level duties by administrative support staff and that he qualifies based on his management of technical communication with Japanese original equipment manufacturers.

Upon *de novo* review, we will dismiss the appeal.

#### I. LEGAL FRAMEWORK

An immigrant visa is available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

The Form I-140, Immigrant Petition for Alien Worker, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3).

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

The first issue to be addressed is whether the Petitioner has established that the Beneficiary would act in a managerial capacity. The Petitioner does not claim that the Beneficiary would be employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary would be employed 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, 8 U.S.C. § 1101(a)(44)(A).

The regulation at 8 C.F.R. § 204.5(j)(5) requires the Petitioner to submit a statement that clearly describes the duties to be performed by the Beneficiary. Beyond the required description of the job duties, we review the totality of the evidence when examining the claimed managerial capacity of a beneficiary, including 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, our analysis of this issue will focus on the Beneficiary’s duties as well as the company’s business activities and staffing levels.

### A. Duties

The Petitioner must show that the Beneficiary will perform certain high-level responsibilities consistent with the statutory definitions of managerial capacity. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). In addition, 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); *Champion World*, 940 F.2d 1533.

The Petitioner stated that it primarily produces “tires for passenger cars, trucks, buses, and other wheeled vehicles ranging from construction and mining vehicles to subway trains.” The Petitioner indicated that the Beneficiary would act as a technical service manager tasked with overseeing and leading “all technical communication between [the Petitioner] and our Japanese Original Equipment (“OE”) manufacturing customers in support of engineering and technical negotiations.” The Petitioner explained that the Beneficiary would also be responsible for “developing and managing the technical strategy to our OE customers,” negotiating “complex customer issues,” and developing management level relationships. It further stated that the Beneficiary “manages our tire testing and

logistics, attends joint test sessions, and coordinates technical meetings in support of the tire standard approval process.” It also indicated that the Beneficiary “is responsible for interpreting, clarifying, and recommending necessary engineering efforts to obtain full engineering approval of OE tires.” The Petitioner submitted these same duties in response to the Director’s request for evidence (RFE), despite the Director stating that the position description was vague and lacking “an explanation of the specific daily tasks” of the Beneficiary.

In denying the petition, the Director determined that the Beneficiary’s duties were consistent with a “high level technical liaison” and not a manager. On appeal, the Petitioner again states that the Beneficiary is focused on “managing technical communication.” The Petitioner also asserts that the Beneficiary is not performing this day-to-day technical communication, but overseeing communication performed by “bargaining representatives from its Original Equipment (“OE”) manufacturing customers.” Beyond this, the Petitioner largely reiterates the Beneficiary’s previously asserted duties on appeal.

The Petitioner has only provided a broad overview of the Beneficiary’s general responsibilities and level of authority without identifying the nature of his actual day-to-day tasks. The Petitioner provides vague statements regarding the Beneficiary’s responsibilities, such as being tasked with overseeing communication between the Petitioner and OE manufacturing customers, “negotiating complex customer issues,” and developing management-level relationships. However, the Petitioner does not detail what specific duties result from these responsibilities, such as what tasks would make up “overseeing communication,” what complex customer issues he would negotiate and with whom, and what tasks he would undertake to “develop management level relationships.”

Likewise, the Petitioner vaguely states that the Beneficiary will manage tire testing logistics, attend joint test sessions, coordinate technical meetings in support of the tire standard approval process, and interpret and recommend “necessary engineering efforts to obtain full engineering approval of OE tires.” Again, the Petitioner does not articulate the daily tasks that the Beneficiary would perform while managing tire testing logistics, attending joint test sessions, and coordinating technical meetings. This lack of detail and documentation is particularly noteworthy since U.S. Citizenship and Immigration Services (USCIS) records indicate that the Beneficiary acted as an L-1A nonimmigrant intracompany transferee for approximately six months prior to the date of the petition. However, the Petitioner provided little detail or documentation regarding his actual daily tasks over these six months or customer issues he negotiated, relationships he developed, joint testing sessions he attended, or technical meetings he coordinated during this time. Conclusory assertions regarding the Beneficiary’s employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the Petitioner’s burden of proof. *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); *Ayvr Assocs., Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

While the stated responsibilities suggest that the Beneficiary likely would have significant responsibilities, the provided description lacked meaningful information regarding what he would actually be doing as part of his day-to-day routine. Further, the Petitioner was afforded the

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opportunity to submit additional detail and supporting evidence, including a more detailed duty description, in response to the RFE and now on appeal, but declined to do so. 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).

To the extent that the Beneficiary provides detail regarding his daily tasks, these duties suggest typical engineering responsibilities, such as tire testing logistics, joint test sessions, technical meetings, and interpreting and recommending necessary engineering, rather than a manager overseeing personnel or a function. On appeal, the Petitioner emphasizes that the Beneficiary does not perform operational level tasks himself, such as performing actual communications, but that he oversees communication between the Petitioner and its OE manufacturing customers who actually make phone calls, send emails, and send documents through mail. However, little evidence regarding the nature of these employees and customers and their communications was submitted which would allow an understanding of the Beneficiary's specific role, what he does on a daily basis in relation to these employees and customers, and how he is managing their communications. In sum, the Petitioner description of the Beneficiary's position is too vague to determine whether he is primarily focused on managerial level tasks rather than non-qualifying operational level duties. 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 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).

The fact that the Beneficiary will manage or direct business does not necessarily establish eligibility for classification as a multinational manager. By statute, eligibility for this classification requires that the duties of a position be "primarily" managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. Even though the Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making, the position descriptions alone are insufficient to establish that his actual duties would be primarily managerial in nature.

#### B. Staffing and Operations

If staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, the reasonable needs of the organization are taken into account in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

The Petitioner stated that the Beneficiary would have no subordinates in his proposed capacity in the United States, but that he would, as discussed, oversee and lead communication between the Petitioner and its Japanese OE manufacturing customers.

In denying the petition, the Director concluded that the Beneficiary's lack of subordinates left question as to who performed the day-to-day operational duties of his function. Based on this, the

Director determined that the Beneficiary was primarily engaged in performing the function rather than managing it. On appeal, the Petitioner asserts that the Beneficiary is supported by two administrative employees who relieve him from non-qualifying tasks such as “translation, copying, mailing, answering phones, and other administrative tasks.” Further, the Petitioner contends that the Beneficiary does not perform the duties of his function, namely “communication,” but that this is performed “by the employees [of the Petitioner] and by its Japanese OE manufacturing customers.”

As we have noted, the Petitioner asserts that the Beneficiary qualifies as a manager. The statutory definition of “managerial capacity” allows for both “personnel managers” and “function managers.” See section 101(a)(44)(A)(i) and (ii) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Since the Beneficiary was not offered a position as a personnel manager, he must qualify as a function manager to be eligible for classification as a multinational manager. 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).

First, the Petitioner also has not properly described and documented the specific function the Beneficiary will manage. As discussed, the Beneficiary’s duty description is vague and does not sufficiently detail the Beneficiary’s day-to-day tasks. Without a sufficient description, it is difficult to properly understand the nature of the Beneficiary’s function. For example, the Petitioner did not articulate the daily tasks that the Beneficiary would perform while managing tire testing logistics, attending joint test sessions, and coordinating technical meetings. The Petitioner did not explain these logistics, test sessions, or technical meetings in detail; as such, the nature of the Beneficiary’s function remains unclear. In addition, the Petitioner does not state why the Beneficiary’s function is essential to the organization. Although the Petitioner generally makes reference to various Japanese automobile companies with which the Beneficiary would coordinate pursuant to managing “communication,” it does not provide cogent reasons for why this function is essential to the organization.

Furthermore, although a function manager is not required to have subordinates, the Petitioner must establish that the Beneficiary is not primarily engaged in performing the function. Again, the Petitioner has not sufficiently explained how the Beneficiary would be relieved from performing his asserted function. For instance, on appeal, the Petitioner emphasizes that the Beneficiary is supported by two administrative employees performing clerical duties. However, the evidence indicates that the Beneficiary’s function does not only consist of clerical duties, but communication

between the Petitioner and its Japanese OE manufacturing customers. Further, the Petitioner does not identify or substantiate the Beneficiary's asserted clerical staff or describe their duties in detail.

The Petitioner also asserts on appeal that the Beneficiary does not actually perform communication with customers, but that this is done by employees of the Petitioner and its Japanese OE manufacturing customers. However, given the Beneficiary's insufficient duties, we are not provided with an adequate picture of how he is delegating communication within his function to the Petitioner's and its customers' employees. Indeed, the Petitioner appears to suggest elsewhere on the record that the Beneficiary is performing this function stating in a support letter that the Beneficiary participates "face-to-face" in the joint testing of tires and discussion of technical issues with corporate customers. This discussion of the Beneficiary's role appears contrary to its assertion on appeal that the Beneficiary is only managing communication performed by the Petitioner's and its customers' employees. Further, the Petitioner does not describe or document its employees and their duties, or how the Beneficiary would direct their communications.

It is also noteworthy that the Beneficiary's foreign duties are identical to his proposed duties in the United States. We note that his title abroad was technical liaison manager, compared to technical service manager in the United States. In short, it appears likely that the Beneficiary would fulfill a nearly identical role in the United States as he did abroad. However, the Petitioner states that the Beneficiary is supported abroad by four technical liaison employees holding bachelor's degrees, while in contrast, he is supported by no professional-level employees in his proposed role in the United States. This only leaves further question as to whether the Beneficiary would primarily manage his function rather than perform it.

Therefore, the Petitioner has not clearly described the Beneficiary's duties or the function he would manage. The Petitioner has also not articulated the essential nature of the Beneficiary's proposed function, nor has it properly explained and documented how the Beneficiary would be primarily relieved from performing his function. As such, the Petitioner has also not established that the Beneficiary would act as a function manager.

For the reasons discussed above, the Petitioner has not demonstrated that the Beneficiary will be employed in a managerial capacity.

### III. FOREIGN EMPLOYMENT IN A MANAGERIAL CAPACITY

Because we conclude that the Petitioner did not demonstrate that the Beneficiary would act in a managerial capacity in the United States, we need not address other issues evident in the record. That said, we will briefly identify an additional ground of ineligibility to inform the Petitioner that this issue should be addressed in future proceedings.

The Petitioner has also not established that the Beneficiary acted in a managerial capacity with the foreign employer. As we have discussed, the Petitioner submits identical duties and similar position titles for the Beneficiary with respect to his role abroad and his proposed role in the United States.

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As we discussed in the previous section, the Beneficiary's stated duties in the United States are vague and do not properly convey his day-to-day tasks; as such, the same holds true for his identical foreign duties. Further, the Petitioner indicates that the Beneficiary oversaw four technical liaison employees abroad holding bachelor's degrees. However, the Petitioner does not describe the duties of these employees, how the Beneficiary manages them, document their employment, or substantiate the existence and any details of their bachelor's degrees.

#### IV. CONCLUSION

The appeal must be dismissed because the Petitioner has not established that the Beneficiary will be employed in the United States in a managerial or executive capacity.

**ORDER:** The appeal is dismissed.

Cite as *Matter of B-A-, Inc.*, ID# 1222620 (AAO May 22, 2018)