



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

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

MATTER OF I-C-(US) INC.

DATE: JAN. 26, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a venture capital firm, seeks to temporarily employ the Beneficiary as an associate under the L-1A nonimmigrant classification for intracompany transferees. *See* 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 record did not establish that the Beneficiary has been employed abroad, or would be employed in the United States, in a managerial or executive capacity.

On appeal, the Petitioner asserts that the Director did not fully consider the totality of the evidence and contends that it demonstrates the Beneficiary acts as a function manager abroad, and that he would be employed as a function manager in the United States.

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 his or her 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).

“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.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) takes 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.

II. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

The first issue to address is whether the Petitioner has established that the Beneficiary is employed abroad in a managerial capacity, specifically, as a function manager. The Petitioner does not claim that the Beneficiary is employed in an executive capacity abroad.

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).

The Director concluded that the Beneficiary’s duties were indicative of an employee providing services and performing non-qualifying operational duties. Specifically, the Director found that the Beneficiary likely performed the duties related to his function rather than managing the function. The Director also stated that the Petitioner did not demonstrate that the Beneficiary has subordinate managers and professionals to relieve him from performing non-qualifying operational duties in his position abroad.

On appeal, the Petitioner states that the Director did not consider all of the evidence related to its extensive investment operations and activities. The Petitioner contends that the Director disregarded the Beneficiary’s elevated position within the foreign entity’s organizational chart and his wide ranging authority to decide on the sourcing of new investments and his subsequent management of these investments. The Petitioner further asserts that the Director improperly focused on whether the Beneficiary has subordinates to relieve him from non-qualifying duties and indicated that this is not required to qualify as a function manager. Regardless, the Petitioner indicates that the Beneficiary is supported by operational employees within the foreign entity who assist him with non-qualifying operational tasks.

The Petitioner stated that the foreign entity is a venture capital firm focused on partnering with “visionary entrepreneurs to build the next generation of information technology companies.” The Petitioner indicated that the foreign entity targets “early-stage and high-growth potential IT companies in Digital Media, Internet, SaaS and Communications sectors with a target of helping entrepreneurs build successful companies in the information technology field.” The Petitioner explained that the foreign entity has secured 179 million Canadian dollars in investment in 114 companies.

The Petitioner stated that the Beneficiary is the only associate employed by the foreign entity and that he reports to the company’s managing partner. The Petitioner submitted a foreign entity organizational chart indicating that the managing partner supervises two partners, a “partner and chief financial officer (CFO),” a principal, the Beneficiary, and a head of talent. In turn, the chart shows that one partner supervises a senior analyst, the partner and CFO oversees a director of finance and administration, another partner supervises an analyst, and the principal oversees an analyst and an intern. Further, the director of finance and administration was shown to oversee an office manager, an accounting technician, an accounting associate, and an operations analyst. The Petitioner stated that the Beneficiary is responsible for an essential function of the foreign entity; namely, “sourcing new investments and managing portfolio companies of the [foreign entity].”

The Petitioner indicated that the Beneficiary holds a “high-level position” within the foreign entity. The Petitioner explained that the Beneficiary devotes 40% of his time to “sourcing new investment opportunities,” including “managing day-to-day relationships with potential portfolio companies, co-investors, limited partners and corporate partners,” “managing a proprietary database of potential investments,” developing and implementing “new investment approaches,” and building the “firm’s brand in spaces of interest, and representing the firm at industry events.” The Petitioner also stated that the Beneficiary spends 30% of his time “managing [the foreign entity’s] portfolio companies,” including “advising portfolio companies with strategy, hiring, business development and planning for future financing” and “serving on portfolio companies’ Boards of Directors as a Director or Observer.”

Further, the Petitioner indicated that 20% of the time the Beneficiary is tasked with “managing the firm’s investment process in the United States, comprising of “overseeing pipeline management,” “managing the investment process,” and “managing quarterly updates for tracking, valuations, and exit plans for portfolio companies.” Lastly, the Petitioner stated that the Beneficiary devotes 10% of his time to performing due diligence, including “controlling due diligence from start to finish” such as an initial review, valuations, “market research through customer calls,” “expert interviews,” and making “recommendations to [the] investment team and lead[ing] new investment opportunities.”

The Petitioner has submitted a duty description indicating that the Beneficiary performs substantial non-qualifying operational duties in his capacity with the foreign entity. For instance, the Beneficiary’s duty description includes several non-qualifying duties that appear directly related to the provision of services for the foreign entity and companies in which it invests, including sourcing investment opportunities, managing a proprietary database of potential investments, creating and

launching brand content and events, advising companies in which the foreign entity invests, overseeing a pipeline of investment opportunities, providing quarterly tracking and valuation updates for companies, performing due diligence in companies from “start to finish” including financial reviews, models, market research, customer calls, and expert interviews, and making recommendations to the investment team. The Petitioner also stated in a support letter that the Beneficiary’s “role is focused on sourcing new investments, managing due diligence, business plan analysis, executing transactions, analyzing select industry subsectors, and supporting portfolio companies.”

Beyond the required description of the job duties, USCIS reviews the totality of the evidence when examining the claimed managerial or executive 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 evidence contributing to understanding a beneficiary’s actual duties and role in a business. In the case of a function manager with no direct subordinates, other factors considered may include a beneficiary’s position within the organizational hierarchy, the depth of a petitioner’s organizational structure, the scope of a beneficiary’s authority and its impact on a petitioner’s operations, the indirect supervision of employees within the scope of the function managed, and the value of the budgets, products, or services that a beneficiary manages. *See Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016).

On appeal, the Petitioner asserted that the Director “cherry-picked” operational duties from the description and mischaracterized the extent to which the Beneficiary has been performing non-managerial tasks. As noted above, service provision and operational related duties dominate the Beneficiary’s duty description. The Petitioner points to the nature of its business, namely the dollar amount of the foreign entity’s investments, as justification for the Beneficiary’s qualification as a function manager. However, it appears based on the evidence submitted and the described business that the Beneficiary is responsible for identifying new investment opportunities, performing due diligence on these potential investments, making “recommendations” to senior management as to investment, and advising and observing the companies following investment. The only revenue listed in foreign entity financials are charges for “advisory fees,” apparently a service provided by the Beneficiary based on his duty description. The Petitioner has not identified any other employees performing these services for the foreign entity. Indeed, in a submitted biography from the foreign entity’s website, the Beneficiary emphasizes his selling ability.

In sum, the evidence suggests that the Beneficiary is more likely devoted to sales, financial review, and advisory tasks, rather than having wide discretionary authority over an essential function within the foreign entity. The Petitioner contends that the Beneficiary acts within a higher level of management within the company on par with the foreign entity’s six partners. However, the Beneficiary is not a partner, and is likely subject to the discretion of the partners, rather than independently making investment and business decisions. The Petitioner provides few examples or documentation to substantiate the Beneficiary’s exercise of independent decision making within his asserted function. Moreover, the very nature of the Beneficiary’s stated function indicates that it is

related to the provision of services, or “sourcing new investments and managing portfolio companies.”

The Petitioner has also not adequately substantiated that the Beneficiary acts in a qualifying capacity by managing “portfolio companies” in which the foreign entity has invested. The Petitioner states that the Beneficiary acts on the board of directors of several portfolio companies, and provided evidence related to the Beneficiary’s participation on one company’s board. However, it is noteworthy that the Beneficiary acts on this board along with the managing partner of the foreign entity, leaving question as to whether he exercises discretionary authority in this capacity. Otherwise, the Petitioner submits no other supporting evidence to substantiate the Beneficiary’s involvement with other boards, or his discretionary authority in managing the companies in which the foreign entity invests. In fact, the Petitioner indicates that the Beneficiary will act as an “observer,” that he will “make recommendations,” “assist” these companies, and “facilitate” investment, suggestive of the provision of advisory services rather than management.

Likewise, although the Beneficiary’s resume highlights his involvement in the board of the aforementioned company, it otherwise only indicates that he “worked on the firm’s new investments” in several other companies. The Beneficiary’s resume also states that he “supported portfolio companies for recruiting, customer acquisition, financial modeling, competitive analysis and strategy” and that he “helped structure the firm’s Limited Partners’ quarterly reporting process, valuation process and cash flow management process.” Again, this document indicates that the Beneficiary is “supporting” and “helping” investing companies and his partners, and there is little indication that he regularly exercises discretionary authority as to fully managing the foreign entity’s investment activities as asserted.

In sum, the submitted duty description and documentation suggests that the Beneficiary has been responsible for a substantial amount of the operational aspects of the business, and it has provided few examples and little evidence to substantiate that he manages an essential function of the organization over which he exercises discretion. The evidence does not indicate that the Beneficiary has been relieved from significant involvement in non-qualifying operational tasks and that he spends a majority of his time managing a function. 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).

Moreover, the Petitioner does not document what proportion of the Beneficiary’s duties would be managerial functions and what proportion would be non-qualifying. The Petitioner lists the Beneficiary’s duties as including both managerial tasks and administrative or operational tasks, which are intermingled in the Beneficiary’s duty description and throughout the record. As such, it does not sufficiently quantify the time the Beneficiary spends on these different duties. This lack of documentation is important because, as we have discussed, the record includes substantial evidence reflecting the Beneficiary’s performance of non-qualifying operational tasks that cannot be classified

as managerial duties as defined in the statute. For this reason, we cannot determine whether the Beneficiary is primarily performing the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In fact, based on the Beneficiary's duty description and the evidence submitted, it is not clear what managerial tasks he performs. For example, the Petitioner references the Beneficiary's membership in company boards in which the foreign entity has invested, but as we have noted, it does not specify or document managerial level duties he has performed in this role and has not properly substantiated his membership in these boards. Otherwise, the record provides little indication of what managerial level tasks the Beneficiary performs. 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).

The Petitioner also asserts that the Beneficiary is supported in his capacity by operational level employees listed in the foreign entity organizational chart, including analysts and members of its finance department. However, the Petitioner does not articulate what duties he is delegating to these employees, nor does it corroborate this assertion with supporting documentation. Absent this evidence, it has not demonstrated that the Beneficiary has the support of indirect subordinates who relieve him from performing the various non-qualifying operational tasks set forth in his duty description.

Lastly, on appeal, the Petitioner compares the current matter to an USCIS adopted decision addressing function managers. See *Z-A-, Inc.*, Adopted Decision at 2016-02. However, we do not concur with the Petitioner's assertion that the facts of *Matter of Z-A-, Inc.* are similar. For instance, the beneficiary in that matter was the vice president and chief operating officer and was acting at the highest level of management within his organization. Here, as we have discussed, the evidence indicates that the Beneficiary acts at a position lower than the highest levels of the foreign entity's management, specifically the company's six partners.

In addition, the beneficiary in *Matter of Z-A-, Inc.* was supported by several operational level employees abroad who relieved him from performing non-qualifying operational duties in his capacity in the United States. In that matter, the beneficiary's managerial capacity abroad was not in dispute. Here, the Petitioner has not demonstrated that the Beneficiary is substantially relieved from performing his stated operational level tasks by subordinates or other staff within the foreign entity. Further, the beneficiary in *Matter of Z-A-, Inc.* performed no apparent non-qualifying tasks, but was focused on general policy, strategies, and goals of the organization, and on monitoring sales activities, while in this case the Beneficiary appears to be performing the sales activities. In short, the petitioner in *Matter of Z-A-, Inc.* credibly demonstrated that the beneficiary in that matter was primarily tasked with managing his function rather than performing the function. In sum, the Petitioner has not convincingly demonstrated that the facts of the current matter are comparable to *Matter of Z-A-, Inc.* and that it persuasively establishes the Beneficiary's eligibility as a function manager.

As we have discussed in this decision, the Petitioner submitted a duty description and supporting evidence indicating that the Beneficiary has been involved in many of the operational matters of his asserted function, and it has submitted little evidence to indicate that he exercises discretionary authority with respect to an essential function, or that he delegates operational tasks to others. The Petitioner has not established, as asserted, that the Beneficiary acts as a function manager for the foreign entity. For these reasons, the appeal will be dismissed.

III. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

As noted, the Director also concluded that the Petitioner did not establish that the Beneficiary would act in a managerial or executive capacity in the United States. In denying the petition on this ground, the Director cited similar reasons as those cited with respect to his foreign employment, indicating that the Petitioner did not establish that the Beneficiary would be primarily managing a function in the United States, but that he would primarily perform the function.

We decline to address this issue at length on appeal. The Petitioner sets forth the same duties for the Beneficiary in his capacity in the United States as those he performed abroad. Further, the Petitioner indicated that the Beneficiary will act in a similar capacity within the petitioning entity, albeit being supervised by the Petitioner's only other employee, a partner in the United States. As such, given the nearly identical nature of the Beneficiary's stated duties and capacity in the United States and abroad, we conclude for the same reasons set forth in the previous section that the Petitioner did not establish that the Beneficiary will be employed as a function manager in the United States. For this additional reason, the appeal will be dismissed.

IV. CONCLUSION

The appeal will be dismissed because the Petitioner has not established that the Beneficiary is employed abroad and will be employed in the United States in an executive or managerial capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of I-C-(US) Inc.*, ID# 939637 (AAO Jan. 26, 2018)