



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

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

In Re: 16423399

Date: APR. 28, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, describing itself as a provider of information technology consulting and back office services, seeks to temporarily employ the Beneficiary in the United States as a senior analytics 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 Director of the Texas Service Center denied the petition, concluding the record did not establish that the Beneficiary was employed in a managerial or executive capacity abroad. On appeal, the Petitioner asserts that support letters submitted by foreign employer executives demonstrate that the Beneficiary holds personnel authority over professional subordinates abroad.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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 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).

II. FOREIGN EMPLOYMENT IN A MANAGERIAL CAPACITY

The sole issue to be addressed is whether the Petitioner established that the Beneficiary was employed in a managerial capacity abroad. The Petitioner does not claim that the Beneficiary was employed in an executive capacity abroad. Therefore, we restrict our analysis to whether the Beneficiary was 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.

When examining the managerial capacity of a given beneficiary abroad, we will review the petitioner’s description of the foreign job duties. The petitioner’s description of the foreign job duties must clearly describe the duties performed by the beneficiary abroad and indicate whether such duties were in a managerial capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

A. Duties

To be eligible for L-1A nonimmigrant visa classification as a manager, the Petitioner must show that the Beneficiary performed the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act in his or her position abroad. If the record does not establish that the foreign position meets all four of these elements, we cannot conclude that it was a qualifying managerial position.

If the Petitioner establishes that the foreign position meets all elements set forth in the statutory definition, it must prove that the Beneficiary was *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside other foreign employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary’s foreign duties were primarily managerial, we consider the Petitioner’s description of the foreign job duties, the foreign company’s organizational structure, the duties of a beneficiary’s subordinate employees abroad, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the foreign business, and any other factors that will contribute to understanding a beneficiary’s actual duties and role in a business abroad.

The Petitioner stated that it and the Beneficiary’s foreign employer are information technology consulting companies providing “technology and business transformation services to small, medium and large enterprises in the US and India,” including “integrated business management software solutions.” The Petitioner indicated that the Beneficiary had been employed abroad since May 2016¹ as an “SAP Analytics Manager” and noted that he “takes the lead role on managing Business Intelligence and ERP implementation,” including managing “his team to work with Project Managers in putting together detailed project plans.” The Petitioner submitted the following duty description for the Beneficiary’s position abroad including percentages of time he devoted to each task monthly:

- Mentor and develop the Analytics team; Assign and monitor daily/weekly deliverables and with the team project members – 10%

¹ The petition was filed in March 2019.

- Define Project Standards, Development of Architecture, Review of Design, Analysis of project schedules, Team Management, ensuring optimum utilization of analytics resources and complete delivery within budget – 20%
- Define Project Standards, Development of Architecture, Review of Design, Analysis of project schedules, Team Management, ensuring optimum utilization of analytics resources and complete delivery within budget – 30%
- Assist with functional requirements using system analysis techniques and methods – 10%
- Review and validate deliverables with appropriate business and technology stakeholders – 20%
- Develop training materials and content – 5-10%
- Quality/Workflow compliance – Ensure service levels are clearly communicated, understood, and performed by on-site and remote staff – 5-10%
- Analytics Resource Coordination and management in the US and India, Coaching & counseling – Provide timely verbal and written feedback to team members; address performance issues, plan for employee growth and development – 5-10%
- Personnel Management – Perform all functions including time and payroll authorizations, training approval and vacation approval. Duties also include hiring and termination, performance reviews and promotions – 5-10%

Later in response to the Director’s request for evidence (RFE), the Petitioner submitted a letter from the foreign employer briefly laying out the Beneficiary’s responsibilities, emphasizing that he was tasked with “managing and participating in SAP Business All In One implementations” and “developing and evaluating plans and criteria to be carried out by others.” The Petitioner further indicating that the Beneficiary was responsible for “facilitating the implementation and support of SAP modules...while maintaining a high degree of customer satisfaction” and “providing functional expertise, guidance, presentation, and instruction on SAP products to clients and project team members.” The Petitioner also asserted that the Beneficiary held personnel authority over professional subordinates working on these projects, including the “authority to carry out...hiring and firing of staff, scheduling hours and vacations.” However, the Petitioner noted that these personnel tasks were formally passed to its human resources to “attend to,” but noted that the Beneficiary held authority over the “make up composition of [his] team on a project and the delegation of specific work to be done by each member.”

Furthermore, the Petitioner also provided the Beneficiary’s performance review from October 2018 including an apparent breakdown of his duties listed as “KRAs” with “weightage” assigned to each task. However, this list of the Beneficiary’s responsibilities abroad appeared to be fundamentally different than his claimed duty descriptions, appearing to include mostly non-qualifying operational level tasks. Further, there was little indication that the Beneficiary was tasked with personnel authority over professionals and that he was primarily delegating operational tasks to claimed subordinates. For instance, this breakdown of the Beneficiary’s duties reflected that he devoted 40% of his time to “understanding the project scope requirements based on team discussion, recording and notes prepared by [redacted]” This duty category also involved the Beneficiary preparing the “General Business Blue print” and “Finance A/P and G/I” documents, as well as discussing these documents with [redacted] and “conducting daily calls with [redacted] to work open deliverables.” Further, another portion of the Beneficiary’s performance review discussed him

“working with senior experts like [redacted] ha[s] be[en] a dynamic motivation in my career.” It is notable that this breakdown of the Beneficiary’s tasks within his performance review completed near to the date the petition was filed appears to include little indication that the Beneficiary oversaw a team of professionals and that he held personnel authority over these subordinates. In fact, this breakdown of the Beneficiary’s tasks from the performance review appears to reflect his performance of a wide range of non-qualifying operational duties and his close coordination daily with senior information technology “experts” rather than his claimed subordinates. These duties also discussed other apparent service related duties, such as the Beneficiary’s collection of scope requirements, preparation of project documents, and coordination with senior experts on “server and client configuration[s] and installations required along with user login vpn support.”

In addition, the duty description included in the Beneficiary’s performance review further indicated that the Beneficiary devoted another 30% of his time to “SAP Business One [redacted] on Cloud Implementation for [redacted]” “understanding the project requirements based on team discussions, recording and notes,” and “preparation of Business Blue Print Document for [redacted] Implementation.” It also noted the Beneficiary’s coordination with the “new Cloud Partner,” [redacted] and the [redacted] Support team,” as well as him “conducting daily calls with [redacted] to work on open deliverables.” Again, the Beneficiary’s performance review duty description lists several non-qualifying operational duties related directly to the provision of services. Further, this portion of the performance review description includes no mention of the Beneficiary’s delegation of duties to subordinates and the mentioned [redacted] is not one of his claimed team members.

Similarly, the remaining 30% of the Beneficiary’s performance review duties appeared exclusively devoted to operational level duties, such as him being responsible for “customization, testing, documentation, scope documents and support” related to [redacted] and [redacted] and “configuration and preparation for SAP One [redacted] demo[s]” for clients.” There was no mention of the Beneficiary’s delegation of these non-qualifying operational level duties to professional subordinates as claimed.

Therefore, the Petitioner submitted two materially conflicting duty descriptions on the record, one in support letters emphasizing the Beneficiary’s assignment of tasks to subordinates, “team management,” as well as other personnel management related duties, and another in his performance review showing nearly all non-qualifying operational-level tasks and no apparent managerial responsibility. The material discrepancies between these two duty descriptions leaves substantial uncertainty as to whether the Beneficiary primarily performed qualifying managerial duties abroad. The Petitioner must resolve discrepancies 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).

Whether the Beneficiary is a managerial employee abroad turns on whether the Petitioner has sustained its burden of proving that their duties were “primarily” managerial. *See* sections 101(a)(44)(A) of the Act. Here, the Petitioner does not sufficiently document what proportion of the Beneficiary’s foreign duties were managerial functions and what proportion would be non-qualifying. The Petitioner submits evidence reflecting the Beneficiary’s performance of both managerial tasks and administrative or operational tasks but it does not quantify time he spent on each. For this reason, we cannot determine whether the Beneficiary primarily performed the duties of a manager abroad. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Even though the Beneficiary manages or directs a portion of the foreign business 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. By statute, eligibility for this classification requires that the duties of a foreign position be “primarily” managerial in nature. *Id.* The Beneficiary may exercise discretion over a portion of the foreign employer’s day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making; however, the foreign position descriptions alone are insufficient to establish that his actual duties were primarily managerial in nature.

B. Staffing

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

The Petitioner stated that the Beneficiary oversaw five professional subordinates, including a “CRM solution consultant,” a “CRM architect,” a “senior business analyst,” a “senior SAP B1 consultant,” and a “senior functional/technical consultant.” The statutory definition of “managerial capacity” allows for both “personnel managers” and “function managers.” *See* section 101(a)(44)(A) of the Act. 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.” *Id.* If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3). Since the Petitioner does not contend on appeal that the Beneficiary qualifies as a personnel manager of subordinate supervisors or managers or as a function manager, we will only analyze whether it has established that he qualifies based on his claimed personnel authority over subordinate professionals abroad.

In the request for evidence (RFE), the Director pointed to an assertion of the Petitioner reading as follows:

[The Beneficiary] has had the authority to assign the personnel under him, to set their assignments, schedules and vacation time. He also had authority in hiring, promotions and terminations, although these are pursued through channel with our Human Resources department.

The Director stated in the RFE that the Petitioner did not submit sufficient evidence of the Beneficiary’s asserted personnel authority asserted in this statement. In response to the RFE, the Petitioner again reiterated the above assertion, generically indicating that his personnel authority was routed through human resources. In denying the petition, the Director once again emphasized that the Petitioner did not sufficiently substantiate with supporting evidence the Beneficiary’s personnel authority over professionals. On appeal the Petitioner contends that a letter from the company’s director of corporate affairs, including the above statement, is sufficient to establish the Beneficiary’s

personnel authority over his subordinates. The Petitioner states that this statement is “dispositive of the issue” and that the Beneficiary exercising personnel authority through the human resources department is “standard business practice.”

Although we agree that it would be relatively common for a manager to exercise their personnel authority through a human resources department, this assertion on appeal does not address the material issue at hand in this matter. The Petitioner, beyond its own assertions, provides no supporting documentation to substantiate the Beneficiary’s personnel authority over his claimed foreign subordinates, his oversight of them, or his assignment of non-qualifying operational duties to them. The Petitioner provides no additional evidence on appeal to rectify this material evidentiary deficiency, despite being reminded of this issue in the RFE and in the denial decision.

In fact, as discussed, the Petitioner provided an annual performance review for the Beneficiary reflecting his apparent engagement in a wide range of non-qualifying operational-level tasks. Further, the Beneficiary’s performance review does not clearly reflect that the Beneficiary had formal subordinates over whom he exercised personnel authority. Indeed, the fact that the Petitioner has provided the Beneficiary’s performance review leaves question as to why it has also not submitted the performance reviews of his claimed professional subordinates, whether these reviews were processed through the company’s human resources or not. Again, the Petitioner must resolve inconsistencies and ambiguities 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). It is the Petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). In sum, the Petitioner has not submitted sufficient evidence and supporting documentation to substantiate that the Beneficiary acted as a personnel manager abroad with personnel authority over subordinate professionals.

The Petitioner did not establish that the Beneficiary was employed in a managerial capacity abroad.

ORDER: The appeal is dismissed.