



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

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

In Re: 26353693

Date: APR. 21, 2023

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, a management consulting firm, seeks to permanently employ the Beneficiary as a management consultant 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 a managerial or executive capacity.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary has been employed abroad, and will be employed in the United States, in a managerial or executive capacity. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

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. ANALYSIS

The Director determined that the Petitioner did not establish that the Beneficiary has been employed abroad, and will be employed in the United States, in a managerial or executive capacity. The Petitioner consistently refers to the Beneficiary's past and intended employment as managerial, and therefore we need not address the requirements for 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, 8 U.S.C. § 1101(a)(44)(A).

If a petitioner establishes that the offered position meets all four elements set forth in the statutory definition, the petitioner must then 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). In determining whether the beneficiary's duties will be primarily managerial, we consider the 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.

The Director concluded that the Petitioner did not establish that the Beneficiary has been employed abroad, and would be employed in the United States, in a managerial or executive capacity. The Petitioner has consistently referred to the U.S. and foreign positions as managerial.

When denying a petition, the Director must explain in writing the specific reasons for denial. 8 C.F.R. § 103.3(a)(1)(i). We agree with the Director that there are deficiencies in the record. Nevertheless, we conclude that the denial notice did not provide enough information to enable the Petitioner to file a meaningful appeal. Most of the Director's decision consists of language quoted from job descriptions submitted by the Petitioner. When setting forth the grounds for denial, the Director stated several conclusions without adequately explaining the underlying reasoning, which might have afforded the Petitioner an opportunity to address the issues on appeal.

The Beneficiary previously worked as a management consultant for the Petitioner's affiliate in Belgium. She now works for the Petitioner in the United States, still as a management consultant, in L-1A nonimmigrant status. The Petitioner's initial filing included similar nine-part job descriptions for the Beneficiary's foreign and U.S. positions. In response to a request for evidence (RFE), the Petitioner submitted longer descriptions.

In the denial notice, the Director stated that "the duties submitted for the [U.S. position] merely repeated the same duties as described from the employment abroad." But the similarity is to be

expected, because the Beneficiary held the same title abroad and in the United States. The Director also stated that the Petitioner submitted inconsistent job descriptions for both the foreign and the U.S. positions. We agree with the Petitioner's argument on appeal that the longer descriptions submitted in response to the RFE amount to expansions, rather than material revisions, to the job descriptions.

The Director also stated, without elaboration, that the submitted job descriptions "lack necessary levels of detail." The Director cited *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990): "Specifics are an important indication of whether the beneficiary's duties are primarily executive in nature. Otherwise, meeting the definition would simply be a matter of reiterating the regulations" *Id.* at 1108. But, as the Petitioner observes on appeal, the job descriptions did not simply reiterate the regulations; the job descriptions submitted in response to the RFE included "a full additional paragraph for each job duty." We agree with the Petitioner that the Director did not adequately explain how the expanded job descriptions are deficient.

The Director's discussion of the Beneficiary's position abroad includes a lengthy discussion of the requirements for an executive capacity. This language does not apply to the case at hand, because the Petitioner has consistently described the Beneficiary's past employment as managerial.

For the reasons discussed above, we will withdraw the Director's decision. Nevertheless, there are deficiencies in the record which, if not adequately addressed, would warrant denial of the petition.

The term "managerial capacity," as defined in the statute and regulations, encompasses two types of managerial position. The statutory definition of "managerial capacity" includes both "personnel managers" and "function managers." A personnel manager supervises and controls the work of other supervisory, professional, or managerial employees, and possesses authority to hire and fire or recommend those and other personnel actions (such as promotion and leave authorization) for employees directly supervised. 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 generally* 6 USCIS Policy Manual F.4(C), <https://www.uscis.gov/policy-manual>.

The Petitioner initially claimed that the Beneficiary's "position entailed both functional managerial responsibilities . . . as well as people management." In more recent filings, the Petitioner has indicated that the Beneficiary supervises professionals and managers, indicating personnel management. The Petitioner does not appear to have met its burden of proof regarding this claim, but has not yet had an adequate opportunity to address these issues.

A personnel manager must have the authority to hire and fire or recommend those and other personnel actions. Section 101(a)(44)(A)(iii); 8 C.F.R. § 204.5(j)(2). The Director concluded that the Petitioner had not submitted "any actual evidence that the beneficiary actually had control of these subordinates . . . or that she possessed the authority to 'hire/fire' or recommend these actions, as well as other personnel actions." The only evidence specifically required by the regulations is a statement from the petitioning employer. *See* 8 C.F.R. § 204.5(j)(3)(i). The record contains such a statement, indicating that, both abroad and in the United States, the Petitioner has "had authority to make recommendations for hiring, firing, and training of [redacted] professionals." If the Director has reason to question the credibility or

reliability of the Petitioner's statement, and request additional documentation in support on that basis, then the Director must explain in enough detail that the Petitioner can meaningfully respond.

In this respect, a potentially significant issue is the Petitioner's acknowledgment that the Beneficiary has no fixed subordinates, but oversees teams that vary from project to project. The extent of the Beneficiary's influence over personnel decisions for individuals only temporarily under her authority bears further inquiry. Also, the Petitioner has not explained the nature of the Beneficiary's authority over decisions to hire individuals who, by definition, do not yet work for the company and are not yet part of any team that the Petitioner oversees.

A manager must manage the organization, or a department, subdivision, function, or component of the organization. Section 101(a)(44)(B)(i) of the Act; 8 C.F.R. § 204.5(j)(2). The Director should give the Petitioner the opportunity to clarify whether it considers *ad hoc* project teams to be departments, subdivisions, functions, or components of the organization, to explain how that would meet the regulatory definition, and to submit evidence to support its claims.

Partial organizational charts in the record, taken together, show the following hierarchy:

- Senior Partner
 - Associate Partner
 - Engagement Manager
 - Management Consultant [the Beneficiary's title]
 - Associate
 - Senior Business Analyst
 - Junior Specialist

Different projects involve different staff. The Petitioner has asserted that “[a]ssociates . . . are manager-level employees,” although the Petitioner does not elaborate. The Petitioner has also stated that the Beneficiary's other subordinates are professionals. The record does not explain the roles of the senior partners, associate partners, and engagement managers with respect to management consulting projects, and the Petitioner does not appear to have fully explained how the Beneficiary's subordinates relieve her from performing the operational tasks involved in consulting projects. Also, the Petitioner is part of an international organization that claims over 9,000 employees in the United States and over 32,000 worldwide. The fragmentary organizational chart does not show the beneficiary's place in the larger organization. The Director should afford the Petitioner an opportunity to submit more evidence in this regard. By showing only the levels immediately above and below the management consultant position, the Petitioner has not adequately shown how management consultants like the Beneficiary fit into the overall company structure.

The Petitioner must adequately address the above issues, but the Director's decision did not give the Petitioner an adequate opportunity to do so. We will therefore remand the matter.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.