



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

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

In Re: 28455174

Date: NOV. 14, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Multinational Managers or Executives)

The Petitioner, a façade design and detailing company, seeks to permanently employ the Beneficiary as its general 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 Texas Service Center denied the petition, concluding that the record did not establish that (1) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; (2) the Beneficiary had been employed abroad in a managerial or executive capacity; and (3) the Beneficiary would be employed in a managerial or executive capacity in the United States.

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 dismiss the appeal.

I. LAW

Section 203(b)(1)(C) of the Act makes an immigrant visa 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.

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). In addition, a petition for a multinational manager or executive must be accompanied by evidence that the prospective United States employer has

the ability to pay the proffered wage from the time the petition is filed and continuing through adjudication. *See* 8 C.F.R. § 204.5(g)(2).

II. ANALYSIS

The primary issue we will address is whether the Petitioner established that the Beneficiary will be employed in a managerial capacity in the United States.¹

“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.

A. Duties

On the Form I-140, Immigrant Petition for Alien Workers, and in a cover letter accompanying the petition, the Petitioner indicated that it sought to employ the Beneficiary as its associate director, noting that he would be responsible for managing, directing, overseeing the company’s project. The Petitioner described the Beneficiary’s proposed duties as follows:

Project Management (25%)

- Direct the execution of project activities such as engineering, cladding, and installation as per the agreed schedule. 3%
- Oversee the execution of assigned project as per technical specification that includes identifying and segregating the scope of project into cladding, skylight, and curtain wall within the envisaged timeframe, quality, and cost. 2%
- Monitor the operational budget, staff cost and other financial measures. 2%

¹ The Petitioner did not claim that it seeks to employ the Beneficiary in an executive capacity.

- Manage the preparation and submission of correct data, including the data entailed under the established quality management system in coordination with the team. 2%
- Direct overall departmental objectives, assess and identify discrepancies, variation, personal training/technical needs. 2%
- Review work orders before start of production, assess and establish the bifurcation of project scope in relation to aluminum/glass covering (cladding, curtain walling system etc.) and ensure timely back and forth submission of technical data, drawings and programmers etc. for necessary processing. 1%
- Establish quality management system and project method statement, quality plan, safety plan and risk assessment accordingly to the project requirements and specifications. 2%
- Oversee bids management to ensure assignment of bid to the respective subordinate managers, on time completion of bids, responses for RFI's (request for information), revisions of estimates and the compiling and sending of elements of bid to the respective customers. 2.5%
- Act as the escalation point of contact between the Client's representative, and [the Petitioner], ensuring the desired project objectives are delivered. 1.5%
- Responsible for adhering to an appropriate and effective project management framework for facade projects. 1.5%
- Manage the project team and supply chain to deliver the facade element of the project to time, cost, quality targets and standards. 2%
- Manage design team in the planning, coordination and development of practical technical details and oversee the timely submission of drawings and materials for approval. 2%
- Review feasibility of design ideas, based on factors, modify drawings to match with circumstances, confer with engineering, production, or sales departments, modify designs to conform with customer specifications, production limitations, or changes in design trends. 1.5%

Client Requirements Management (25%)

- Lead the design and architecture discussions with the clients, documenting processes, and requirements for the projects. 4.5%
- Represent [the Petitioner] in all customer communications that requires technical expertise and pertinent to [the Petitioner] technical expertise on the façade concepts. 3.5%
- Responsible to conduct architecture specification workshop for clients. 1.5%
- Responsible for the technical part of the bid preparation; design/architecture; effort estimates, and scope of work. 2%
- Present offered design/architecture to customers and verify/adapt it during realization phases. 1.5%
- Drive architectural and technical discussions for security, privacy, and compliance for proposed facade solutions. 2.5%
- Collaborate with the sales team to represent the solution offering to the clients. 2%
- Recommend client value creation initiatives and industry best practices. 2%

- Understand and propose the appropriate solution in line with client's expectations. 2%
- Manage high and critical priority technical calls raised by the clients and supervise the process of low to medium priority matters. 3.5%

Resource Management (25%)

- Manage the work activities of staff including subordinate managers and advise accordingly by providing them with operational guidelines and direction. 5%
- Coordinate the involvement of different resources including support, service, and management resources, in order to meet project performance objectives and customer expectations. 2%
- Detail out each project deliverables vs. staff's target completion while keeping in mind optimal resource utilization. 1.5%
- Ensure a healthy collaboration between subordinate managers and project teams. 2%
- Identify and resolve issues and conflicts within project teams. 2%
- Keep subordinates abreast of company's goals and client's expectations or changes. 1.5%
- Identify staff training needs and advise on training sessions. Staff the programs with lead managers and team members. 3%
- Conduct project-based performance appraisal and annual performance appraisal of team members. 2%
- Discuss area of improvement and suggest promotions and salary increases based on staff performance. Collaborate with project resources to define their goals. 2%
- Responsible to hire the project staff and interview candidates for respective projects (contractors and staff). 2%
- Conduct daily project progress status review meetings and facilitate issue management and requirements clarification from business team. 2%
- Assess grievances and seek resolution from relevant departments. Collaborate with subordinate managers to make sure attrition levels are within agreed to limit. 2%

Operations Management (25%)

- Support capability building for [the Petitioner] in the areas of expertise. 2%
- Develop and promote architectural best practices and standards. 2%
- Stays abreast with the current affairs like leading packages and vendors, forthcoming architectures and trends, and existing and forthcoming standards. 2%
- Identify areas of focus and games expertise through research period 2%
- Share personal knowledge through coaching and mentoring, in addition to participating and running knowledge sharing sessions and community building activities. 3%
- Acts as a bridge between the technical architecture team and management in translating the organizational strategy & vision into solution design. 2%

- Integrate knowledge of own discipline with knowledge of other disciplines in order to develop integrated solutions and help in setting organizational road-map. 2%
- Responsible for providing technical leadership throughout the project life-cycles. 3%
- Evaluate emerging technologies and the evolution of current technologies to define a future vision road map for optimal application of technology to meet business needs. 3%
- Spearhead innovation by exploring, investigating, recommending, benchmarking, and implementing technologies for business solutions. 2%
- Ensure knowledge up-graduation and work with new technologies to ensure that facade solutions are current and meets the quality standards. 2%

The Petitioner further claimed that the Beneficiary would be managing a team of 35 managerial and professional employees.

In a request for evidence, the Director found that the initial position description did not sufficiently identify the Beneficiary's proposed duties as the Petitioner's associate director. The Director further noted that the Petitioner's claim to employ 35 subordinate managerial and professional employees was not supported by the record and was contradicted by the Petitioner's claim on the Form I-140 petition that it employed only three individuals. The Director requested further evidence to supplement the record and resolve the noted discrepancies in staffing.

In response, the Petitioner claimed that the Beneficiary would report directly to the company's president, and would directly oversee a project coordinator, a business and projects coordinator, a senior project lead, and two project leads. Regarding staffing, the Petitioner claimed that the Beneficiary would manage "multiple sets of teams at onsite U.S. and offshore India locations." The Petitioner submitted an organizational chart, indicating that the only U.S. employees, in addition to the Beneficiary, were the project coordinator and the business and projects coordinator. The chart further indicated that the senior project lead and two project leads were based abroad.

The Petitioner provided payroll records for its project coordinator and business and projects coordinator, demonstrating that they were on the U.S. company's payroll in May and June of 2022. The Petitioner also submitted copies of diplomas as well as April 2022 payroll records for its senior project lead and project leads demonstrating that they were employed abroad during that period. Regarding the Beneficiary's position, the Petitioner resubmitted the previously submitted description of duties.

In denying the petition, the Director determined that the Petitioner's description of the Beneficiary's duties did not adequately identify what he would actually be doing in his role as associate director. The Director further noted that the duties as described did not explain how he would interact with his claimed managerial and professional subordinates, or how they would relieve him from performing non-qualifying duties. The Director concluded that the generic description of duties, coupled with the discrepancies regarding the Petitioner's staffing levels, did not support the assertion that the Beneficiary would be employed in a primarily managerial capacity.

On appeal, the Petitioner asserts that the Director failed to apply the preponderance of the evidence standard and contends that it is clear that the Beneficiary will be employed in a primarily managerial capacity because he will "manage the organization and his specific department, supervise and control

the work of thirty-five professional employees, have the authority to perform personnel actions over employees, and supervise the day-to-day operations of the functions he has authority over.” However, the Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. For the reasons outlined below, the Petitioner did not demonstrate that the Beneficiary’s role will be primarily managerial in nature, as the job description the Petitioner offered contains generalities that preclude a meaningful assessment of the Beneficiary’s actual tasks in the course of the Petitioner’s daily operation.

Whether the Beneficiary is a managerial employee turns on whether the Petitioner has sustained its burden of proving that his duties are “primarily” managerial. *See* section 101(a)(44)(A) of the Act. 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 (E.D.N.Y. 1989), *aff’d*, 905 F.2d 41 (2d Cir. 1990). Here, the Petitioner indicated that the Beneficiary would “collaborate with the sales team to represent the solution offering to the clients” and “act[] as a bridge between the technical architecture team and management.” However, the organizational chart submitted does not list a sales team or technical architecture team, nor is “management” clearly defined; rather, the chart indicates that the U.S. entity is composed solely of the Beneficiary, the project coordinator, and the business and projects coordinator.² Additionally, the organizational chart for the India office likewise identifies no such departments, and indicates that the project leads oversee engineers. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Likewise, the job description broadly states that the Beneficiary will manage, direct, and oversee the company’s [] project without elaborating on the tasks this responsibility would entail. Reciting a beneficiary’s vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary’s daily job duties. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff’d*, 905 F.2d 41.

Further, despite providing a job duty breakdown with time allocations, the Petitioner did not clearly describe the Beneficiary’s proposed position or convey a meaningful understanding of his actual daily tasks. The above discussed duties suggest the Beneficiary’s direct involvement in the project management and engineering services of the U.S. entity and leave uncertainty as to whether he will primarily perform qualifying managerial duties. Again, the Petitioner must prove that the Beneficiary will *primarily* engage in managerial duties, as opposed to ordinary operational activities alongside the Petitioner’s other employees. *See Family Inc. v. USCIS*, 469 F.3d at 1316. On appeal, the Petitioner does not directly address the Director’s determination regarding the deficient position description and lack of information regarding the nature of his stated duties and their relationship with his claimed subordinate employees. Rather, the Petitioner emphasizes the Beneficiary’s performance of managerial duties, and asserts that it is clear that the Beneficiary will be employed in a primarily

² We further observe that the Petitioner does not employ any administrative or bookkeeping staff that would perform the day-to-day operational tasks of the company. Moreover, despite claiming that the Beneficiary will “coordinate with [human resources] teams in making decisions pertaining to hiring, training of employees, and firing of employees,” the Petitioner provides no evidence that it employs a human resources team.

managerial capacity. While we acknowledge the Petitioner's assertion that the Beneficiary will continue to manage and supervise technical projects, supervise subordinate managers, and oversee subordinate professionals abroad who it claims will relieve him from primarily performing non-qualifying operational duties, the Petitioner has provided little supporting documentation to substantiate this assertion.

Upon review, we agree with the Director's determination that the job description for the Beneficiary is insufficient. The record does not demonstrate the Beneficiary's claimed personnel authority over professional subordinates, his direction of them, and his delegation of non-qualifying duties to them. The Petitioner did not demonstrate that the Beneficiary's role will be primarily managerial in nature, as the job description the Petitioner offered contains generalities that preclude a meaningful assessment of the Beneficiary's actual tasks in the course of the Petitioner's daily operation. Moreover, the Petitioner had not shown who would perform the non-managerial duties that are necessary to run the business. The Petitioner did not demonstrate that a subordinate staff was available at the time of filing to perform the non-qualifying operational and administrative duties of the business, nor does the submitted position description establish that the Beneficiary's duties are primarily managerial in nature. Again, the Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Without sufficient supporting evidence, the Petitioner has not sufficiently established that the Beneficiary will primarily engage in qualifying managerial tasks, as opposed to non-qualifying duties directly related to the U.S. entity's operations.

B. Staffing

Next, we will discuss the Petitioner's organizational hierarchy and staffing. If staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, we take 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.

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).

The Petitioner provided a general organizational chart related to the composition of the U.S. office as well as its foreign affiliate in India. As noted above, the U.S. organizational chart indicates that despite its incorporation in 2010, it had only three employees, including the Beneficiary, at the time of filing. The Petitioner further claimed that the Beneficiary will manage "multiple sets of teams at onsite U.S. and offshore India locations."

Although the Beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the Petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* section 101(a)(44)(A)(ii) of the Act. The Petitioner indicated that the Beneficiary will oversee a project coordinator and a business and projects coordinator in the U.S. office. The Petitioner did not provide a clear breakdown of the percentage of time the Beneficiary would devote to personnel management, but indicated that he would devote approximately 14% of his time to “manag[ing] the work activities of staff including subordinate managers,” “identify[ing] staff training needs,” “conduct[ing] project-based performance appraisal[s] and annual performance appraisal[s],” “discuss[ing] area of improvement and suggest[ing] promotions and salary increases based on staff performance,” and “hir[ing] the project staff and interview[ing] candidates for respective projects.” No further details regarding the level of interaction with and supervision of staff was provided. Consequently, absent a clear breakdown of his supervisory duties and the percentage of time he would devote to each duty, we are unable to determine whether he will primarily supervise others in the capacity of a personnel manager.

On appeal, the Petitioner asserts that it submitted sufficient documentary evidence, including copies of performance reviews and leave letters executed by the Beneficiary, to demonstrate his supervision of employees and that his position will be primarily managerial. Even if the Petitioner established that the Beneficiary’s duties are primarily supervisory in nature, which it did not, it has not demonstrated that the Beneficiary would direct subordinate supervisory, professional, or managerial employees. The Petitioner’s organizational chart, which shows a two-tiered structure, does not demonstrate that the Beneficiary’s U.S. subordinates supervise subordinate staff members or manage a clearly defined department or function of the Petitioner, such that they could be classified as managers or supervisors.

In evaluating 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. *See* 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”). Therefore, we must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor’s degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity. Although the Petitioner claimed that the project coordinator holds a bachelor’s degree in mechanical engineering, and that the business and projects coordinator holds a bachelor’s degree in business management, the Petitioner did not corroborate the educational backgrounds of these individuals with documentary evidence. Nor has the Petitioner shown that either of these positions require a bachelor’s degree in a specific relevant area of study, such that they could be classified as professionals.

Moreover, the Petitioner emphasizes that the Beneficiary will continue to supervise managerial and professional subordinates abroad and that he holds personnel authority over them, and submits evidence in support of the claimed foreign staffing such as pay stubs, position descriptions, and educational credentials for several claimed subordinates. The Beneficiary, however, cannot qualify as a personnel manager based on the oversight of subordinate managers or professionals abroad, as the provided foreign organizational chart is vague and does not reflect the manner in which they will support him. If a petitioner claims that it has a reasonable need for foreign staff to perform some of the operational tasks associated with its U.S. business, it has the burden of documenting those foreign

employees and the duties they perform for the U.S. entity. *Matter of Z- A, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016). Moreover, the brief statement of duties provided for the senior team lead and the two team leads does not articulate the manner in which the Beneficiary will be relieved from performing non-qualifying operational duties.

The Petitioner also did not establish that the Beneficiary managed an essential function pursuant to section 101(a)(44)(A)(ii) of the Act. 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 Petitioner claimed that the Beneficiary will be managing its [] project, and claimed that he will manage this function as well as oversee the personnel based both in its foreign affiliate office and in the U.S. office. The Petitioner did not, however, establish that the Beneficiary’s position would be at a senior level either within the organization or with respect to the function. It also did not establish that the Beneficiary would primarily manage, as opposed to perform, the function. See *id.*

The Petitioner provided evidence indicating the Beneficiary’s performance of non-qualifying duties directly related to the company’s [] project, such as “represent[ing] [the Petitioner] in all customer communications that requires technical expertise,” “conduct[ing] architecture specification workshop for clients,” and “present[ing] offered design/architecture to customers and verify/adapt it during realization phases.” The Petitioner further indicated that the Beneficiary was responsible for the technical part of the bid preparation, design/architecture, effort estimates, and scope of work.

Here, the Petitioner did not submit supporting documentation to substantiate that the Beneficiary was primarily engaged in managing a function rather than performing it. The Petitioner indicated that the Beneficiary will have direct interaction with clients and customers regarding project specifications and adaptations. Although the Petitioner claims that the Beneficiary manages teams of professionals both in the U.S. and abroad, it provided little evidence to substantiate the Beneficiary’s direction of these employees or his delegation of non-qualifying tasks to them, and provides no discussion of the roles and contributions of those employees. Therefore, the Petitioner has not sufficiently established that the Beneficiary’s function is well defined and that he has senior level discretionary authority over it.

In light of the deficiencies described above, we cannot conclude that the Beneficiary will primarily allocate his time to performing managerial job duties.

III. RESERVED ISSUES

As noted, the Director also concluded that the Petitioner did not establish that it had a qualifying relationship with the Beneficiary’s foreign employer and that the Beneficiary has been employed

abroad in a managerial or executive capacity. Because the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the remaining grounds for denial. *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).

IV. CONCLUSION

The Petitioner has not established that it will employ the Beneficiary in a managerial capacity in the United States.

ORDER: The appeal is dismissed.