



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

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

In Re: 28819250

Date: NOV. 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a seller of semiconductor components, systems, and equipment, seeks to permanently employ the Beneficiary as a patent agent in the United States under the first preference immigrant classification for multinational executives or managers. 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.¹

The Director of the Texas Service Center denied the petition concluding the record did not establish, as required, that the Beneficiary had been employed in a managerial or executive capacity in his former position abroad. The Director further determined that the Petitioner did not demonstrate the Beneficiary would 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).

On appeal, the Petitioner contends that the Director was mistaken in analyzing whether the Beneficiary qualified as a function manager abroad and indicates that it claimed he qualified as a personnel manager overseeing professional subordinates.² In addition, the Petitioner asserts that it submitted

¹ 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. See section 203(b)(1)(C) of the Act; see also 8 C.F.R. § 204.5(j).

² 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. 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. § 204.5(j)(2). Function managers are primarily responsible for managing an “essential function” within an 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

sufficient documentary evidence to establish that the Beneficiary has been, and would be, employed as a function manager in the United States.

Upon de novo review, we will sustain the appeal. We conclude that the Petitioner has established by a preponderance of the evidence that the Beneficiary was employed as a personnel manager abroad as the foreign employer's "Patent Strategy Manager- Asia." The Petitioner submitted a detailed and credible duty description for the Beneficiary reflecting that, more likely than not, he was primarily engaged in qualifying managerial tasks overseeing its Asia patent team. Further, the evidence reflects that the Beneficiary more likely than not had the ability to recommend personnel actions with respect to thirteen patent leads, a patent engineer, and a patent administrative employee within his Asia patent team, all who were required to have bachelor's degrees to perform the duties of their positions. As such, the evidence demonstrates that the Beneficiary qualified as a personnel manager in his former position abroad. 8 C.F.R. § 204.5(j)(2).

We further conclude that the Petitioner has established by a preponderance of the evidence that it will employ the Beneficiary in the United States as a function manager. The Petitioner submitted supporting documentation to substantiate that the Beneficiary has acted, and would continue to act, as its most senior employee within its patent prosecution and patent committee, which is a clearly defined and essential function of the Petitioner. The Petitioner also provided supporting evidence to demonstrate that he has exercised, and will continue to exercise, discretionary authority over the day-to-day functions of the patent prosecution and patent committee. For instance, the Petitioner provided evidence reflecting the Beneficiary delegating tasks to those within his function and coordinating others in processing patents, including outside patent counsel. Therefore, the evidence demonstrates that the Beneficiary would primarily manage, as opposed to perform, an essential function in the United States. *See* section 101(a)(44)(A)(ii) of the Act; *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

The Petitioner has established by a preponderance of the evidence that the Beneficiary served as a personnel manager abroad and that he will serve as a function manager in the United States. Accordingly, we will withdraw the Director's decision and sustain the appeal.

ORDER: The appeal is sustained.

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).