



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

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

In Re: 27187203

Date: JUNE 9, 2023

Motion on Administrative Appeals Office Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a manufacturer of optoelectronics, seeks to continue its employment of the Beneficiary temporarily as its “contracts manager” under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity.¹ Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition, concluding that the record did not establish that the Beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity. The Petitioner subsequently filed an appeal, which was summarily dismissed. The matter is now before us on a combined motion to reopen and reconsider. The Petitioner argues that we erred in summarily dismissing the appeal and provides a copy of the appeal brief and FedEx receipt showing that the brief was timely filed.

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). Upon review, the Petitioner has overcome the basis of our summary dismissal by showing that the appeal brief was timely and properly filed. As such, we will withdraw the summary dismissal and issue a decision on the merits. However, upon de novo review, we will dismiss this motion because the Petitioner did not establish that the Beneficiary’s position abroad was in a managerial capacity.² Further, because the identified basis for denial is dispositive of this motion, we decline to reach and hereby reserve the Petitioner’s arguments regarding the Beneficiary’s proposed employment in the United States. *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).

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity, or in a position requiring

¹ The Beneficiary initially came to the United States to work for the Petitioner under an approved blanket L-1 petition.

² The Petitioner claims that the Beneficiary was employed in a managerial capacity and does not claim that the foreign employment was in an executive capacity.

specialized knowledge for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(1). 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. 8 C.F.R. § 214.2(l)(3)(ii).

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) 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;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. 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.

II. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

The issue to be addressed is whether the Petitioner provided sufficient evidence establishing that the Beneficiary's position abroad was in a managerial capacity.

Based on the statutory definition of managerial capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. Section 101(a)(44)(A) of the Act. The Petitioner must also prove that the Beneficiary *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).

Further, the statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) 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 managed an essential function, it must clearly describe the duties 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). In this matter, the Petitioner has not provided sufficient evidence that the Beneficiary managed an essential function.

The petition shows that the Petitioner claimed nearly 1900 employees in the United States and a gross annual income of over \$500 million. In a supporting cover letter, the Petitioner discussed the Beneficiary's former position abroad as a global contract manager in the "Business Administration Sales Europe department," where he is said to have "held full responsibility for the Contract Management Professional, CCON COE Commercial EMEA function." The Petitioner stated that this function is essential to the organization and listed the following six job duties as the components of the Beneficiary's position abroad:

- Checking, negotiating, undertaking risk analysis and administration of global sales contract[s] (10%)
- Risk assessment of contracts as part of business case management. (20%)
- Working out compromise [sic] solutions such as long-term availability, warranty, limitation of liability. (10%)
- Coordinating with the involved specialty departments. . . . (20%)
- Contact partner for colleagues from the specialty departments . . . for customer contract questions and for providing professional advice on contract management. (10%)
- Designing and implementing key contract archives worldwide and setup limited authorization structures, projects . . . for case-by-case analysis of contracts, reporting and automation. (30%)

In addition, the Petitioner stated that the Beneficiary also had supervisory responsibilities and "was responsible for alignment of Global Contract Management requirements and process, including T&C's and conducting counter measure regarding audit findings; cross-functional Contract Management Guideline, and worldwide implementation of a Business Case Assessment Workflow platform to evaluate and document contractual risks. . . ." The Petitioner did not explain how these additional responsibilities fit within the six job duties listed above, nor did it disclose whom the Beneficiary supervised or the supervisory responsibilities he carried out in the course of managing the "Contract Management Professional, CCON COE Commercial EMEA function."

Moreover, in a separate letter authored by the foreign company's human resources (HR) team lead, the phrase "not applicable" was used to describe the Beneficiary's involvement in "supervisory responsibilities," thus contradicting claims made in the supporting cover letter regarding the Beneficiary's supervisory responsibilities. The Petitioner must resolve this inconsistency with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The same HR letter described the Beneficiary as "an outstanding service provider" and stated that he "performed particularly well in developing and implementing processes as part of policies and tools" and was directly involved in not only developing tools that are used in business case management, but also in creating the instruction manual on the use of such tools. It is unclear how much time the Beneficiary allocated to these operational job duties as they were not included among the six duties listed in the job duty breakdown. Furthermore, in order to establish that the Beneficiary's position abroad was in a managerial capacity, the Petitioner must demonstrate that the Beneficiary primarily managed, rather than performed the underlying duties of the function he is claimed to manage. See *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017). 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 or executive 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). Here, the information provided does not establish that the Beneficiary primarily performed duties that are indicative of managing an essential function.

Also unclear is the placement of the Beneficiary’s position within the foreign entity’s organizational structure. Although the Petitioner provided a diagram depicting the Beneficiary and the managing director to whom the Beneficiary reported, no further information was provided establishing the placement of this reporting structure within the broader organizational hierarchy or within the context of the department to which the Beneficiary’s position was assigned.

In a request for evidence (RFE), the Director informed the Petitioner that the job description provided was too general and did not disclose the Beneficiary’s daily job duties within the scope of the foreign entity’s business activities and corporate structure. The Director also listed the key parameters used to define a function manager and found that the Beneficiary’s claimed function was not sufficiently defined within those parameters. In addition, the Director asked for an organizational chart or diagram of the foreign organization’s reporting structure and staffing levels as well as a list of the employees in the Beneficiary’s department along with their job titles and job descriptions.

In response, the Petitioner provided a letter signed by [redacted], head of HR. In discussing the Beneficiary’s employment abroad, [redacted] did not reiterate the Petitioner’s original claim that the Beneficiary managed an essential function, nor did he identify an essential function. Rather, [redacted] stated that the Beneficiary had a “team” of four subordinates “who reported to him . . . and whom [sic] implemented his decisions,” but he did not elaborate on the decisions they are claimed to have implemented or list their respective job duties to explain how supported the Beneficiary in what is claimed to have been a managerial position. The Petitioner also did not provide supporting evidence reconciling [redacted] claim and the information contained in the previously submitted letter from the foreign entity’s HR team lead, who indicated that supervisory responsibilities were not applicable to the Beneficiary’s position with the foreign entity. *See id.* [redacted] also stated that the Beneficiary “was responsible for leading Global Contract Management” which involved developing systems and processes “to underpin robust contract management and reporting,” maintaining regular correspondence with “legal entities worldwide” who were responsible for implementing those systems and processes, and “handling individual customer contracts”; he added that the Beneficiary also “regularly checked, negotiated, undertook risk analysis and administration” of various contracts and settlement agreements, worked with various departments within the organization in conducting risk assessment of the organization’s contracts, and designed the organization’s contract archives worldwide. However, the Petitioner did not establish that duties such as developing systems and processes, handling customer contracts, and conducting risk analysis, were managerial, as opposed to operational in nature.

Furthermore, although [redacted] provided a job duty breakdown of the Beneficiary’s position abroad, that breakdown is not consistent with the one contained in the Petitioner’s initial supporting cover letter, which contained a list of six job duties and the percentage of time assigned to each duty. The job duty breakdown contained in [redacted] letter, however, consists of 20 job duties, each listed under one of four categories – sales contract management, strategic development, managing

people, and training and development. Although both job duty breakdowns indicate that the Beneficiary interacted with various departments within the organization for the purpose of coordinating certain activities associated with executing contracts and providing customer service in the course of contract execution, there is little overlap between the two job descriptions and no clarification was offered explaining how to interpret the new job duty breakdown within the context of the six-duty job description provided in the original supporting cover letter. The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). As such, an RFE response should not include evidence that materially changes a beneficiary's position title, level of authority within an organization, or their associated job responsibilities. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998) (establishing that a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements).

In the matter at hand, the Petitioner did not merely elaborate on an already existing job description, but rather provided an entirely new job description with new job duties that show a departure from the original job description. Most notably, while the new job description states that the Beneficiary allocated 30% of his time to managing people and 5% to training and development, neither element was listed in the original job duty breakdown, not to mention that the responsibility of employee supervision was previously indicated as "not applicable" to the Beneficiary's position abroad. Moreover, the same job duties comprising the new job duty breakdown for the foreign position, which did include supervisory responsibilities for four direct reports, were listed in the job description of the proposed U.S. position. These unresolved inconsistencies preclude us from conducting a meaningful review of the Beneficiary's job duties, which are critical to determining whether the foreign position was in a managerial capacity. *See 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) (stating that the actual duties themselves reveal the true nature of the employment).

Further, we note that [redacted] allocated a percentage of time to each category, rather than to each individual job duty, as instructed in the RFE. Likewise, the Petitioner did not comply with the RFE's request for a detailed organizational chart of the foreign entity. Although [redacted] signed an organizational chart showing a limited reporting structure of the Beneficiary overseeing four employees – three in Germany and one in China – that chart lists the Beneficiary in the position of "contract management" and shows this position as based in [redacted], thus indicating that this reporting structure pertains to the Beneficiary's proposed position in the United States rather than his former position in Germany. Although the RFE response contains one other diagram depicting the Beneficiary and his superior, this too appears to pertain to the U.S. position as it lists [redacted] as the superior, whereas the diagram submitted originally showed [redacted] as the Beneficiary's superior in his position with the foreign entity. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

On appeal, the Petitioner reiterates information about the Beneficiary's position abroad, maintaining that the Beneficiary's position as global contract manager was core to the foreign entity given the importance of sales contracts within the context of the foreign entity's business activities. The Petitioner asserts that the Beneficiary was responsible for the development and implementation of the organization's contractual obligations worldwide as well as identifying "contractual concerns" and making recommendations to those responsible for addressing the identified concerns. While the

Beneficiary's responsibilities indicate that he performed critical functions during his employment abroad, they do not establish that the Beneficiary *managed* an essential function, as originally claimed. As discussed earlier, the Petitioner has offered deficient evidence regarding the Beneficiary's position abroad, including conflicting job duty breakdowns and inconsistent information as to whether the Beneficiary managed others in the course of executing his job responsibilities.

Moreover, the Petitioner has not consistently identified the function the Beneficiary is claimed to have managed. As noted earlier, in the initial supporting cover letter, the Petitioner stated that the Beneficiary managed the "Contract Management Professional, CCON COE Commercial EMEA function." On appeal, however, the Petitioner confusingly refers to the global contracts manager as a function and states that the Beneficiary "has primarily managed the position of Global Contracts Manager," thus indicating that the Beneficiary's position is synonymous with the function. The Petitioner does not acknowledge or reconcile these irregularities, nor did it provide organizational charts or diagrams clarifying the Beneficiary's role and placement within the foreign organization or with respect to the function he is claimed to have managed. Therefore, although the Petitioner stresses the Beneficiary's "complete discretion" over the contracts he managed and states that he worked "at a senior level," it has not adequately supported these claim; when asked, the Petitioner did not provide the requested organizational chart depicting the Beneficiary's position within the context of the foreign entity's staffing structure. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

For the reasons discussed above, the Petitioner did not establish that the Beneficiary's position abroad was in a managerial capacity as defined in the statute governing this classification.

ORDER: The motion is dismissed.