



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

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

MATTER OF J-G- INC.

DATE: SEPT. 26, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a freight forwarding and international trading company, seeks to permanently employ the Beneficiary as its president 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary would be employed in the United States in a managerial or executive capacity.

On appeal, the Petitioner submits additional evidence and asserts that it has established that the Beneficiary would act in a qualifying managerial capacity.¹

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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 capacity that is managerial or executive, 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.

A United States employer may file Form I-140, Immigrant Petition for Alien Worker, to classify a beneficiary under section 203(b)(1)(C) of the Act as a multinational executive or manager. The petition 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

¹ The Petitioner does not claim that the Beneficiary will be employed in an executive capacity and we will therefore restrict our review to determining whether the Petitioner established that she will be employed in a managerial capacity.

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).

The law defines the term “managerial capacity” as an assignment in which an 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; has the authority to hire and fire or recommend those as well as other 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). Further, “[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 staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, U.S. Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

As noted, the Director found that the Petitioner did not establish that the Beneficiary would be employed in the United States in a managerial or executive capacity. In the denial decision, the Director determined that the duty descriptions for the Beneficiary’s claimed subordinates were vague and lacked sufficient detail to establish that the Beneficiary would oversee a subordinate staff of supervisors, managers, or professionals.

On appeal, the Petitioner asserts that the Beneficiary’s subordinates are professionals holding bachelor’s degrees, and submits job advertisements for these subordinate positions which indicate a bachelor’s degree requirement. In short, the Petitioner contends that the Beneficiary qualifies as a personnel manager supervising professional subordinates.

The regulation at 8 C.F.R. § 204.5(j)(5) requires the Petitioner to submit a statement which indicates that the Beneficiary is to be employed in the United States in a managerial or executive capacity. The statement must clearly describe the duties to be performed by the Beneficiary. Beyond the required description of the job duties, USCIS reviews the totality of the evidence when examining the claimed managerial or executive capacity of a beneficiary, including the company’s organizational structure, the duties of a beneficiary’s subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary’s actual duties and role in a business. Accordingly, our analysis of this issue will focus on the Beneficiary’s duties as well as the company’s business activities and staffing levels.

A. Duties

The Petitioner must show that the Beneficiary will perform certain high-level responsibilities consistent with the statutory definitions of managerial capacity. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). In addition, the Petitioner must 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); *Champion World*, 940 F.2d 1533.

The Petitioner indicates that it is engaged in freight forwarding and submitted supporting documentation indicating that it purchased and shipped various types of goods between China and the United States. In a job offer letter, the Petitioner stated that the Beneficiary's duties as president would include overseeing "the general operations of three departments," hiring and terminating department managers, reviewing and approving business plans, policies and procedures, and exercising discretion over major business decisions.

In response to the Director's request for evidence (RFE), which asked for a more detailed description of the Beneficiary's duties, the Petitioner stated that she would be responsible for directing the company's "business operations and comprehensive business planning," that she would "streamline, standardize, and formulate business policies, processes, and procedures for logistics, finances, marketing, sales and customer services efforts," and lead the company's efforts in achieving goals and objectives. The Petitioner indicated that the Beneficiary would supervise the entire operation and "review and approve business plans, policies, and procedures formulated by the department managers" and make "major business decisions." The Petitioner also submitted the following duty description for the Beneficiary:

- a) [The Beneficiary] will allocate 25% of her time in setting financial goals, reviewing budgeting and financial analysis;
- b) [The Beneficiary] will allocate about 10% of her time to coordinating advertising and marketing efforts;
- c) [The Beneficiary] will allocate about 30% of her time to training and supervising department managers;
- d) [The Beneficiary] will allocate about 35% of her time to networking, maintaining operations and developing business relations.

The Petitioner noted that the Beneficiary would not perform the day-to-day functions or tasks necessary to "conduct the freight forwarding business directly," but that she would be responsible for "directing and establishing efficient business systems and trainings to ensure that business procedures are followed and generating new business opportunities."

The Petitioner has provided only a broad overview of the Beneficiary's general responsibilities and level of authority without identifying the nature of her actual day-to-day tasks. For example, the Petitioner vaguely stated that the Beneficiary would be responsible for various general tasks that could apply to any manager employed by any company in any industry, including formulating "policies, processes, and procedures," leading the company in fulfilling goals and objectives, setting financial goals, reviewing budgets and financial analysis, coordinating advertising and marketing efforts, maintaining operations, developing business relations, directing and establishing efficient business systems, ensuring business procedures are followed, and generating new business opportunities. However, in each case, the Petitioner has provided few examples and little supporting evidence to substantiate policies, processes or procedures the Beneficiary put in place, financial goals she set, financial analyses she reviewed, advertising or marketing she directed, business relationships she built, systems she created, business procedures she implemented, or new business opportunities she generated. Conclusory assertions regarding the Beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *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); *Avyr Assocs., Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). While the stated responsibilities suggest that the Beneficiary is the senior employee in the company, the provided description lacked meaningful information regarding what she would actually be doing as part of her day-to-day routine.

The fact that the Beneficiary will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. While the Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making, the position descriptions alone are insufficient to establish that his actual duties would be primarily managerial in nature.

As discussed further below, the record does not support the Petitioner's claim that it had a sufficient subordinate staff to relieve the Beneficiary from involvement in the day-to-day operations of the business at the time the petition was filed, and we cannot determine how much time the Beneficiary would reasonably devote to qualifying managerial duties.

B. Staffing and Business Activities

The Petitioner stated on the Form I-140 that it had five employees as of the date of filing in November 2015. The Petitioner stated in a support letter that it employed a manager assistant, an operations officer, and a sourcing manager subordinate to the Beneficiary. In addition, the Petitioner's organizational chart indicated that the Beneficiary would also supervise a sales manager position. In response to the Director's later RFE, the Petitioner submitted an organizational chart showing that an administration manager, an operations supervisor, sales manager, and sourcing manager reported to the Beneficiary.

While the record shows that there were changes in the Petitioner's staffing levels while the petition was pending, we emphasize that we must first look at the organizational structure that was in place at the time of filing. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

The Petitioner's supporting payroll evidence leaves significant question as to whether it was sufficiently staffed at the time of filing, and through the adjudication of this matter, to support the Beneficiary is a managerial capacity. The Petitioner stated on the Form I-140 that it employed five individuals in November 2015 when it filed the petition. However, the Petitioner submitted an Illinois quarterly wage report for the fourth quarter of 2015 reflecting that it only had three employees in October and November 2015, and only one as of December 2015. Those three employees were the Beneficiary, manager assistant, and the operations officer. The record does not include evidence that the Petitioner employed a sourcing manager or sales manager as claimed in the Petitioner's support letter and organizational chart, although it appears that these positions had briefly been staffed earlier in the year.

For the first quarter of 2016, the Petitioner's Illinois quarterly wage report indicates that the company paid no salaries or wages. Further, the submitted evidence indicates that the Beneficiary was the only employee who received any wages from December 2015 to August 2016. In September 2016, approximately ten months after the date of filing, the Petitioner reported payments to the administration manager, sourcing manager, sales manager, and operations supervisor identified in the latter organizational chart submitted in response to the RFE. In sum, the supporting wage documentation reveals discrepancies in the Petitioner's assertions regarding its staffing levels and raises questions as to whether it was sufficiently staffed and operational as of the date of filing and for a significant period thereafter.

On appeal, the Petitioner provides a letter reflecting the same organizational structure submitted in response to the RFE, but with expanded duties for the Beneficiary's subordinates. For instance, the Petitioner explained that the administration manager (previously identified as the "manager assistant") would be responsible for "internal administrative and human resources tasks," "rapid development of the company's logistical capabilities," advising on "major business policies," and "formulating the Company's HR master plan." The Petitioner stated that the sales manager would be tasked with "planning and managing all sales activities," "maintaining existing accounts," preparing bids and quotes for customers and suppliers, "assisting with sales campaigns," and coordinating and attending to sales visits, while the sourcing manager would provide leadership in all phases of sourcing, identify projects, perform data collection, review sourcing strategies, create a supplier support policy, and establish customer satisfaction metrics. Lastly, the Petitioner indicated that the operations supervisor (previously identified as "operations officer") would coordinate import/export logistics, work with airlines, shipping lines, and trucking companies, perform related administrative tasks, make suggestions for improving procedures, maintain customer resource management, and resolve supply chain and logistics problems.

The statutory definition of “managerial capacity” allows for both “personnel managers” and “function managers.” See section 101(a)(44)(A)(i) and (ii) of the Act. The Petitioner has not claimed that the Beneficiary manages an essential function, but does state that she would supervise subordinate personnel. 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.”² Section 101(a)(44)(A)(iv) of the Act. 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).

The Petitioner contends on appeal that the Beneficiary qualifies as a personnel manager, citing her supervision of professional employees. The Petitioner submits evidence reflecting that the asserted administration manager has a master’s degree in business administration, the sales manager has a foreign bachelor’s degree in journalism/public relations, the sourcing manager has an associate’s degree in computer science, and the sales manager an unidentified bachelor’s degree. The Petitioner further provides job advertisements for these positions which it claims it had posted on the website “indeed.com.” The job advertisements indicate that each position requires a bachelor’s degrees or equivalent experience.

Although the Petitioner at times suggests that the Beneficiary would oversee other managers and supervisors, none of the provided organizational charts reflect that her subordinates oversee subordinates of their own. As such, the Beneficiary cannot qualify as a personnel manager on this basis. Therefore, our analysis will focus on whether the Beneficiary qualifies as a personnel manager based on her supervision of professional subordinates.

On appeal, the Petitioner’s emphasizes its then current organizational structure in asserting that the Beneficiary qualifies as a personnel manager. However, as we have noted, we must look to the organizational structure in place as of the date of the petition when assessing whether the Beneficiary was, and would, act as a personnel manager under the extended petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

At the time of filing, the Petitioner indicated that it employed a manager assistant holding a master’s degree in business administration, an operations officer with a bachelor’s degree in fine arts, and a

² 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. Cf. 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”). Section 101(a)(32) of the Act, states that “[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.”

sourcing manager with an associate's degree in computer science. As discussed, the Petitioner provides job advertisements for these positions on appeal and asserts that these demonstrate that the positions subordinate to the Beneficiary require a bachelor's degree. However, the supporting evidence shows that the Petitioner did not employ a sourcing manager when it filed the petition. The wage evidence further reflects that the other two employees soon left the company in December 2015, within three weeks of the filing of the petition, and did not work for the Petitioner for a full nine months thereafter.

Regardless, there is no indication that the job advertisements provided on appeal relate directly to the positions that existed in the organization when the petition was filed. The job advertisements are not dated and there is no evidence to corroborate that they were posted and that they led directly to the hiring of the subordinates who were in place in November 2015. For instance, one such job posting refers to a needed "administrator manager" rather than the manager assistant, the position referenced in the initial evidence. Two other job announcements reference positions not filled as of the date of the petition, namely postings relevant to a "business development sales manager" and a "logistics operations – bilingual (English/Chinese)" position. Further, the job advertisements relevant to the administrator manager (or manager assistant) reflects that this employee was to earn \$50,000 per year, while the Petitioner states that the person who holds the position earns \$12,000 per year for part-time work. Therefore, we do not find the provided job advertisements probative in demonstrating that the positions subordinate to the Beneficiary, as of November 2015, were professional level positions.

In addition, the duties of the Beneficiary's asserted subordinates do not appear to be consistent with professional positions. For instance, the Petitioner states that the manager assistant holds a master's degree in business administration; however, there is little indication that this part-time position requires at least a bachelor's degree, particularly since the Petitioner initially indicated that this employee would be responsible for "HR and office Administration," but now on appeal lists various higher level tasks such as advising on "major business policies" and "formulating the Company's HR master plan." Likewise, the Petitioner's evidence does not establish that the operations officer position involves professional level tasks that require a bachelor's level education. The individual who held this position at the time of filing had an associate's degree.

The Petitioner has also not provided sufficient supporting evidence to substantiate that the Beneficiary's subordinates were or would be performing the duties attributed to their positions. The Petitioner did submit several contracts for the purchase of goods in the United States and other transactional documentation such as invoices and shipping receipts reflecting the purchase and shipment of various goods to and from China. However, the evidence does not reflect the performance of these non-qualifying operational duties by the Beneficiary's subordinates. For instance, the Petitioner submits duties indicating that the sourcing manager is responsible for several higher level tasks with respect to sourcing such as providing leadership, "identifying project[s] and getting the team started," "reviewing sourcing strategies," and "selecting suppliers, negotiating contracts and making necessary changes to internal sourcing processes." However, the organizational structure does not include operational level employees to perform tasks inherent to

the import and export business such as purchasing products, paying invoices, and arranging deliveries. Indeed, it is not clear what “team” the sourcing manager would be overseeing and for whom he would be creating sourcing strategies and processes.

In addition, the Petitioner states that the operations officer/supervisor is tasked with coordinating logistics on shipments from China, working with shippers, and related administrative tasks, but the supporting documentation does not show that he, or his replacement in this position, are performing these tasks. In contrast, the Petitioner provides invoices and other transactional documents reflecting the Beneficiary’s name and contact information dated just prior to the filing of the petition. Further, all contracts for purchase and delivery of goods are signed by the Beneficiary. The supporting documentation does not support a conclusion that the Beneficiary has been or would be relieved from performing the non-qualifying operational tasks of the business. In fact, the Petitioner emphasizes various accomplishments of the company to date, including setting up the company’s website, filing a trademark application, purchasing products for the office, promoting the company’s products at exhibitions, setting up logistics, handling customer service, and arranging deliveries and orders. However, it does not identify and document who was responsible for these largely non-qualifying operational tasks at the time of filing when it had a three-person staff. As noted, the Beneficiary was the sole employee of the company for a period of 10 months while the petition was pending.

Therefore, the Petitioner has not submitted sufficient evidence to support that the Beneficiary qualifies as a personnel manager through her supervision of professional subordinates. Due to the company’s apparent lack of operational employees, it appears more likely that the Beneficiary and her subordinates were and would be primarily performing these tasks rather than higher level managerial or professional level duties. 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).

Lastly, the Petitioner suggests that the Beneficiary qualifies as a function manager. 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. The term “essential function” is not defined by statute or regulation. If a petitioner claims that a beneficiary will manage an essential function, a petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, or more specifically, identify the function with specificity, articulate the essential nature of the function, and establish the proportion of a beneficiary’s daily duties attributed to managing the essential function. See 8 C.F.R. § 204.5(j)(5). In addition, a petitioner’s description of a beneficiary’s daily duties must demonstrate that the beneficiary will manage the function rather than perform duties related to the function. See *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016).

Although we acknowledge that the Beneficiary would likely be responsible for the direction of the company in general, the Petitioner has not demonstrated that she will be primarily tasked with

managing an essential function of the organization and primarily relieved from performing non-qualifying operational tasks associated with a specific function or the business as a whole. The Petitioner does not identify a specific essential function which the Beneficiary manages, nor explained it in detail. It is not sufficient for the Petitioner to merely state that the Beneficiary will be the president and manage the company as a whole to establish her management of an essential function. As we discussed at length, the Petitioner has provided a vague position description which does not establish that she primarily performs managerial duties. Finally, the Petitioner did not adequately support that the Beneficiary would be relieved from performing the non-qualifying operational duties of the business.

The Petitioner has not established that the Beneficiary would act in a managerial capacity in the United States.

III. DOING BUSINESS

Although not addressed in the Director's decision, the Petitioner has not demonstrated that it had been doing business for at least one year when it filed the petition in November 2015. *See* 8 C.F.R. § 204.5(j)(3)(i)(D). The Petitioner filed the petition in November 2015; therefore, it is required to establish that it had been doing business since November 2014. However, the Petitioner provided a 2014 IRS Form 1120, U.S. Corporation Income Tax Return, reflecting that it earned no revenue, had no assets, and paid no wages during that calendar year. Further, the record indicates that the Beneficiary made her first entry to the United States as an L-1A nonimmigrant intracompany transferee in January 2015. As such, the evidence does not indicate that the Petitioner had been doing business for one year prior at the time the petition was filed. For this additional reason, the petition cannot be approved.

IV. PRIOR APPROVAL

Lastly, we acknowledge that USCIS approved the Petitioner's Form I-129, Petition for a Nonimmigrant Worker, in September 2015, which granted the Beneficiary a two-year extension of her L-1A status. However, we exercise *de novo* review of all issues of fact, law, policy, and discretion. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). This means that we look at the record anew and are not required to defer to findings made in other approvals. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be unreasonable for USCIS or any agency to treat acknowledged errors as binding precedent. *Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center Director approved a nonimmigrant petition on behalf of the Beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 1999).

Matter of J-G- Inc.

V. CONCLUSION

The appeal must be dismissed because the Petitioner has not established that the Beneficiary will be employed in the United States in a managerial capacity or that it had been doing business for at least one year at the time it filed this petition.

ORDER: The appeal is dismissed.

Cite as *Matter of J-G- Inc.*, ID# 596705 (AAO Sept. 26, 2017)