



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

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

MATTER OF C-S-, INC.

DATE: JUNE 19, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a data and information management software company, seeks to permanently employ the Beneficiary as its "District Systems Engineering 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not establish, as required, that: (1) it will employ the Beneficiary in the United States in a managerial or executive capacity; and (2) that the Beneficiary was employed abroad in a managerial or executive capacity prior to his entry to the United States to work for the Petitioner as a nonimmigrant.

On appeal, the Petitioner asserts that the record establishes by a preponderance of the evidence that the Beneficiary was employed abroad, and will be employed in the United States, in a managerial capacity.

Upon *de novo* review, we will withdraw the Director's finding with respect to the Beneficiary's proposed U.S. employment.<sup>1</sup> However, as the Petitioner has not overcome the remaining ground for denial, 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 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.

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<sup>1</sup> We find that the Petitioner submitted sufficient evidence to establish that the Beneficiary will primarily manage a department or component of the company, supervise the work of subordinate professional staff with authority to make or recommend personnel actions, and exercise discretion over the day-to-day operations of his department. Accordingly, the Petitioner has established that he will be employed in the United States in a managerial capacity as defined at section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A).

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. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

The sole issue to be addressed is whether the Petitioner established that the Beneficiary was employed abroad in a managerial capacity for at least one year in the three years preceding his entry to the United States as a nonimmigrant.<sup>2</sup> The Petitioner does not claim that the Beneficiary was employed abroad in an executive capacity.

### A. Definition

“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).

The Petitioner must show that the Beneficiary performed 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 was *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the foreign entity’s other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

### B. Function Manager

The Petitioner asserts that its foreign affiliate employed the Beneficiary in the position of “Principal Systems Engineering Lead” from April 2013 until December 2014. The Petitioner stated that he was responsible for managing “the essential function of planning and overseeing the implementation of technical strategies for key accounts in [REDACTED] using his knowledge of the organization and its proprietary Simpana software.” The Petitioner has consistently claimed that the Beneficiary was employed abroad as a function manager.

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<sup>2</sup> The Beneficiary was initially admitted to the United States in 2014 as an L-1B intracompany transferee in a specialized knowledge capacity. In March 2016, U.S. Citizenship and Immigration Services (USCIS) granted him an extension of stay and an amendment of his nonimmigrant status from L-1B to that of an L-1A manager or executive.

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).

Beyond the required description of the job duties, we review the totality of the evidence when examining the claimed managerial 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 evidence contributing to understanding a beneficiary’s actual duties and role in a business. In the case of a function manager with no direct subordinates, other factors considered may include a beneficiary’s position within the organizational hierarchy, the depth of a company’s organizational structure, the scope of a beneficiary’s authority and its impact on a company’s operations, the indirect supervision of employees within the scope of the function managed, and the value of the budgets, products, or services that a beneficiary manages. See *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016).

### 1. Duties

The Petitioner initially submitted an overly broad job description of the Beneficiary’s last position abroad and was asked to provide further explanation of his specific daily tasks and the percentage of time he spent on each duty. In response to the Director’s request for evidence (RFE), the Petitioner submitted a letter from its foreign affiliate describing the Beneficiary’s “specific daily job duties” as follows:

#### 50% of his time

- Managed new and existing client engagements to enhance [REDACTED] product offerings, effectively driving [REDACTED] sales and revenues and was responsible for directing cross-functional team members on all salient technical, business, operational and financial efficiencies of [REDACTED] in order to best meet client needs.
- Oversaw meetings with customers to understand their current technical environment, key business issues/drivers and future technology requirements, and set strategy and business solutions.

#### 15% of his time

- Oversaw technical training to partners, explaining technical capabilities and business benefits of solutions and managed the gathering of feedback from cross-

functional teams in order to craft plans and strategies that fostered regional growth and met [the company's] objective.

25% of his time

- Led interactions between [the company's] various departments in order to manage and meet customer expectations, ensuring that [the company] provided optimal solutions to customers' technical and business requirements and was also responsible for managing strong relationships between strategic clients, key partners and regional system integrators. Optimized the relationship between [the company] and its clients to attain a substantial number of sales and revenue for the . . . organization.

10% of his time

- Recruited and hired the technical team for [the ██████ region] by leading and overseeing the selection of candidates, onboarding [systems engineers] for existing teams in Russia and India, building of teams in Poland, Israel and Turkey and mentoring and training the technical staff.

The foreign entity's human resources director for the ██████ region confirmed that the Beneficiary did not have any direct reports in his position. She stated that "he served as a critical senior member of the organization, serving as a functional manager, holding a position within [the company's] advisory board, and also played an essential role in forming the technical team for [the company's] offices in the ██████ East region, by leading the hiring, onboarding and training process."

In the denial decision, the Director found that the Petitioner did not provide a sufficient description of the Beneficiary's day-to-day duties, and noted that some of the listed duties suggest that he was working in a sales position. On appeal, the Petitioner reiterates that the Beneficiary managed the essential function of "planning and overseeing the implementation of technical strategies for key ██████ accounts." It maintains that the previously submitted evidence was sufficient to meet its burden of proof, and does not address the Director's concerns regarding the Beneficiary's position description.

We agree with the Director's determination that the submitted duty description is insufficient to establish that the Beneficiary primarily managed an essential function. The Petitioner did not clearly describe the duties the Beneficiary performed, nor did it sufficiently define the essential function he is claimed to have managed. For example, the Petitioner stated that he "oversaw" meetings with customers to understand their business issues and technology requirements and set strategy and business solutions, but it is not clear what type of oversight he exercised to differentiate this responsibility from the non-managerial, pre-sales requirements gathering duties typically performed by an experienced systems engineer.<sup>3</sup>

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<sup>3</sup> For example, the Petitioner indicates that its enterprise systems engineers, whom the Beneficiary supervises in his current U.S.-based position, formulate account strategies and engage with customers to understand their technical,

The description also lacks sufficient detail regarding the Beneficiary's role in managing client engagements and does not provide insight into the nature of the specific tasks he performed to "enhance product offerings" or drive sales revenues. As discussed further below, the Petitioner states that the Beneficiary had no direct subordinates, and it declined to identify the "cross functional team members" that it claims he directed "on all salient technical, business, operational and financial efficiencies." Together, these first two responsibilities accounted for 50 percent of his time so it is particularly critical that the Petitioner clearly demonstrate how the duties are consistent with the management of the claimed essential function.

The Petitioner indicated that the Beneficiary "oversaw" technical training to partners by "explaining technical business benefits of solutions," and "managed" the gathering of feedback from "cross functional teams." Again, the Petitioner did not explain who delivered the training or who gathered the feedback the Beneficiary used to "craft plans and strategies," nor did it provide any examples of plans or strategies he created. Further, it did not clarify how explaining the benefits of technical solutions is a managerial duty, rather than a pre-sales duty. Similarly, it is unclear what specific managerial duties the Beneficiary performed to "optimize" the relationship between the company and customers in order to attain sales, or to "lead interactions" between departments to provide optimal solutions. 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Here, the Petitioner has not provided the necessary detail or an adequate explanation of the Beneficiary's activities in the course of his daily routine.

The Petitioner has documented the Beneficiary's role in making personnel recommendations in the [redacted] region, but this responsibility accounted for only 10 percent of his time. Whether a beneficiary is a "function" manager turns in part on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial. See *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016). Overall, the Petitioner's description of the Beneficiary's last position abroad did not demonstrate that he primarily performed managerial duties, nor did it clearly define the essential function he was claimed to manage.

## 2. Foreign Entity's Organizational Structure

In the request for evidence, the Director advised the Petitioner that its function manager claim must be supported by evidence that the foreign entity had qualified employees to perform the day-to-day duties of the function, and that the Beneficiary acted in a senior level with respect to the foreign entity's organizational hierarchy or the function managed.

Although the Director also asked the Petitioner to provide an organizational chart for the foreign entity showing the Beneficiary's placement within the company's hierarchy and identifying other

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financial, operational, and business issues, and perform several other duties that are similar to those listed in the Beneficiary's job description with the foreign entity.

employees within his division, the Petitioner did not submit this evidence. The human resources director's letter mentioned that the Beneficiary worked with the "regional manager and director of operations" on recruiting matters and the RFE response included evidence of the Beneficiary's participation in interviews of technical staff and recommendations regarding personnel hires. However, this evidence alone does not establish the Beneficiary's senior placement in the organizational hierarchy. The Petitioner mentioned that a member of the region's advisory board, but did not identify the members of the advisory board or the role of that board within the organization, or otherwise show how the Beneficiary held a senior role within the organization or within the function of planning technical strategies for accounts in the [REDACTED] region.

The Director also emphasized that "no information was given on how the organization employed qualified employees who performed the day-to-day job duties of the function." We agree with the Director's finding that such information is critical to the Petitioner's function manager claim. The Petitioner has not addressed this deficiency on appeal and the record does not contain a description of the foreign entity's organizational structure or staffing during the Beneficiary's period of employment abroad.

Based on the foregoing, the Petitioner has not clearly defined the essential function the Beneficiary managed or his day-to-day job duties. The record does not clearly demonstrate that he occupied a senior position within the foreign entity or with respect to the [REDACTED] region technical strategy planning and implementation function. Further, the Petitioner has not provided evidence demonstrating that someone other than the Beneficiary performed the non-qualifying duties associated with that function. In fact, several of duties the Beneficiary performed abroad are similar to those of the non-managerial employees that he currently supervises in the United States.

As a result, the Petitioner has not met its burden to establish that the Beneficiary primarily performed managerial duties or that he was employed by its foreign affiliate as a function manager prior to his transfer to the United States as a nonimmigrant.

### III. CONCLUSION

The appeal will be dismissed as the Petitioner has not established that the Beneficiary was employed abroad in a managerial capacity.

**ORDER:** The appeal is dismissed.

Cite as *Matter of C-S- Inc.*, ID# 1367016 (AAO June 19, 2018)