



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

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

In Re: 12211071

Date: DEC. 17, 2020

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, a company engaged in leasing helicopters and the sale of aircraft parts, seeks to permanently employ the Beneficiary as its president 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).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary was employed in a managerial or executive capacity abroad prior to his entry into the United States as a nonimmigrant. On appeal, the Petitioner asserts that it submitted sufficient evidence to establish that the Beneficiary acted as a personnel manager abroad overseeing supervisory and professional subordinates.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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 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.

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. FOREIGN EMPLOYMENT IN A MANAGERIAL CAPACITY

The sole issue we will address is whether the Petitioner has established that the Beneficiary acted in a

managerial or executive capacity abroad. The Petitioner does not claim that the Beneficiary was employed in an executive capacity abroad. Therefore, we restrict our analysis to whether the Beneficiary was employed in a managerial capacity abroad.

“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.

The regulation at 8 C.F.R. § 204.5(j)(5) requires the Petitioner to submit a statement that clearly describes the duties performed by the Beneficiary abroad.

A. Duties

To be eligible for L-1A nonimmigrant visa classification as a manager, the Petitioner must show that the Beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If the record does not establish that the foreign position meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

If the Petitioner establishes that the foreign position meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary was *primarily* engaged in managerial duties abroad, as opposed to ordinary operational activities alongside the foreign employer’s other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary’s foreign duties will be primarily managerial, we consider the description of the foreign job duties, the foreign employer’s organizational structure, the duties of a beneficiary’s subordinates employees abroad, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the foreign business, and any other factors that will contribute to understanding a beneficiary’s actual duties and role in a business abroad.

The Petitioner stated that the Beneficiary’s former foreign employer and its parent company has been “a pioneer in the implementation of aeronautical technologies” for more than “six decades,” further noting that it has “built a reputation as a well respected leader in the aircraft industry with its premier fleet of helicopters, logistic services and aircraft repair capabilities.” The Petitioner indicated that the Beneficiary was employed abroad as its vice president and business development manager from 2001 until his entry into the United States as an L-1A nonimmigrant in 2015. The Petitioner listed some of the following duties for the Beneficiary in his former position abroad:

Operations Management and Executive Duties (3-4 hours per day)

- Approving the investment of technologies, such as replicating all databases and carrying operational control of international operations in 2011;
- Overseeing and reviewing strategic direction and objectives;

- Establishing and communicating goals and objectives, defining methodologies and tasks;
- Approving overall project plans, budgets, and work breakdown schedules in U.S., Venezuela, Panama, and the Caribbean;
- Safeguarding the interests of the company's shareholders and making key decisions on how investment capital should be managed;
- Consulting with outside experts to make strategic business decisions; and
- Overseeing processes to safeguard assets and mitigate risks.

Marketing/Strategizing Activities (2 hours per day)

- Acquisition of new contracts to support sales and margin goals as established by the company business plan;
- Identifying opportunities to raise investment revenue and negotiate with investors or joint venture opportunities;
- Establishing and implementing long- and short-term strategies to deliver services to customers within reasonable schedules and budgets;
- Overseeing marketing strategies and making decisions regarding how to best market products and services;
- Act as a key contact for negotiations between the different international organizations;
- Served as a Board Member of all three structures and facilitated synergies among all different companies; and
- Overseeing and creating committees to help company on specific issues.

Business development, Compliance (2 hours per day)

- Overseeing the Company's compliance with applicable laws and regulations;
- Maintaining communication with [the foreign employer] concerning new business opportunities and prospects; and
- Identifying opportunities to meet with new and existing clients with the goal of expanding the geographical areas of services.

Financial Functions (1 hour per day)

- Monitoring accounting and financial reporting practices and reviewing financial and other controls; and
- Supervising the Information Technology Manager, Finance Manager, and Business Development Manager.

The Petitioner submitted a duty description that does not sufficiently demonstrate that the Beneficiary primarily devoted his time to qualifying managerial duties abroad. For instance, despite asserting that the Beneficiary acted in a managerial role abroad from 2001 until his entry into the United States as a nonimmigrant in January 2015; there is little detail and no supporting documentation to substantiate his performance of managerial level duties abroad. In fact, the Beneficiary's duties are generic and could apply to a manager acting in any company or industry. For instance, the Petitioner did not detail or document strategic direction and objectives the Beneficiary set, "methodologies tasks" he defined, project plans he approved, budgets he set, or business operations he oversaw. Likewise, the Petitioner did not specifically articulate or submit supporting evidence to substantiate the key decisions on

investment capital the Beneficiary made, assets he safeguarded, risks he mitigated, new support sales contracts he acquired, long- and short-term strategies he established, marketing strategies he implemented, or “standards with future market coverage” he set up.

Although we do not expect the Petitioner to detail and document all of the Beneficiary’s managerial tasks, the lack of detail and supporting evidence on the record is noteworthy. For instance, the Petitioner mentioned that in 2011 the Beneficiary and the foreign board of directors “approved the investment of technologies that would result in the [foreign employer] replicating all databases and carrying operational control of international operations.” However, there is little context or detail to make this statement credible, such as the investment, technologies, databases, or operations mentioned. Further, this example dates from well before the Beneficiary’s three-year period of qualifying foreign employment prior to his entry into the United States as a nonimmigrant in 2015.

In addition, the Petitioner indicated that in November 2014 the Beneficiary “negotiated a loan with [redacted] Bank in [redacted] that would increase the operational fleet by at least one aircraft within the first quarter of 2015 for international leasing” and noted that this solidified projects in the oil and gas industry. However, again, this one example over the Beneficiary’s long claimed employment with the foreign employer lacks credible specifics, including the size of the loan, the aircraft purchased, or the specific oil and gas projects this expanded; and the Petitioner provided no supporting documentation to substantiate these activities. Specifics are clearly an important indication of whether a beneficiary’s duties are primarily 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, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F.2d 41 (2d. Cir. 1990).

Further, it is also noteworthy that there is no submitted supporting documentation to substantiate the Beneficiary’s managerial tasks. Therefore, two vague examples of managerial tasks performed over the Beneficiary’s long asserted foreign employment history are not sufficient to establish that he devoted a majority of his time to managerial tasks for one year in the three years prior to his entry into the United States. It is also significant that there is no supporting evidence reflecting the Beneficiary delegation of tasks to his asserted supervisory and professional subordinates while employed abroad, despite the Petitioner contending that he qualifies on this basis.

The fact that the Beneficiary managed or directed a portion of the foreign business does not necessarily establish eligibility for classification as a multinational manager. By statute, eligibility for this classification requires that the duties of a foreign position be “primarily” managerial in nature. Sections 101(A)(44)(A) of the Act. Even though the Beneficiary may have exercised discretion over some of the foreign employer’s day-to-day operations and possessed some authority with respect to discretionary decision-making, the position descriptions alone are insufficient to establish that his foreign duties were primarily managerial in nature.

B. Staffing and Operations

If staffing levels are used as a factor in determining whether an individual was acting in a managerial capacity, the reasonable needs of the organization are taken into account in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

The Petitioner asserts that the Beneficiary supervised subordinate managers and professionals in his position abroad, claiming he qualified as a personnel manager. 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. § 204.5(j)(2). Since the Petitioner does not assert that the Beneficiary qualified as a function manager abroad, we will only consider whether he was employed as a personnel manager.

The Petitioner provided a foreign organizational chart reflecting that the Beneficiary supervised a “manager–information technology,” a finance manager, and a business development manager. In addition, the chart indicated that the finance manager oversaw human resources, accounting, and invoicing managers. The human resources manager was also shown to supervise two personnel assistants, the accounting manager an accounting assistant, and the invoicing manager an invoicing assistant.

The Petitioner has not submitted sufficient evidence to establish that the Beneficiary qualified as a personnel manager abroad based on his supervision of subordinate supervisors or managers. First, we note that the provided foreign organizational chart indicated that the Beneficiary directly oversaw only one manager and supervisor overseeing subordinates of their own, the finance manager. However, the Petitioner provided no supporting evidence to substantiate the Beneficiary’s supervision and direction of the claimed finance manager. There is no evidence reflecting the Beneficiary’s direction of this claimed manager or his delegation of duties to this employee. Further, the Petitioner submitted no supporting evidence to substantiate the employment of this claimed subordinate finance manager abroad during the Beneficiary’s time of qualifying foreign employment or his personnel authority over them. As such, the Petitioner did not demonstrate that the Beneficiary had the authority to hire or fire this claimed supervisory subordinate, recommend these actions, or take other personnel actions with respect to them. 8 C.F.R. § 204.5(j)(2).

Further, the provided duty description for the Beneficiary’s sole claimed subordinate manager abroad are generic and do not sufficiently corroborate the position. For instance, the Petitioner vaguely stated that the finance manager was tasked with “providing and interpreting financial information,” “formulating strategic and long-term business plans,” “developing financial management mechanisms,” and “conducting reviews and evaluations for cost-reduction opportunities.” However, this generic duty description includes no credible detail to sufficiently substantiate this claimed supervisory position, such as the strategic plans the finance manager formulated, financial management mechanisms they developed, or cost reduction initiatives they implemented. The duty description for the finance manager also did not discuss his claimed supervisory authority over other departments and managers, as reflected in the claimed foreign organizational chart. Therefore, the Petitioner did not properly demonstrate with credible evidence that the Beneficiary supervised subordinate supervisors or managers abroad.

In the alternative, the Petitioner did establish that the Beneficiary qualified as a personnel manager based on his supervision of subordinate professionals abroad. To determine whether a beneficiary managed professional employees, we must evaluate whether the subordinate positions required 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.” Therefore, we must focus on the level of education required by the position, rather than the degree held by the 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.

The Petitioner did not demonstrate that the Beneficiary supervised professional subordinates abroad. First, the Petitioner indicated that the finance manager “possesses the equivalent of a bachelor’s degree in business administration with a concentration in banking and finance.” However, it provides no supporting documentation to substantiate this assertion. Beyond this, the Petitioner does not indicate whether the claimed business development manager and information technology manager held bachelor’s degrees, explain why they qualify as professionals, nor does it provide supporting documentation to corroborate that they held bachelor’s degrees. In addition, as we have discussed, the Petitioner submitted no evidence to substantiate that the Beneficiary had personnel authority over subordinate professionals abroad, such as evidence of him performing personnel actions with respect to professionals, his delegation of duties to them, or even evidence to establish the employment of these asserted professionals with the foreign employment during the Beneficiary’s asserted time of qualifying foreign employment.

Meanwhile, the duties of the business development manager and information technology manager are also vague and do not sufficiently establish that they were professional positions subordinate to the Beneficiary. For example, the Petitioner ambiguously stated that the business development manager was responsible for “identifying business opportunities,” “screening potential business deals by analyzing market strategies,” and “recommending equity investments;” however, there is no detail specifically related to the foreign employer’s business such as the business opportunities this claimed professional worked on, market strategies they analyzed, or equity investments they recommended. In addition, the Petitioner indicated that the information technology manager was tasked with “maintaining the network, (Server & PCs) and software” and the “distribution of paper and digital technical publications and libraries required on daily maintenance and operations of aircrafts and equipment.” Again, this duty description was brief and generic and included little credible detail and did not sufficiently demonstrate that it was a professional position subordinate to the Beneficiary. As such, the Petitioner did not establish that the Beneficiary acted as a personnel manager abroad based on his supervision of subordinate professionals.

For the foregoing reasons, the Petitioner has not established that the Beneficiary acted in a managerial capacity abroad.

ORDER: The appeal is dismissed.