



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

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

In Re: 11283641

Date: OCT. 1, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, an owner and operator of a barbeque restaurant, 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 Nebraska Service Center denied the petition concluding the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. On appeal, the Petitioner contends the Beneficiary qualifies as a manager based on her supervision of subordinate managers and professionals as defined by the regulations.

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. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The sole issue we will address is whether the Petitioner established that the Beneficiary would act in a managerial capacity in the United States. The Petitioner does not claim that the Beneficiary would

be employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary would be employed in a managerial capacity.

“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).

When examining the managerial capacity of a given beneficiary, we will review the petitioner’s description of the job duties. The petitioner’s description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in a managerial capacity. 8 C.F.R. § 204.5(j)(5).

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 offered position meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

If the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, 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). In determining whether a given beneficiary’s duties will be primarily managerial, we consider the Petitioner’s description of the job duties, the company’s organizational structure, the duties of a beneficiary’s subordinate employees, the presence of other employees to relieve the 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.

The Petitioner stated that it owns and operates a barbeque restaurant franchise and that it “has been exploring other business opportunities to invest, manage, and develop more franchised [barbeque] fast-food restaurants in the next few years.” The Petitioner indicated that the Beneficiary would perform some of the following duties as its president:

Set and implement the overall strategy of the U.S. company- 15%

- Set and adjust the development strategy for the company, organize to implement the overall strategy of the company, develop market opportunities, clarify the business direction and focus of the company and follow through the whole process of new projects of important clients,
- Review potential new office locations researched, selected, and recommended by subordinate owner operator,

- Negotiate lease terms with landlord,
- Attend different tradeshow and private events,
- Allocate and approve budget for business development purposes, and
- Modify and approve the budget and instruct the Owner Operator to execute according to the plan.

Make and implement the annual operation plan of the U.S. company– 15%

- Set, amend and implement the annual operation plan based on the annual operation goals, prepare and implement the financial budget plan and plans for profit distribution and redistribution,
- Set sales goals for the restaurant and the mobile app business,
- Approve new vendors for restaurant equipment and supplies,
- Direct financial management, including specific goals for the company’s balance sheet,
- Determine the funding for each store’s operations and projects,
- Arrange for various payments of operational expenses and review accounting reports to monitor payment status, and
- Inquire about the source and reason for the extra expenditure.

Establish sound routine operational management rules– 25%

- Select middle and high-level management personnel,
- Approve major personnel decisions,
- Improve financial management systems and make financial rules and regulations,
- Establish and improve the logistics and administrative management rules,
- Lead in establishing sound internal communication channels, and
- Coordinate relationships between different departments.

Build an efficient and vibrant employee team– 25%

- Responsible for hiring and firing of direct subordinates, including Pitt Boss and Owner Operator,
- Provide reasonable salary system and effective motivation system, continuously train and develop excellent employees, and
- Establish company culture, regulate internal cohesion, and hold various employee events.

Manage the work of direct subordinates– 20%

- Preside over regular meetings with the Pitt Boss and Owner Operator,
- Supervise and evaluate the work performance of subordinate managers and appoint and remove them,
- Learn about the company’s status and any issues in daily operations,
- Provide advice to Pit Boss and Owner Operator regarding problems encountered, how to resolve problems, and make work plans for the coming week,
- Provide guidelines and instructions to the managers,
 - Make decisions on issues that may interrupt the effective and efficient running of the normal business activities, and
 - Establish KPI (Key Performance Indicator) systems.

The Petitioner submitted supporting evidence indicating the Beneficiary's likely involvement in several non-qualifying operational duties related to its barbeque restaurant. For instance, the Petitioner submitted a printout of an online ordering application listing the Beneficiary as a contact for orders. Further, a letter provided with the petition from the owner-operator of the Petitioner's barbeque restaurant described several apparent non-qualifying operational level duties, such as her closely monitoring sales, inventory, accounts receivable and payable and her purchasing "raw materials" and new cooking equipment. Likewise, the Petitioner submitted instructions written by the Beneficiary from November 2018 where she discusses a claimed subordinate doing "more deep cleaning."

The Petitioner also submitted another letter from the owner-operator stating that the Beneficiary "has managed the...restaurant from the beginning" and noting that she "personally ensures the quality and timely delivery of all caterings and call[s] customer[s] to ask opinions." In addition, the Petitioner provided a weekly schedule from November 2018 reflecting that the Beneficiary was assigned hours as a "Pitt Boss" from 11:00 am to 9:30 pm on Tuesday and Wednesday, and from 11:00 am to 7:30 pm on Sunday of that same week.¹ Likewise, the Petitioner stated in a support letter that the Beneficiary approves and corrects this weekly schedule. It also submitted a text message exchange between the Beneficiary and a subordinate discussing the cash receipts from that day, including a picture of an applicable receipt, and it indicated that this practice is "routine every night." Therefore, in sum, it the Petitioner provided documentary evidence indicating that the Beneficiary is likely primarily engaged in ordinary operational activities alongside the other employees of its barbeque restaurant. Further, it is noteworthy that many of these apparent non-qualifying operational duties questionably do not appear in the Beneficiary's asserted duty description leaving uncertainty as to their credibility.

Whether the Beneficiary is a managerial employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial. *See* sections 101(a)(44)(A) of the Act. Here, the Petitioner does not document what proportion of the Beneficiary's duties would be managerial functions and what proportion would be non-qualifying. The Petitioner submits evidence reflecting the Beneficiary's duties as including administrative or operational tasks, but it does not quantify the time she spends on these duties as compared to qualifying managerial tasks. For this reason, we cannot determine whether the Beneficiary would primarily performing the duties of a manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In addition, the Beneficiary's duty description is overly generic, not supported by the submitted evidence, and it does not sufficiently convey that she would devote her time primarily to qualifying managerial tasks. For instance, the Petitioner emphasized the Beneficiary would spend approximately 30% of her time developing additional restaurant locations and a "mobile app business," including formulating strategies related to these ventures. However, the record reflects that the Beneficiary has been in the United States since December 2015 as a nonimmigrant, supposedly employed as the Petitioner's president, yet there is no evidence to indicate that it has, or is in the process of, developing any other franchise locations or working on any ventures beyond its one barbeque restaurant location. Further, the Beneficiary's duties are largely generic and could apply to any president in any business and industry and they do not sufficiently substantiate her asserted managerial role. The duty description includes few specifics related to the company's actual business or industry. The Petitioner

¹ The petition was filed on May 3, 2019.

provided insufficient examples and little supporting documentation to demonstrate the Beneficiary's performance of qualifying managerial duties, such as development strategies she set, "new projects" or "important clients" she worked with, budgets she approved, operational plans she put in place, or sales goals she set. Similarly, the Petitioner did not credibly describe or document major personnel decisions she made, financial management systems she established, "management systems" she created, or "KPI systems" she implemented.

The lack of detail and documentation regarding the Beneficiary's asserted managerial capacity is particularly notable given that the Petitioner asserts that she has acted in this role in United States for more than three years. Although we do not expect the Petitioner to articulate every specific related to the Beneficiary's duties or document her performance of every managerial task, it is reasonable to expect that it would provide sufficient credible detail and documentation to properly substantiate her performance of managerial duties, particularly since it their evidentiary burden and it claims she has acted in this role for years. 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).

Even though the Beneficiary holds a senior position within the organization, the fact that she will manage or direct the business does not necessarily establish eligibility for classification as a multinational manager within the meaning of section 101(a)(44)(A) of the Act. 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; however, the position description alone is insufficient to establish that her actual duties would be primarily managerial in nature.

B. Staffing and Personnel Manager

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

The Petitioner submitted an organizational chart with the petition indicating that the Beneficiary would supervise a "Pitt Boss" and an owner-operator. The chart further reflected that the Pitt Boss would oversee three "Shift Pitt bosses" and that one shift bosses would supervise eight restaurant staff employees. In addition, the chart indicated that the owner-operator would oversee a marketing employee and an outsourced bookkeeping and a tax service provider.

On appeal, the Petitioner emphasizes that the "local first-line managers supervised by [the] beneficiary have food handler certificate[s] and Serv Safe Manager Certificate[s] of [the] National Restaurant Association" and that they are "professionals in the hospitality industry." The Petitioner also asserts that the claimed owner-operator subordinate to the Beneficiary earned a Bachelor of Arts degree in China. 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). As the Petitioner does not assert that the Beneficiary would act as a function manager, we will only analyze whether she would qualify as a personnel manager as claimed.

The Petitioner has not sufficiently demonstrated that the Beneficiary would act as a personnel manager overseeing subordinate supervisors. As discussed, the Petitioner provided an organizational chart reflecting that the Beneficiary oversaw three subordinate "Pitt Bosses" who in turn supervised restaurant staff. It also claimed that the Beneficiary oversaw the owner-operator, who had subordinates of his own. First, the Petitioner provided supporting evidence indicating that the claimed "Pitt Bosses" subordinate to the Beneficiary are actually operational employees fulfilling temporary roles to ensure that the restaurant operates properly. However, there is little evidence or indication that these are permanent positions, or that these employees hold actual personnel authority over their claimed subordinates. In fact, as we have noted, the supporting documentation reflects that the Beneficiary acted as a "Pitt Boss" herself twice a week as late as November 2018. The Petitioner also provided a document appearing to reflect that its various operational employees are assigned to these different roles on a week to week and shift to shift basis, suggesting that these are not actual subordinate supervisors and managers, but operational employees assigned to these roles as needed. Further, as discussed, there is substantial evidence indicating that the Beneficiary acts alongside these operational employees performing all the tasks necessary to keep the barbeque restaurant operating.

In addition, the Petitioner has not credibly established that the owner-operator is her subordinate. First, there is no credible evidence on the record of the Beneficiary exercising personnel authority over the owner-operator. The Petitioner also provided a generic duty description for the owner-operator, vaguely indicating that he supervised marketing staff, compiled recommendations for the Beneficiary's review, conducted food safety assessments, and resolved customer complaints. These duties appear to be largely the same as the Beneficiary's and there are several documents on the record indicating that the owner-operator, the Beneficiary's husband, also acted as the company's president before and after her entry as a nonimmigrant. In fact, despite the owner-operator claiming that the Beneficiary can fire him, he also states that "we are more sort of partners and it is common to run business with husband and wife." As such, it is questionable that the Beneficiary would exercise full personnel authority over the owner-operator since he owns 100% of the Petitioner and he is her husband and stated business partner. In fact, given the submitted evidence, it seems more likely that the Beneficiary and her husband act as partners in running the business on a daily basis. Therefore, for the foregoing reasons, the Petitioner did not sufficiently establish that the Beneficiary would act as a personnel manager based on her personnel authority over subordinate supervisors.

Next, we will analyze the Petitioner's contention that the Beneficiary would qualify as a personnel manager based on her supervision of subordinate professionals. To determine 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.” Therefore, we must focus on the level of education required by the position, rather than the degree held by 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 has not sufficiently demonstrated that the Beneficiary would qualify as a personnel manager based on the supervision of subordinate professionals as claimed. As noted, the Petitioner contends that the “local first-line managers supervised by [the] beneficiary have food handler certificate[s] and Serv Safe Manager Certificate[s] of [the] National Restaurant Association” and that they are “professionals in the hospitality industry.” However, food handling or safety certificates are not bachelor’s degrees and the duties of the “Pitt Boss” positions do not include professional tasks requiring a bachelor’s degree as contemplated by the regulations, including them interacting with customers, submitting food orders, and ensuring the implementation of safety policies in a restaurant setting.

Further, even if the Petitioner had established that the Beneficiary would have personnel authority over the owner-operator, it is not clear how this qualifies as a professional position as defined by the regulations. The Petitioner only indicates that the owner-operator earned a Bachelor of Arts degree from China, but it does not indicate how this position requires such a degree to perform its duties, including marketing a barbeque restaurant, conducting research on online food ordering, and conducting food safety assessments. In fact, the staff schedule indicates that the owner-operator was assigned to open the restaurant four days per week, suggesting that he is fulfilling a role similar to that of the Beneficiary; namely performing non-professional operational duties running the restaurant that do not require a bachelor’s degree. As such, the Petitioner has not sufficiently established that the Beneficiary would act as a manager of professional subordinates.

For the foregoing reasons, the Petitioner has not established that the Beneficiary would act in a managerial capacity in the United States.

ORDER: The appeal is dismissed.