



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

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

In Re: 11271748

Date: OCT. 26, 2020

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, describing itself as a seller of fabrics and home furnishings, 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 Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. In addition, the Director determined that the Petitioner did not demonstrate that it would have the ability to pay the Beneficiary's proffered wage.

On appeal, the Petitioner contends the Director overlooked submitted evidence demonstrating that it engaged contractors to support its operations and the Beneficiary in a managerial capacity; specifically, IRS Forms 1099, Miscellaneous Income. The Petitioner also asserts that the Beneficiary was "unfairly prejudiced" by the Director because of involvement in additional U.S. business ventures outside of his employment with the Petitioner that were not disclosed in support of this petition, as well as based on information gathered in a Customs and Border Patrol (CBP) detention at an airport. Lastly, the Petitioner states that the Director improperly analyzed whether the Beneficiary qualified as an executive when it asserted that he qualified as a manager according to 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 first 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 is “a luxury home furnishing[s] company specializing in designing, producing and selling textile finished products, including custom drapery, upholstery, blinds and shutters, and bedding.” The Petitioner indicated in support of the petition that it operated three

showrooms displaying its products in the [] Texas area and emphasized that the Beneficiary managed “a staff of subordinate managers as well as sales professionals, designers, and other subordinate staff.” In a letter submitted in response to the Director’s request for evidence (RFE), the Petitioner provided the following duty description for the Beneficiary as its president:

1. Manage and direct the company’s overall business strategy, operations, and financial policy.

- Take [*sic*] discretionary decisions over whether and when the company should begin marketing new product lines or start new lines of business (20%)
- Negotiate terms of business with the top management of new corporate customers (15%)
- Determine whether the company needs additional staff or needs to expand to new stores (5%)
- Oversee the company’s financial management, including ensuring that the company has sufficient revenue streams to support current and anticipated operations (15%)

Manage the company as a whole, exclusive authority for broad policy decisions such as developing the relationships with particular home décor retailers, whether to expand to a new store or close an existing store, or ordering action in light of the company’s financial position.

2. Supervise and direct a team of managers responsible for the performance of their respective departments.

- Receive daily reports from the management team as to the performance of the company’s different functions such as sales, customer relations, IT management, and finance (5%)
- Direct managers to take action in response to issues that arise such as delays in major orders, orders for major customers, or to hire additional staff (5%)

Responsible for instructing his managerial team to handle matters such as ensuring that staff attend to the timeframe and delivery schedules of major customer orders from a particular store, issuing sufficient financial and staffing resources, and ensuring that departments work smoothly together.

3. Take [*sic*] personnel actions regarding the employees under his supervision, including hiring, firing, disciplinary, and promotion decisions.

- Review and approve hiring recommendations made by store managers (5%)
- Hire additional management as needed to meet the needs of the business as new stores are leased (5%)
- Order pay raises and/or new benefits for high-performing employees (5%)

4. Taking [*sic*] decisions on a day-to-day basis that further increase the company’s visibility and expand the business into new markets.

- Negotiate with other businesses to obtain exclusive supplier agreements, and oversee the management of those key business relationships over time (5%)

- Approve the introduction of new product lines and oversee their roll-out in the company showroom (5%)
- Review financial figures and other performance figures by management (10%)

Negotiates agreements with new and existing customer companies for their needs, assigns projects to respective managers to oversee and handle further, introduces new product lines, such as our new upholstered furniture offerings at our showroom, and oversee the company's financial performance.

The Petitioner submitted supporting documentation dated after the time the petition was filed indicating the Beneficiary's wide involvement in the non-qualifying operational tasks.¹ For instance, the Petitioner provided shipping documentation signed by the Beneficiary for the delivery of screen door parts in August 2019. The Petitioner also submitted several emails from throughout 2019 reflecting the Beneficiary's direct engagement in day-to-day operational matters, such as him providing a quote directly to a customer, taking specifications for an order, receiving estimates from suppliers, confirming the delivery of "room drapery, bedskirts, and scarf toppers," confirming an installation date with a contractor, and requesting a quote from one of its vendors to whom he provided measurements. Likewise, the Petitioner provided emails and supporting invoices the Beneficiary submitted to a customer in May and June 2019 for the purchase of motorized screens, including one email indicating that the Beneficiary would "pay for this order" and him inquiring "who do I call to pay with [a] credit card." Further, the Petitioner submitted an email from January 2019 within which the Beneficiary states to a client that he "managed to get [the] install done" and that he would "submit the final invoice." Another email from October 2018 also showed the Beneficiary sending an address to a marketing vendor to send samples.

In sum, this documentation indicates the Beneficiary's substantial involvement in the non-qualifying operational aspects of the business as opposed to his delegation of these duties to managerial and professional subordinates as claimed. In fact, the record includes no documentation corresponding with the date the petition was filed reflecting the Beneficiary's performance of managerial duties or his supervision of his claimed subordinates. In addition, the apparent operational duties reflected in the submitted supporting documentation, such as him receiving shipments, providing and requesting quotes, arranging for installations, providing specifications, and requesting samples from vendors, are not listed in the Beneficiary's asserted duty description thereby leaving question as to their credibility. 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).

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 substantial documentation reflecting the Beneficiary's direct performance of administrative or operational tasks but does not quantify the time he would spend on these different duties. For this reason, we cannot determine whether the Beneficiary is 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).

¹ The petition was filed on February 6, 2018.

The Petitioner also submitted a generic duty description for the Beneficiary that does not sufficiently establish that he would primarily perform managerial duties as of the date the petition was filed. The Beneficiary's duty description, and the record generally, include few credible details and little supporting documentation to substantiate his performance of qualifying managerial tasks. For instance, the Petitioner did not detail or document the business strategies or financial policies the Beneficiary's directed, product lines he marketed, negotiations he conducted with new corporate customers, or store expansions he carried out. Likewise, the Petitioner did not sufficiently describe or document the broad policy decisions the Beneficiary made, hiring decisions he made, "exclusive supplier agreements" he negotiated, or financial issues he managed.

In addition, the Beneficiary's asserted duties state that he received "daily reports from the management team as to the performance of the company's different functions such as sales, customer relations, IT management, and finance," but none of this supporting documentation is apparent on the record. Further, the Beneficiary's duties also indicated that he devoted, and would devote, 15% of his time to "hiring, firing, disciplinary, and promotion decisions;" however, there is no supporting documentation to corroborate him exercising personnel authority over his claimed supervisory and professional subordinates.

Although we do not expect the Petitioner to document all of the Beneficiary's qualifying managerial tasks, the lack of supporting documentation to substantiate them is noteworthy, particularly since it asserts that he has been acting in a managerial capacity in the United States since early 2012, approximately six years prior to the date the current petition was filed. 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).

In contrast, to the extent the Beneficiary's duties discuss specifics related to the business, much like the supporting documentation previously discussed, they also suggest his involvement in the day-to-day operational matters of the business, such as him dealing with "major orders," attending "to the timeframe and delivery schedules of major customer orders," and "introducing our upholstered furniture offerings at our showroom." Further, there is no supporting documentation to substantiate that the Beneficiary was primarily delegating these duties and functions to supervisory subordinates as claimed; in fact, as discussed, there is substantial evidence reflecting his direct performance in these non-qualifying tasks. Therefore, in sum, the submitted evidence indicates that the Beneficiary would more likely be engaged in non-qualifying operational tasks rather than managerial duties overseeing subordinate supervisors and professionals as claimed.

Furthermore, in denying the petition, the Director briefly noted that United States Citizenship and Immigration (USCIS) records reflected that the Beneficiary acknowledged he also worked for other companies outside of the Petitioner, including a wireless store and two other design businesses. On appeal, the Petitioner contends that the Director was "prejudiced" by the Beneficiary's involvement in these other businesses and his detention by Customs and Border Control (CBP) officers who questioned him about this other employment. The Petitioner acknowledges the Beneficiary's involvement in these businesses and his investment in a wireless store and another shade and drape business, both in 2019, and asserts that he is not barred from seeking these additional business opportunities.

We do not agree that the Director was “prejudiced” by the Beneficiary’s aforementioned CBP detention in July 2019. In fact, this incident is not directly discussed in the decision. Regardless, it was reasonable for the Director to take into account information gathered during this detention, of which it was provided notice, when assessing the totality of the evidence and the Beneficiary’s eligibility. This evidence is probative as to whether the Beneficiary was, and would, primarily perform managerial tasks for the Petitioner as required for approval. In considering the totality of the evidence, the acknowledgements on the part of the Petitioner as to the Beneficiary’s additional employment and business activities leave only further question as to his actual daily duties with the Petitioner. For instance, it is not clear how the Beneficiary’s involvement in these other businesses relates to his employment with the Petitioner, if at all, and whether this contributes to or detracts from his ability primarily perform qualifying managerial duties for the petitioning employer. The Petitioner must resolve inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Even though the Beneficiary holds a senior position within the organization, the fact that he 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 his 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.

As discussed, the Petitioner asserts that the Beneficiary would qualify as a manager and contends that he would qualify based on his supervision of subordinate supervisors and professionals. The Petitioner asserts that the Beneficiary would oversee subordinate supervisors and professionals. 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).

The Petitioner submitted conflicting assertions on the record with respect to its staffing and operations leaving uncertainty as to the credibility of the Beneficiary’s asserted managerial role. For instance, in support of the petition in February 2018 the Petitioner stated that “we now employ a staff of 42...and have annual gross revenue of over \$2 million” and provided an accompanying organizational chart reflecting this level of staffing. However, in response to the RFE in November 2019, it stated that “the company currently has a staff of 11, including managers, professionals, and supervisory employees, it employs these staff in contracting relationships.” In support of this statement, the

Petitioner provided 2018 IRS Forms 1099; however, these tax forms reflected payments made to only seven individuals. The Petitioner's submission only seven 2018 IRS Forms 1099 related to only seven contractors raises material question as to its initial assertion on the record that it supported a staff of 42 employees as of the date the petition was filed in February 2018.

In fact, this large discrepancy indicates that the Petitioner was likely not accurately portraying its staffing and operations as of the date the petition was filed leaving substantial uncertainty as to the credibility of its assertions. Likewise, there is little objective evidence, such as submitted corporate tax documentation, audited financial statements, or other evidence to substantiate its assertion that it was, or would, earn \$2 million in revenue per year as stated in its initial support letter. On appeal, the Petitioner emphasizes that the it was heavily impacted by [redacted] which struck the business in [redacted] 2017 and emphasized that it "struggled to maintain the position [redacted] [redacted] with 42 employees and three stores." Although this turn of events is very unfortunate, these assertions on appeal leave only more doubt as to why it submitted an organizational structure with 42 employees and three stores approximately six months later when it filed the petition in February 2018. Again, the Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

Therefore, the Petitioner has not established an accurate and substantiated picture of its organizational structure and operations as of the date the petition was filed as necessary to sufficiently demonstrate that the Beneficiary was acting as a manager of subordinate supervisors or professionals at that time. For example, in response to the RFE in November 2019, the Petitioner indicated that it "currently has a staff of 11," including asserted supervisors and professionals subordinate to the Beneficiary. However, this asserted organizational chart did not establish the Petitioner's organizational structure as of the date the petition was filed, staffing that must be analyzed in order to assess the Beneficiary's eligibility as a personnel manager. In fact, the Petitioner's IRS Form 1099s, reflect payments to only seven individuals during all of 2018, indicating that its staffing and organizational structure was substantially different and smaller at this time.

Since the Petitioner has not credibly demonstrated its organizational structure as of the date the petition was filed, we cannot conclude that he was acting as a personnel manager overseeing subordinate supervisors and professionals at that time. Again, 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). Further, as noted, it is also significant that the Petitioner provided no documentary evidence to substantiate that the Beneficiary was acting as a personnel manager near to the date of the petition, such as him exercising personnel authority over subordinate supervisors or professionals or delegating non-qualifying tasks to them. Indeed, as discussed at length, the submitted documentary evidence indicates the Beneficiary's wide involvement in non-qualifying operational duties well after the date the petition was filed. For the foregoing reasons, the Petitioner has not established that the Beneficiary qualified as a personnel manager as of the date the petition was filed.

Lastly, the Petitioner also contends on appeal that the Beneficiary would qualify as a function manager indicating that he oversees a "clearly defined and essential activity." 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).

The Petitioner has not sufficiently demonstrated that the Beneficiary would qualify as a function manager. The Petitioner only generically indicates that the Beneficiary’s “defined and essential activity” is “developing the company’s overall strategy,” including “personnel policies, revenue generation activities, decisions to expand to new locations, and all other business decisions.” As one example, the Petitioner noted that the Beneficiary would have the authority to “contract its business and reduce its workforce to stay in business in the wake of [redacted]” However, holding designated authority as the ultimate decision maker for a petitioner does not alone demonstrate that the Beneficiary is a function manager. The Petitioner has not defined an essential function within the organization that the Beneficiary manages.

For instance, as previously discussed, the Petitioner does not explain the Beneficiary’s development of the company’s strategies or personnel policies, nor does it described his managerial duties with credible detail or support them with documentary evidence. In fact, as noted, the Petitioner provided substantial evidence indicating the Beneficiary’s direct performance of non-qualifying operational duties well after the date the petition was filed. Therefore, even if the Beneficiary’s claimed essential function was properly defined, it has not demonstrated that he would primarily manage a function, as opposed to perform it.

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

III. REMAINING ISSUE

Since the identified basis for denial is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve its appellate arguments regarding whether it would have the ability to pay the Beneficiary’s proffered wage. *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).

ORDER: The appeal is dismissed.