



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

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

In Re: 11199033

Date: SEPT. 30, 2020

Appeal of Texas Service Center Decision

Form I-140C, Immigrant Petition for Alien Workers (Multinational Managers or Executives)

The Petitioner, an international management consulting firm, seeks to permanently employ the Beneficiary as a senior fellow 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). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in a managerial or executive capacity.

The Director of the Texas Service Center denied the petition, concluding that the record does not establish that the Beneficiary was employed in a managerial or executive capacity abroad prior to his entry into the United States as a nonimmigrant. In addition, the Director determined that the record does not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States.

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).

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term “managerial capacity” as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) 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;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. 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.

## II. FOREIGN EMPLOYMENT IN A MANAGERIAL CAPACITY

The primary issue that we will address on appeal is whether the Petitioner has established that the Beneficiary acted in a managerial capacity abroad. The Petitioner asserted in response to the Director's notice of intent to deny (NOID) that the Beneficiary's duties abroad involved both functional management responsibilities and personnel management responsibilities.<sup>1</sup> The Director denied the petition based on a finding that the Petitioner did not establish that the Beneficiary was employed in a managerial capacity abroad. In analyzing the Beneficiary's position descriptions, the Director observed that an individual cannot primarily perform the duties of a personnel manager and a functional manager. On appeal, while acknowledging that the Beneficiary had duties related to a function manager, the Petitioner asserts that the Beneficiary served primarily as a personnel manager abroad. Given the Petitioner's assertions that the Beneficiary served as both a personnel manager and a function manager abroad, we will review both capacities below.

The Petitioner must show that the Beneficiary performed 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

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<sup>1</sup> As set forth above, 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. Function managers are primarily responsible for managing an essential function within the organization. The Petitioner does not claim that the Beneficiary was employed in an executive capacity abroad.

positions abroad meet all four of these elements, we cannot conclude that they are qualifying managerial positions.

If the Petitioner establishes that the positions abroad meet all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary was *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's duties were primarily managerial, we consider the 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.

As noted above, we must determine whether the Petitioner has established that the Beneficiary's positions abroad meet all elements of the statutory definition of "managerial capacity" at section 101(a)(44)(A) of the Act. We conclude that the record does not establish that the Beneficiary's role abroad meets the requirements of sections 101(a)(44)(A)(ii) and (iii) of the Act.<sup>2</sup>

#### A. Dates of Employment Abroad

We will initially address the conflicting information in the record regarding the Beneficiary's employment with the qualifying organization abroad. In a supporting letter dated April 5, 2019, submitted with the petition, the Petitioner indicated that the Beneficiary was employed with its subsidiary in [REDACTED], India "from "October 1, 2014 to March 31, 2017 in a managerial capacity, serving in the roles of Analyst and Senior Analyst." Later in that letter, it clarified that the Beneficiary joined its office in [REDACTED] "in October 2014 to serve in the managerial position of Analyst" with its healthcare analytics and delivery team and that in September 2015, "he advanced to the managerial role of Senior Analyst." It subsequently asserted in the same letter that from "October 2014 to May 2016, [the Beneficiary] held the managerial position of Analyst" and that in July 2016, [the Beneficiary] advanced to the managerial role of Senior Analyst." It asserted that he was transferred to the United States in L-1 nonimmigrant status in April 2017.<sup>3</sup> Thus, as noted in the Director's subsequent NOID, the information regarding his employment abroad contains inconsistencies regarding the timeline and roles that the Beneficiary held with the foreign entity.<sup>4</sup> The Director also stated that since the letter focuses on the Beneficiary's role as senior analyst and he did not serve in that role for at least one year prior to his entry into the United States, the record does not establish that he worked in a managerial capacity for at least one year in the three years preceding his entry as a nonimmigrant. *See* 8 C.F.R. § 204.5(j)(3)(i)(B).

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<sup>2</sup> Because the record must establish that he met all four of the requirements and we have determined that he failed to meet more than one of them, we do not need to analyze whether he met the remaining requirements and therefore reserve them in the event of future proceedings.

<sup>3</sup> According to government records, the Beneficiary was granted L-1 nonimmigrant status in 2014 based on a blanket petition previously approved for the Petitioner in 2013, and he made four separate trips to the United States in L-1 status between April 2015 and November 2016. The Petitioner did not mention these U.S. assignments when describing the Beneficiary's employment abroad with the foreign entity. Records indicate that his next arrival in L-1 status occurred on April 5, 2017.

<sup>4</sup> The Petitioner must resolve the discrepancies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In its NOID response, the Petitioner stated that the Beneficiary joined its office in [redacted] India on June 3, 2013, to serve in the role of research analyst. It stated that he “commenced his managerial role on October 1, 2014, initially as an Analyst where he served as a member of the organization’s [redacted] [redacted] Analytics and Delivery Team, which forms part of its [redacted] [redacted]” It further stated that he served “in various managerial roles” within this practice group, including a “title change to Technology Analyst” on April 1, 2015;<sup>5</sup> to analyst on September 1, 2015; and to senior analyst on July 1, 2016. It reiterated that the Beneficiary was transferred to the United States in L-1A nonimmigrant status on April 1, 2017. It did not provide any independent, objective evidence to support these assertions.

Given the conflicting information regarding the Beneficiary’s employment with the foreign subsidiary, and the lack of supporting documentation in the record, the Beneficiary’s work history and eligibility for this immigrant classification are not clear. In any future filings, the Petitioner must resolve the discrepancies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

#### B. Personnel Manager

With regard to the claimed role of personnel manager, the record does not establish that the Beneficiary’s role abroad involved supervision of subordinate supervisory, professional, or managerial employees as required by section 101(a)(44)(A)(ii) of the Act, or that he had the authority to hire, fire, or recommend those and other personnel actions as required by section 101(a)(44)(A)(iii) of the Act.

The Petitioner is a large international management consulting firm. In its supporting letter submitted with the petition, the Petitioner listed different duties for the Beneficiary’s roles of analyst and senior analyst, but asserted that both positions were managerial. The duties for the position of analyst included the oversight of data analysis in [redacted] analytics, but they did not include the supervision of any employees or the authority to hire, fire, or recommend personnel actions for any subordinates. The duties for the position of senior analyst included client engagement work, client development, knowledge creation and transfer, and building business; however, they did not include tasks related to the supervision of any employees or the authority to hire, fire, or recommend personnel actions for any subordinates. Despite the lack of supervisory tasks, the Petitioner asserted that the position of senior analyst “is a role that includes the direct or indirect management of several levels of professional employees.”

In the supporting letter, the Petitioner included a “typical organizational chart for the types of assignments that [the Beneficiary] led and the professional employees under [his] supervision” in the [redacted] office. The chart shows the Beneficiary as a senior analyst who oversaw a business analyst, a senior data engineer, and a data scientist. The chart demonstrates that the Beneficiary was overseen by a chief actuary; the business analyst oversaw a junior analyst; and the senior data engineer oversaw a data engineer. The Petitioner asserted that all business analysts are required to possess a minimum of a bachelor’s degree in a related field, but it did not indicate that any of the other direct or indirect subordinates were required to possess a minimum of a bachelor’s degree. Other than the Beneficiary,

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<sup>5</sup> The reason for this “title change” is not clear, and it is not clear if the change in job title included any corresponding change in duties.

no individual names are listed on the chart, and the record does not identify the names or educational qualifications of any of the Beneficiary's purported subordinates. The Petitioner did not initially submit an organizational chart showing the Beneficiary's role as an analyst within the hierarchy of the foreign organization.

In the NOID, the Director stated that the Petitioner did not establish that the Beneficiary meets any of the four requirements of section 101(a)(44)(A)(i)-(iv) of the Act. He noted that the organizational chart submitted by the Petitioner does not contain any identifying information or a larger overview of the organization. He indicated that the positions of analyst and senior analyst do not "carry the implication" that they are managers of direct subordinates.

In its NOID response, the Petitioner stated that as a management consulting firm, it assists clients in solving major problems, and that its employees work in large-scale teams to study the clients' problems and advise on how to execute major organizational changes. It asserted that analysts and senior analysts "perform essentially the same core duties, although Senior Analysts operate at a higher level within our organizational hierarchy." This conflicts with its original job descriptions which detailed different duties for the two positions. The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). It further asserted in its NOID response that analysts and senior analysts manage a specialized function within the organization's structure, and that the Beneficiary's duties abroad involved both functional management responsibilities and personnel management responsibilities.

With regard to the Beneficiary's personnel management duties, it asserted that he "oversaw a team of professional employees on the day-to-day project work that they executed" and that the Beneficiary's "team size varied depending upon the size and complexity of the project." The revised combined duties for the positions of analyst and senior analyst included one-on-one coaching and overseeing of direct reports. It asserted that the Beneficiary's subordinates relieved him of performing any and all non-qualifying tasks, leaving him free to focus on broader strategic planning. It submitted another organizational chart showing the Beneficiary as an analyst who oversaw a business analyst, a senior data engineer, and a data engineer. He was overseen by an engagement manager who, in turn was supervised by an associate partner. It also provided job descriptions for the employees purportedly under the Beneficiary's supervision abroad. The job descriptions indicate that all of the subordinate positions require a bachelor's degree. However, other than the Beneficiary, no individual names are listed on the chart, and the record does not identify the names or specific educational qualifications of any of the Beneficiary's purported subordinates. The Petitioner asserted that "as a matter of policy" it does not provide personal information about "current or former employees that are unassociated with any immigration filing with USCIS," but it confirms "that all individuals represented on the organizational chart possesses at least a Bachelor's degree in a field related to their job duties." The burden of proof is on the Petitioner in the current matter. Section 291 of the Act, 8 U.S.C. § 1361. A petitioner's unsupported statements are of limited weight and normally will be insufficient to carry its burden of proof. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

In his denial decision, the Director stated that the Petitioner did not clarify whether the Beneficiary primarily served as a function manager or personnel manager abroad, and he determined that the Petitioner did not establish that the Beneficiary meets any of the four requirements of section 101(a)(44)(A)(i)-(iv) of the Act. He stated that the Petitioner did not identify any actual employees managed by the Beneficiary or provide evidence of their professional credentials. On appeal, the Petitioner asserts that the Beneficiary supervised subordinate professionals in his capacity abroad, and claims that he was primarily a personnel manager. It submits a duty description for the Beneficiary on appeal that breaks down some of the previously submitted duties into additional categories; however, none of the duties indicate that he had the authority to hire, fire, or other personnel actions for any subordinates.

The record contains two foreign organizational charts showing that the Beneficiary oversaw subordinates in his positions abroad. As previously discussed, there is no supporting evidence to substantiate that the Beneficiary acted in a managerial role with personnel authority over subordinate professionals, managers, or supervisors. The submitted evidence indicates that it is more likely that the Beneficiary was in a more junior position as an analyst and then was promoted to a senior analyst less than one year before he was transferred to the United States.

Even if the Beneficiary supervised teams abroad, his duty description states that he coached them and gave feedback regarding their professional development. However, this does not demonstrate that the Beneficiary had the authority to hire or fire these claimed subordinates, recommend these actions, or take other personnel actions with respect to them. 8 C.F.R. § 204.5(j)(2). The Petitioner submits no supporting documentation to substantiate the Beneficiary's asserted personnel authority over subordinate supervisors, managers, or professionals abroad.

Furthermore, it is also noteworthy that the Petitioner did not submit specific evidence to demonstrate that the Beneficiary's claimed subordinates were professionals, if indeed his supervisory authority had been established. The Petitioner did not identify any of the Beneficiary's subordinates by name, nor did it provide evidence to demonstrate that any of them held bachelor's degrees.<sup>6</sup> There is no supporting documentation to demonstrate that the Beneficiary acted in a managerial capacity in relation to these claimed subordinates. Therefore, the Petitioner has not submitted sufficient evidence to establish that the Beneficiary acted as a personnel manager abroad.

The Petitioner must show that the Beneficiary performed 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 position abroad meets all four of these elements, we cannot conclude that it is a qualifying managerial position. For the reasons discussed, the Petitioner has not established that the Beneficiary would supervise and control the work of other supervisory, professional, or managerial employees as required by section 101(a)(44)(A)(ii) of the Act. Further, the Petitioner has not established that the Beneficiary

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<sup>6</sup> 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."

that he had the authority to hire, fire, or recommend those and other personnel actions as required by section 101(a)(44)(A)(iii) of the Act.

### C. Function Manager

The record also does not establish that the Beneficiary's role abroad involved managing an essential function within the organization, or a department or subdivision of the organization as required by section 101(a)(44)(A)(ii) of the Act, or that he functioned at a senior level within the organizational hierarchy or with respect to the function managed as required by section 101(a)(44)(A)(iii) of the Act.

The Petitioner has not provided sufficient evidence to establish that the Beneficiary acted as a function manager abroad. The Petitioner has not clearly defined the Beneficiary's function. For instance, the Petitioner generally stated that the Beneficiary acted as an analyst and senior analyst within the foreign employer's healthcare analytics and delivery department, and that he was assigned to different teams providing services to various clients. However, the nature of this function is not clear; for instance, although healthcare analytics and delivery could be a function itself, it is not sufficiently established that each team within this function providing diverse services to various clients at different times represents a defined function. Further, as we have discussed, the record conflicts as to the Beneficiary's job history abroad, and there is insufficient supporting evidence to substantiate the Petitioner's claim that the Beneficiary was primarily engaged in managing a function. As such, even if the Petitioner demonstrated that the Beneficiary acted within a defined function, it has not demonstrated with sufficient evidence that he was directing this function at a senior level. The two foreign organizational charts in the record reflect that as an analyst, the Beneficiary reported to an engagement manager who, in turn was supervised by an associate partner; and that as senior analyst, the Beneficiary reported to an actuary. The roles of the supervisory engagement manager, associate partner, and actuary are not defined in the record. Therefore, although the Petitioner asserts that the Beneficiary served a senior manager in his roles as analyst and senior analyst, the record does not demonstrate that the Beneficiary acted at a senior level within his claimed function abroad. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

For the reasons discussed, the Petitioner has not established that the Beneficiary's role abroad involved managing an essential function within the organization, or a department or subdivision of the organization as required by section 101(a)(44)(A)(ii) of the Act, or that he functioned at a senior level within the organizational hierarchy or with respect to the function managed as required by section 101(a)(44)(A)(iii) of the Act.

The Petitioner must show that the Beneficiary performed the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. Because the record does not establish that the positions of analyst and senior analyst abroad meet all four of these elements, we cannot conclude that either position is a qualifying managerial position.

### D. Duties

As the Petitioner did not establish that the Beneficiary meets all of the four requirements of section 101(a)(44)(A)(i)-(iv) of the Act, we will not conduct a full analysis of the remaining evidence related

to the Beneficiary's positions abroad. However, we note that the submitted job descriptions do not support a finding that his duties were primarily managerial in nature. The Petitioner has submitted duty descriptions that conflict and that do not sufficiently demonstrate that the Beneficiary primarily devoted his time to qualifying managerial duties abroad. As detailed above, the Petitioner initially indicated that the Beneficiary's roles as analyst and senior analyst were different. The duties for the position of analyst included the oversight of data analysis in healthcare analytics, while the duties for the position of senior analyst included client engagement work, client development, knowledge creation and transfer, and building business. The Petitioner did not indicate that the position of analyst involved supervision of subordinates, but it stated that the senior analyst position "is a role that includes the direct or indirect management of several levels of professional employees."

However, in response to the NOID, it asserted that analysts and senior analysts "perform essentially the same core duties, although Senior Analysts operate at a higher level within our organizational hierarchy." It described the core combined duties for both jobs and the percentages of time devoted to the duties. However, none of the provided duty descriptions 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 for over two years, there is no supporting documentation to substantiate his delegation of duties and his claimed management of teams described in his duty description. Further, the Beneficiary's duties are vague and could apply generally to any business consultant. For example, the Petitioner did not detail or document the "complex problems facing clients in various sectors" that the Beneficiary solved through his teams; "data development solutions" that he identified; "recommendations for change" that he developed; "feedback to team members" that he provided; contributions to the "formal evaluation process" that he made; "significant benchmarking projects" that he oversaw; or "implementation plans" that he led. Likewise, the Petitioner did not specifically articulate or submit supporting evidence to substantiate the operational and management issues the Beneficiary addressed through his asserted teams, personnel decisions he made, or coaching he provided to his subordinates. 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, there is no supporting evidence that the Beneficiary was primarily delegating the operational aspects of his duties, such as data development for clients, developing analytical models and algorithms for clients, developing solutions and recommendations for clients, and formulating final presentations. Although the Petitioner contends that the Beneficiary led these activities through subordinate teams, there is no supporting evidence to substantiate this assertion. An employee who "primarily" performs the tasks necessary to provide services is not considered to be "primarily" employed in a managerial capacity. *See, e.g.*, section 101(a)(44)(A) of the Act (requiring that one "primarily" perform the enumerated managerial duties); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).

By statute, eligibility for classification as a multinational manager requires that the duties of a foreign position be "primarily" managerial in nature. Sections 101(A)(44)(A) of the Act. The foreign position must meet all elements of the statutory definition of managerial capacity and the Beneficiary must have performed primarily managerial duties. Here, the Petitioner did not meet that burden. Accordingly, the appeal will be dismissed.



### III. RESERVED ISSUE

As noted, the Director also determined that the Petitioner did not establish that the Beneficiary would be employed in a managerial capacity in the United States. However, because the Beneficiary's lack of qualifying managerial employment abroad is dispositive in this case, we need not reach this issue and therefore reserve it. *See 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.