



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

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

In Re: 21599672

Date: AUG. 31, 2022

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, describing itself as a real estate investment and development company, seeks to permanently employ the Beneficiary as its general manager 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 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. The matter is now before us on appeal.

On appeal, the Petitioner asserts that it was erroneous for the Director to deny the petition because it did not submit the percentages of time the Beneficiary devoted to his different tasks abroad. The Petitioner contends that it submitted sufficient evidence to demonstrate that the Beneficiary was employed abroad in a managerial capacity.

Upon *de novo* review, we will dismiss the appeal. 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.

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 on appeal 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.

“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 foreign duties performed by the Beneficiary.

A. Duties

To be eligible for the immigrant classification as a manager, 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 foreign position meets all four of these elements, we cannot conclude that it was 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 were 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 the business abroad.

The Petitioner stated that the Beneficiary was employed by the foreign employer, a telecommunications company, as its general manager of regulatory and corporate affairs. The Petitioner indicated that the Beneficiary was responsible for “a variety of important tasks,” including “public relations, managing of service contracts, business development, and maintaining relationships with carriers, suppliers, and other service partners.” In response to the Director’s request for evidence (RFE), the Petitioner submitted the following duty description for the Beneficiary’s employment abroad:

- Building, managing and maintaining strategic relationships with the external stakeholders (Regulators, Government bodies. VSP holders & other operators)

- To be aligned with regulatory compliance to ensure smooth business operation
- Keeping knowledge on latest regulatory developments and reporting to Group Regulatory/Corporate office. Support industry forums (IGW Operators Forum, IOF) on common regulatory and strategic issues
- Assess the Impact of new Telecom Policies, Regulations & Directives issued by Ministry of Post and Telecommunications (MOPT)/Bangladesh Telecommunications Regulatory Commission (BTRC) & prepare strategy to remove unfavorable clauses
- Strategic regulatory support for new business initiatives
- Through an effective relationship with MOPI, BTRC, obtain different approvals, share transfer etc.
- Work closely [with] concerned government offices to gather information of potential business critical policy level proposals and amendments and act accordingly to protect company interest on those issues.
- Support preparing essential feedback and position paper on behalf of company to express company stand on differing and existing and upcoming policies and pursue concerned government offices to ensure proper incorporation.
- Follow up for renewal of all licenses related to [foreign employer] business
- Focus to establish good & effective relationship with government bodies so that instant support can be provided as and when required
- Follow up for sending financial statement on monthly, quarterly and annual basis to BTRC.
- Conducting dialogue with industry regulators for new interconnection regime, interconnection regulations and local exchange of traffics.
- Establishing favorable gateway payment regime; effective relationship with the industry stakeholders, operators and regulators
- Conducting technical research/analysis on regulatory best practices (Telecom Act, National policies, directives, guidelines) and approach to regulator to get favorable outcomes for the business.
- Participation in consultation process on new policies, guidelines, rules and regulations that have impact on the company and industry, pricing policy, competition regulations, etc.
- Monitor regional and international regulatory Benchmarks, Developments and exchange dialog with regulators.

In denying the petition, the Director indicated that the Beneficiary's foreign duty description included operational tasks directly related to the provision of products and services. The Director also emphasized that the Petitioner did not sufficiently explain his specific daily tasks and the percentage of time he devoted to each of these duties. On appeal, the Petitioner contends that it was improper for the Director to deny on this basis, since the percentages of time were only mentioned in the RFE as a type of evidence that could be submitted, but not explicitly required.

However, as noted, the Petitioner submitted a foreign duty description including several duties reflecting the Beneficiary's performance of non-qualifying operational-level tasks directly related to the company's regulatory affairs, including him working closely with government offices to gather critical information on proposals and amendments, supporting the preparation of essential feedback and company position papers, and pursuing concerned government offices to ensure proper

incorporation of proposals and amendments. Likewise, the Petitioner stated that the Beneficiary was responsible for following up on the renewal of *all* [emphasis added] telecommunications licenses, sending financial statements to regulatory bodies on a monthly, quarterly, and annual basis, conducting dialogue with industry regulators on new interconnection regimes, and establishing a “favorable gateway payment regime.” In addition, the Beneficiary’s duty description also indicated that he was tasked with conducting technical research and analysis on regulatory best practices, working directly with regulators to get favorable outcomes, and monitoring regional and international regulatory benchmarks and developments. Therefore, a large portion of the Beneficiary’s foreign duties discuss his apparent direct performance of operational tasks inherent in the foreign employer’s regulatory affairs and there is no indication in his duties that he was delegating these non-qualifying tasks to subordinates.

Whether the Beneficiary was a managerial employee abroad turns on whether the Petitioner has sustained its burden of proving that their duties were “primarily” managerial. *See* sections 101(a)(44)(A) of the Act. Here, the Petitioner does not clearly document what proportion of the Beneficiary’s duties were managerial functions and what proportion were non-qualifying. The Petitioner lists the Beneficiary’s duties as including both managerial tasks and administrative or operational tasks, but it does not sufficiently quantify and document the time he spent on these different duties. For this reason, we cannot determine whether the Beneficiary was primarily performing the duties of a manager abroad. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). Therefore, we disagree with the Petitioner’s assertion on appeal that it was improper for the Director to emphasize the lack of percentages in the Beneficiary’s foreign duties to reflect the time devoted to his different tasks, as this evidence was probative in determining whether he primarily devoted his time to qualifying managerial duties abroad. Further, the Petitioner had the opportunity to remedy this deficiency on appeal, and it has questionably not provided this evidence. The Petitioner must resolve ambiguity 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).

In contrast, the Petitioner submitted little supporting documentation to substantiate that the Beneficiary primarily delegated the company’s regulatory tasks to subordinates. Further, to the extent the Petitioner discussed apparent managerial tasks in the Beneficiary’s duty description, these were overly generic and the record lacks detail and supporting documentation to substantiate his primary performance of qualifying tasks. For instance, the Petitioner stated that the Beneficiary built, managed, and maintained strategic relationships with regulators and government bodies, prepared strategies related thereto, and supported new business initiatives. However, the Petitioner did not detail these managerial duties or submit supporting documentation to substantiate his performance of them, such as the relationships he built and maintained, the strategies he prepared, or new business initiatives he implemented. Again, it is also significant that there is no supporting evidence reflecting the Beneficiary’s delegation of tasks to subordinates while employed abroad. This is particularly noteworthy since the Petitioner contends that the Beneficiary acted in a managerial capacity and his duty description includes numerous apparent operational tasks directly related to the company’s regulatory affairs. 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).

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 foreign organization are taken into account in light of its overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

As discussed, the Petitioner states on appeal that it provided sufficient evidence to establish that the Beneficiary was employed in a managerial capacity. 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 provided an undated foreign organizational chart reflecting the Beneficiary as the head of the “External & Corporate Affairs Department” overseeing a deputy manager. However, the Petitioner does not specifically articulate how the Beneficiary’s foreign employment qualified as a managerial position as defined by law. For instance, with only one subordinate, the Beneficiary could not qualify as a personnel manager abroad based on his supervision of subordinate managers or supervisors, since his lone subordinate was shown to have no subordinates of his own.

In the alternative, the Petitioner provides little explanation or evidence to demonstrate that the Beneficiary had personnel authority over subordinate professionals. 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. Here, the Petitioner provided no evidence to establish that the Beneficiary’s lone subordinate, the deputy manager of external and corporate affairs, held a bachelor’s degree. The Petitioner also did not submit a duty description for the deputy manager as necessary to determine

whether this position required a level of education equivalent to a bachelor's degree. Therefore, the Petitioner has not asserted or established that the Beneficiary qualified as a personnel manager based on his supervision of subordinate supervisory, professional, or managerial employees.

As noted, the statutory definition of "managerial capacity" also allows for "function managers." *See* section 101(a)(44)(A) of the Act. 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).

However, on appeal, the Petitioner does not specifically articulate how the Beneficiary qualified as a function manager. The Petitioner does not describe and define the Beneficiary's function, nor does it indicate how it was essential to the foreign employer. In addition, as we have discussed, the Beneficiary's foreign duty description included numerous apparent non-qualifying operational duties, such as working directly with regulators on proposals and amendments, renewing all the foreign employer's telecommunications licenses, regularly sending financial statements to regulators, establishing payment regimes, and monitoring benchmarks. As such, the Petitioner has not sufficiently demonstrated that the Beneficiary was primarily responsible for managing a function, assuming this function had been clearly defined, rather than performing it. Further, as stated, the Petitioner provides little detail and supporting documentation to substantiate the Beneficiary's primary performance of managerial-level duties abroad. Therefore, the Petitioner has not established that the Beneficiary was employed as a function manager abroad.

Lastly, the Petitioner provided conflicting statements on the record as to the Beneficiary's claimed foreign employment leaving further uncertainty as to whether he was employed in a managerial capacity. For example, the Petitioner stated in a support letter provided with the petition that the Beneficiary was employed abroad with the foreign employer from October 1, 2013, to May 31, 2016. However, in a Form I-485, Application to Register Permanent Residence or Adjust Status, submitted in October 2019 the Beneficiary indicated in his employment history that he had only been employed with the foreign employer from January 2015 to July 2016, and that he had been employed with another company [redacted] as "Head of Department of Ocean Freight" from 2010 to 2014. In response to the Director's RFE, the Petitioner also indicated that the Beneficiary was employed by the foreign employer from January 2015 until his entry into the United States as a nonimmigrant in 2016. The Petitioner provides no explanation for this discrepancy with the respect to the time of his foreign employment, leaving further uncertainty as to its assertion that the Beneficiary was employed abroad in a managerial capacity. Again, the Petitioner must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 582, 591-92.

For the foregoing reasons, the evidence reflects that the Director was correct in denying the petition as the Petitioner did not sufficiently establish that the Beneficiary was employed in a managerial capacity abroad.

ORDER: The appeal is dismissed.