



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

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

In Re: 28568995

Date: APR. 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a wholesaler and retailer of wallcoverings and textiles, seeks to permanently employ the Beneficiary as its financial and operational director under the first preference immigrant classification for multinational executives or managers. *See* 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 the Petitioner did not establish that the Beneficiary would be employed in the United States in a managerial capacity. The Petitioner subsequently filed combined motions to reopen and reconsider, which the Director dismissed. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

## I. LAW

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).

The statute defines “managerial capacity” as 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).

## II. ANALYSIS

The sole issue addressed by the Director is whether the Petitioner established that it would employ the Beneficiary in a managerial capacity.<sup>1</sup>

To establish that a beneficiary is eligible for immigrant classification as a multinational manager, a petitioner must show that the beneficiary will perform all four of the high-level responsibilities set forth in the statutory definition of “managerial capacity” at section 101(a)(44)(A) of the Act. If a petitioner establishes that the offered position meets all four elements set forth in the statutory definition, the petitioner must then prove that the beneficiary will be *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside other company employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

In determining whether the beneficiary’s duties will be primarily managerial, we consider the required description of the job duties, the company’s organizational structure, the duties of the beneficiary’s subordinate employees, the presence of other personnel to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding the beneficiary’s actual duties and role in the business.

### A. Job Duties

The Petitioner seeks to employ the Beneficiary as its financial and operational director. In a letter submitted in support of the petition, the Petitioner described his assigned duties as follows:

- Establish and develop the operational and financial systems, processes, and policies of the company
- Manage and increase the effectiveness of the company’s support services
- Oversee overall financial management planning, systems and controls
- Control the company’s budget
- Manage payroll, salaries and other expenses
- Organize financial documents
- Supervise and coach the administrative staff
- Coordinate with the company’s accountant

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<sup>1</sup> The Petitioner does not claim the Beneficiary would be employed in an executive capacity as defined at section 101(a)(44)(B) of the Act.

- Reconcile monthly activity, generating year-end reports, and fulfilling tax related requirements
- Plan, coordinate and monitor the receipt, order assembly, and dispatch of goods from the warehouse
- Use the warehouses' space efficiently and ensure that quality budgetary targets and environmental objectives are met
- Ensure employees are properly using and updating the stock control systems which ensures accuracy of inventory
- Plan future capacity requirements
- Organize the recruitment and training of staff as well as monitor staff performance and progress
- Interview and recruit employees as necessary, as well as have full discretion in employee termination
- Review regular reports and statistics prepared by Financial Manager on a daily, weekly and monthly basis

The Director determined that the initial job description conveyed a sense of the Beneficiary's discretionary authority over the company's business and its objectives, but lacked meaningful content revealing the nature of the actual tasks the Beneficiary performs on a day-to-day basis. We agree with the Director's assessment of these duties. Although the Petitioner indicated that the Beneficiary is responsible for the company's overall operations and finances and has the authority to hire and fire employees, it also suggested he would be performing non-managerial tasks related to these activities and did not indicate what proportion of his time he would allocate to managerial duties. Further, the Petitioner's initial evidence did not include an organizational chart or information regarding the duties performed by subordinate personnel and contractors, and therefore did not allow for an evaluation of the Beneficiary's duties within the context of the company's structure and staffing levels.

In response to a request for evidence (RFE), the Petitioner described the Beneficiary's duties as follows:

- 10% Establish and develop the operational and financial systems, processes, and policies of the company, increasing effectiveness and efficiency. Authorize the allocation of capital based on budgetary decisions.
- 20% Review monthly activity and generate year-end reports (tax, revenue and expenses) to establish the company's financial goals and profitability. Based on the above reports, make necessary adjustments to company's operational strategy.
- 20% Establish goals for each department/function in the company and oversee the execution and design, marketing, promotion, delivery, and quality of products. Ensure the proper use of equipment and stock control systems.
- 10% Review and approve budgets for marketing, [a]ds, and payments for/with third-party business partners and service providers.

- 15% Approve new hires, hold interviews with potential management team members, and organize the training of new personnel. Review and authorize salary increase requests, analyze bonuses and commissions based on performance review of fulfilled assignments and achievement of sales targets.
- 10% Oversee guidelines and review business requirements for the development of new product lines, ensuring implementation of a long-term strategy for the company's portfolio.
- 15% Manage relationships with key clientele and represent the company in industry meetings, public events.

In the decision denying the petition, the Director concluded the job description submitted with the RFE response, rather than clarifying or adding more specificity to the original description, materially changed that description by adding certain duties and removing others. The Director emphasized that the first job description contained references to "administrative staff," "the company's accountant," and a "financial manager" who are not mentioned in the RFE response and noted that these staff do not appear on the Petitioner's organizational chart. The Petitioner explained in its subsequent motion that the "administrative staff" are the company's "department heads," while the references to the "financial manager" and "company's accountant" refer to the accounting firm the Petitioner contracts to provide bookkeeping, tax, and payroll-related services. It also clarified that some of the Beneficiary's duties evolved over time but emphasized that most of the original duties were simply reorganized, rather than materially changed, for purposes of providing the breakdown of tasks requested in the RFE.

While we acknowledge the Petitioner's explanations for the differences the Director noted in the two descriptions, neither description of the Beneficiary's duties contains the level of detail needed to clearly define his day-to-day tasks. For example, the Petitioner asserts that the Beneficiary spends over half of his time on establishing the company's policies, processes, strategies, and goals and making budgetary decisions, but does not indicate the specific tasks he performs in support of its assertion that these responsibilities require such a significant portion of his time on a continuous and ongoing basis. Although some of these responsibilities appear to generally paraphrase the statutory definitions of managerial or executive capacity, reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or 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). Here, the Petitioner has not provided the necessary detail or an adequate explanation of the Beneficiary's activities in the course of his daily routine.

Further, while we do not doubt that the Beneficiary holds responsibility for the company's overall operations and finances, we must still evaluate his stated responsibilities within the context of other relevant evidence, such as the nature of the business, the company's organizational structure, and the duties performed by subordinate employees and other personnel such as contractors. The fact that the Beneficiary has the authority to manage the company, make hiring and firing decisions, and holds the senior position in the company's organizational chart does not necessarily establish eligibility for

classification as multinational manager as defined in the statute. By statute, eligibility for this classification requires that the duties of a position be “primarily” managerial. While 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, the submitted position descriptions alone are insufficient to establish that his actual duties would be primarily managerial in nature.

## B. Staffing and Organizational Structure

The Director denied the petition, in part, based on a determination that the Petitioner did not have sufficient staff to relieve the Beneficiary from significant involvement in the routine, day-to-day activities of the business. The Petitioner correctly observes that we must take into account the reasonable needs of the organization when considering a company’s staffing levels, and that a company’s size alone may not be the only factor in determining whether the Beneficiary is or would be employed in a managerial or executive capacity. *See* section 101(a)(44)(C) of the Act. However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

As noted, the Petitioner is a wallcovering and fabrics business and indicated that it was operating two showrooms and a warehouse at the time of filing. It appears to engage in both wholesales as well as retail sales to interior designers and their clients. At the time of filing, the Petitioner indicated that it had five employees, who were later identified as a sales manager, two sales associates, a warehouse operator, and a showroom operator, who all reported directly or indirectly to the Beneficiary. The Petitioner has also consistently stated that it relies on external contractors for accounting/bookkeeping services and installation of its products. The supporting documentation corroborates that this staffing was in place when the petition was filed in February 2021. The evidence submitted in response to the RFE showed that the Petitioner had hired a project manager as of July 2022 and that one of its two sales associates (G-Q-R-) had left the company earlier that year.<sup>2</sup> We also note that the individual identified as the warehouse operator did not receive a paycheck from the Petitioner after July 15, 2022 based on the third quarter payroll information provided with the RFE response, although it included this employee on the organizational chart it submitted in September 2022.

The record indicates that the Petitioner employed an in-house marketing coordinator for part of 2020 and has used the services of three different marketing consultants since 2019, although it concedes that no one was contracted to provide these services at the time of filing. The Petitioner also documented its continuous use of the services of an accounting firm for bookkeeping services, payroll, preparation of sales and use tax returns and annual tax returns and filing of Form 1099-NEC. Based on the evidence provided, we disagree with the Director’s conclusion that the accounting firm provides only “intermittent services” for the Petitioner. However, the evidence does not sufficiently support the Petitioner’s claim that the contracted accountant, who receives a fee of only \$350 to \$400 per month, is essentially acting as a “financial manager” for the company, or that she relieves the

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<sup>2</sup> The Petitioner submitted an “employee summary” for the first two quarters of 2022, which show this sales associate as an active, full-time employee with \$4,040 in “year to date” earnings reported for each quarter. A separate “payroll summary” for the period December 30, 2021 through May 29, 2022 shows that this individual was paid \$4,040 in January 2022 and received no further compensation after January 31, 2022.

Beneficiary from having to perform any non-managerial duties associated with the company's day-to-day finances.

We acknowledge that the Petitioner submitted email communications between the Beneficiary, his subordinates, and contractors demonstrating that these personnel relieve him from performing certain non-managerial tasks related to the company's sales, marketing, product installation, and some administrative and bookkeeping tasks. However, overall, the record does not establish that the staffing and structure in place at the time of filing and through adjudication was sufficient to enable him to spend his time primarily on his claimed managerial job duties.

The Petitioner indicated at the time of filing and in response to the RFE that it was actively seeking to hire additional sales staff, but the record reflects that none were hired. In fact, one of the Petitioner's two sales associates left the company while the petition was pending, as did the company's warehouse operator. The Petitioner did not address how the departure of these two full-time employees impacted the company's ability to relieve the Beneficiary from involvement in non-managerial tasks. Moreover, the Petitioner hired a project manager in 2022, yet it did not state that the need for this position arose from a change in the company's activities or operations. Therefore, it is reasonable to conclude that the company required someone to supervise the installation of the company's projects at the time of filing. Although the company's February 2021 organizational chart depicts the warehouse operator as the supervisor of the installation contractors, the Petitioner's job description for the position did not indicate this employee performed any project-related or supervisory tasks, despite his placement on the organizational chart. Therefore, we cannot determine whether the Beneficiary was relieved from directly overseeing installation projects carried out by contractors when the petition was filed.

Finally, we note that the Petitioner has submitted personnel charts which identify the Beneficiary's subordinate staff, their job titles, work location, salary, and job duties. The Petitioner indicates that all the Beneficiary's subordinates at the time of the RFE response were working in the company's [redacted] location. However, the Petitioner has consistently stated it operates a second showroom in [redacted] Florida and has not explained who is available to perform the day-to-day tasks associated with the Petitioner's business at this second site.

On appeal, the Petitioner asserts that, as a small business, it reasonably requires its employees to perform some overlapping job duties. It maintains that the company is nevertheless able to consistently maintain an organizational structure that sustains the Beneficiary's employment in a managerial capacity. However, considering evidence demonstrating the lack of a project manager at the time of filing, the departure of a sales associate and the warehouse operator while the petition was pending, and the apparent lack of any staff assigned to work at one of the company's two locations, the Petitioner has not met its burden to establish that the company's staff and contractors are able to relieve the Beneficiary from any significant involvement in non-managerial duties, such that his actual day-to-day duties would be primarily managerial functions as defined at section 101(a)(44)(A) of the Act. The evidence must establish that the Beneficiary was eligible for classification as a multinational manager at the time of filing and that he continued to be eligible through adjudication. *See* 8 C.F.R. § 103.2(b)(1).

Finally, the statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) of the Act. The Petitioner does not claim that the

Beneficiary would be responsible for managing an essential function of the company. 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.”<sup>3</sup> *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 Beneficiary’s direct subordinates at the time of filing included the sales manager, the warehouse operator, and the showroom operator. The Petitioner did not claim that any of these are professional positions that require a minimum of a bachelor’s degree, nor did it indicate that the warehouse operator or showroom operator perform any managerial or supervisory functions. Although the Petitioner indicates that the sales manager is responsible for “leading” and “motivating” the sales associate(s), the submitted job description indicates that this position also performs sales duties that overlap significantly with those performed by the sales associate position. We cannot determine based on the evidence provided whether the sales manager performs managerial or supervisory duties, as opposed to acting in a senior or lead sales position. Absent evidence that the Beneficiary supervises subordinate managers, supervisors or professionals, the Petitioner has not met its burden to establish that the Beneficiary will act in a managerial capacity as defined at section 101(a)(44)(A) of the Act.

Here, the Petitioner did not provide the required detailed description of the Beneficiary’s proposed job duties in the United States or sufficient probative evidence to establish how he is relieved from involvement in the day-to-day operations of company, such that he is able to primarily perform managerial duties as defined at section 101(a)(44)(A) of the Act. Accordingly, the Petitioner has not established that the Beneficiary would be employed in the United States in a managerial capacity.

### III. PRIOR APPROVALS

As acknowledged in the Director’s decision, USCIS has approved L-1A nonimmigrant intracompany transferee petitions that the Petitioner previously filed on behalf of Beneficiary. The L-1A nonimmigrant classification relies on the same statutory definitions of managerial capacity and executive capacity at section 101(a)(44) of the Act.

Eligibility as an L-1A nonimmigrant does not automatically establish eligibility under the criteria for an immigrant visa classification for a multinational executive or manager. Each petition is separate and independent and must be adjudicated on its own merits, under the corresponding statutory and regulatory provisions. Therefore, the fact that a beneficiary was previously approved for L-1A classification is not binding if the facts do not support approval of the immigrant petition. For the

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<sup>3</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.” Therefore, we focus on the level of education required by the position, rather than the degree held by subordinate employee.

reasons discussed above, the Petitioner has not met its burden to establish the Beneficiary's eligibility for classification as a multinational manager. Further, we are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987).

#### IV. CONCLUSION

The Petitioner has not established that the Beneficiary would be employed in the United States in a managerial capacity. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.