



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

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

In Re: 34672241

Date: NOV. 22, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a company focused on programmatic advertising, seeks to permanently employ the Beneficiary as a senior director of solutions engineering 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity. The matter is now before us on appeal under 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).

II. ANALYSIS

The Director determined that the Petitioner did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity. The Petitioner specifically refers to the Beneficiary's past employment as managerial. Therefore, therefore, we need not address the requirements for an executive 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).

If a petitioner establishes that the past position meets all four elements set forth in the statutory definition, the petitioner must then prove that the beneficiary was *primarily* engaged in managerial duties, as opposed to ordinary operational activities. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether the beneficiary's duties were primarily managerial, we consider the description of the job duties, the company's organizational structure, the duties of the 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 the beneficiary's actual duties and role in the business.

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

Accordingly, we have considered evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business and its staffing levels.

From 2016 to 2018, the Beneficiary worked as a senior data scientist at the Petitioner's affiliate in India. The Beneficiary has worked for the Beneficiary in L-1B nonimmigrant status since 2018, with some trips outside the United States.

The Petitioner stated that the Beneficiary worked abroad as “a Senior Data Scientist within the Enterprise Solutions Research and Development Team,” and that “a Senior Data Scientist is a dualistically managerial and technical role.”

The Petitioner described the Beneficiary's employment abroad:

[The Beneficiary] played a significant role in performing data science and analytics consultancy for our clients whilst operating as a manager for Data Scientists below him.

...

. . . [The Beneficiary] spent time building a road map of analytical outputs and practices to be delivered, performed advanced analytics and data science exercises . . . , and designed statistical experiments. . . .

. . . .

. . . [The Beneficiary] primarily focused on aiding clients from various verticals by analyzing and extracting actionable insights from their data and providing tailored advertising solutions through customer segmentation and predictive modeling.

The Petitioner indicated that the Beneficiary spent 55% of his time “Managing and Building Data Products,” which involved 11 specified duties, and 45% of his time on “Data Science & Analytics Consultancy,” which involved 12 specified duties. We will discuss examples of these duties further below.

In a request for evidence (RFE), the Director stated: “the proposed employment job descriptions are vague and do not explain in exact detail the beneficiary’s specific job duties.” The Director also stated that the Petitioner did not sufficiently break down “the percentage of time the beneficiary spent on each duty.” The Director asked the Petitioner to submit a detailed statement from a company official, corroborated by evidence, to establish that the Beneficiary worked abroad in a primarily managerial or executive capacity.

In response, the Petitioner discussed various projects that the Beneficiary undertook, such as “travel[ing] to the United States in 2017 and 2018 for quarterly business reviews,” “conduct[ing] several training sessions . . . [and] workshops,” and “present[ing the company’s] enterprise and data science capabilities to several private equity firms.” The Petitioner asserted that these activities show the Beneficiary’s high-level responsibilities and impact on the company’s success.

The Director denied the petition, stating that the Petitioner’s response to the RFE included “additional details about the beneficiary’s job duties, but [not] any further breakdown of percentages of time. Without specific details explaining how the beneficiary spent his time, USCIS is unable to determine whether the position was primarily managerial or executive in nature.”

On appeal, the Petitioner states that the job descriptions submitted previously were sufficiently specific. The Petitioner, however, had initially described the Beneficiary’s role was “dualistically managerial and technical.” The burden is on the Petitioner to establish that the Beneficiary’s role was *primarily* managerial. *See* section 101(a)(44)(A) of the Act; 8 C.F.R. § 204.5(j)(2).

An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm’r 1988).

Many of these duties listed in the initial statement appear to have been operational rather than managerial in nature, such as the following examples:

- Performing market research to gather relevant information on products available.

- Extracting data points that are of value to the business or the context of the problem.
- Writing relevant software cookies for specific tasks and monitoring development cycles.
- Performing advanced analytics and data science exercises, which comprise step-by-step processes to extract hidden patterns from the data.
- Designing statistical experiments to measure the impact of analytical outputs and prescribing best practices to the clients.

The Director requested a more specific time breakdown because if the Beneficiary spent most of his time performing the technical duties of a data scientist, then his role was not primarily managerial.

In this respect, it is significant that the Petitioner was one of six members of a team comprised entirely of data scientists and senior data scientists. Because these six individuals would not all have been managers, the burden is on the Petitioner to distinguish the Beneficiary's role as primarily managerial. The Petitioner has not done so.

The Petitioner points to specific activities, such as "quarterly business reviews with strategic clients," but the Petitioner does not establish that the Beneficiary's primary duties were substantially different from those of the other senior data scientists on the same team.

In the denial notice, the Director concluded that the Beneficiary's intended U.S. position qualifies as managerial. The Petitioner cites this determination on appeal, and observes that it had previously stated that the Beneficiary's "role of Senior Solutions Engineer in New York mirrored his role [at] the [foreign affiliate's] offices."

But there is a key distinction. The Beneficiary worked as a senior solutions engineer when he began working in the United States in 2018. His nonimmigrant classification was that of an L-1B employee with specialized knowledge, not as an L-1A manager. The Petitioner later promoted the Beneficiary to a managerial position with a different title.

Therefore, the assertion that the Beneficiary's position abroad mirrored his initial, non-managerial role in the United States does not support the claim that he was employed as a manager abroad.

A copy of the Beneficiary's résumé, submitted with the petition, lists three duties associated with his position with the foreign affiliate, none of which is expressly managerial:

1. To help clients from various verticals by analyzing and extracting actionable insights out of their data.
2. Providing tailored advertising solutions by customer segmentation and predictive modeling.
3. Major contributor to building an automated modeling and analysis platform.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. 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.” Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 204.5(j)(4)(i). 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).

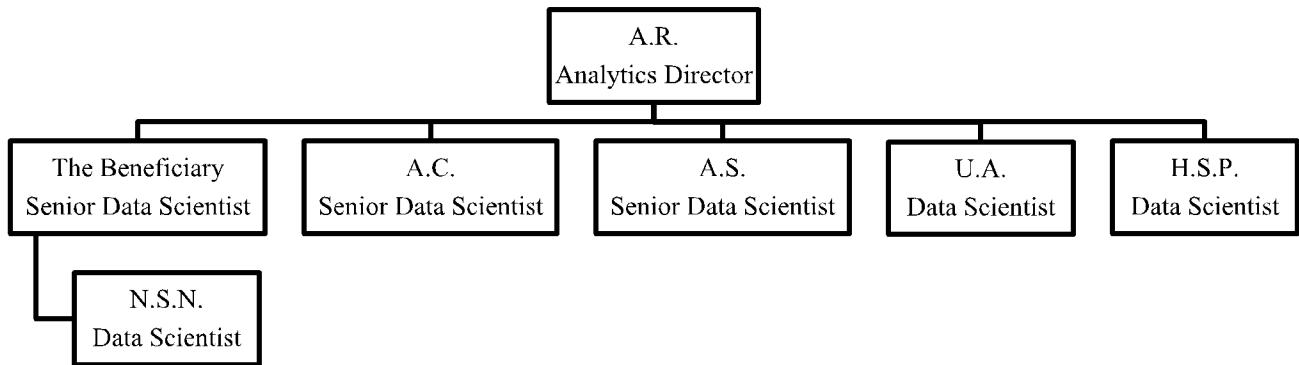
The term “function manager” applies generally when a beneficiary’s managerial capacity derives not from supervising or controlling a subordinate staff, but instead from primarily managing an “essential function” within the organization. See section 101(a)(44)(A)(ii) of the Act. If a petitioner claims 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 referred both to personnel management and function management, but has not established that the Beneficiary was employed abroad either as a personnel manager or as a function manager.

Although the submitted job description refers to “[g]uiding and leading the [foreign affiliate’s] data scientists,” the Petitioner indicated that the Beneficiary had only one subordinate in India. The Petitioner asserted that the Beneficiary “oversaw the work product of . . . a Data Scientist on the team.” An accompanying organizational chart for the foreign affiliate’s data science team as of 2018 shows the following structure:



The Petitioner did not explain why the Beneficiary was the only senior data scientist to have a subordinate, and why that subordinate was the only data scientist to report to a senior data scientist.

In the RFE, the Director stated that the Petitioner had not established “that the beneficiary had the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization),” and did not describe the duties of the Beneficiary’s claimed subordinate.

In response, the Petitioner submitted copies of email messages, indicating that the Beneficiary evaluated the performance of an intern who started on the team “at the beginning of this year” (2018), who was promoted to “Full-Time Data Scientist” at the end of May 2018. An unsigned handwritten notation on the email printout indicates that the intern was “promoted based on [the Beneficiary’s] recommendation” and “joined [the Beneficiary’s] team, supporting his management of an essential function of business: data science and analytics.”

In the denial notice, the Director stated that the Petitioner did not provide enough information about the claimed subordinate’s duties, and “did not fully explain how this direct report handled non-managerial tasks so the beneficiary was free to work in a primarily managerial or executive capacity.”

The Petitioner, on appeal, does not address this determination.

The anonymous note written onto the email printout has negligible evidentiary weight. Because the record does not reveal who wrote the note, we cannot determine whether the writer had personal knowledge of the Beneficiary’s employment and duties abroad.

The email messages indicate that the Beneficiary worked with the intern for about five months, from January to May 2018. The Beneficiary entered the United States as an L-1B nonimmigrant less than three months later in August. The Petitioner did not establish or claim that the Beneficiary had similar authority over other individuals before 2018. Therefore, even if the Petitioner had established that the Beneficiary had a managerial level of authority over the individual both as an intern and later as a data scientist, this activity would not have constituted a full year of employment in a managerial capacity as required by section 203(b)(1)(C) of the Act and 8 C.F.R. § 204.5(j)(3)(i)(B).

Furthermore, the organizational chart in the record indicates that the Beneficiary and the other data scientists and senior data scientists reported to the analytics director. The Petitioner has not established that the Beneficiary, rather than the analytics director, managed the data science and analytics function.

While the Petitioner has described some of the Beneficiary’s activities as a senior data scientist, the Petitioner did not establish that these activities distinguished the Beneficiary from the other senior data scientists.

The incomplete information in the record indicates that the Beneficiary and the other data scientists and senior data scientists collectively performed, rather than managed, the operational tasks of the foreign affiliate’s data science and analytics functions.

III. CONCLUSION

The Petitioner has not established that the Beneficiary was employed abroad in a primarily managerial capacity for at least one year before his admission to the United States as a nonimmigrant. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.