



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

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

In Re: 33948019

Date: SEP. 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an importer and distributor of materials for the digital printing industry, seeks to permanently employ the Beneficiary as its operations manager 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 record did not establish that (1) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; and (2) the Petitioner would employ the Beneficiary in a managerial capacity in the United States. 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 Workers, 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. QUALIFYING RELATIONSHIP

The first issue to be addressed is whether the Petitioner established that it has a qualifying relationship with the Beneficiary's foreign employer. To establish a "qualifying relationship," the Petitioner must show that the Beneficiary's foreign employer and the proposed U.S. employer are the "same employer" or related as "parent and subsidiary" or as "affiliates." *See* section 203(b)(1)(C) of the Act; *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

The record reflects that the Beneficiary was employed by a Dominican Republic company between 2016 and 2021, immediately prior to his transfer to the United States in L-1A nonimmigrant status to work for the Petitioner. The Petitioner has consistently claimed that it is an affiliate of this company based on common ownership and control by the same individual, D-E-A-. *See* 8 C.F.R. § 204.5(j)(2) (defining affiliate). The Director acknowledged that the Petitioner submitted evidence demonstrating that D-E-A- holds a majority ownership interest in the Dominican Republic company but concluded that the Petitioner did not submit sufficient objective evidence to support its claim that it is wholly owned by the same individual.

On appeal, the Petitioner asserts that it provided documentation that was specifically requested in the Director's request for evidence (RFE) and requests that we consider supplemental evidence submitted in support of the appeal.¹ While we agree with the Director's determination that the evidence previously submitted is generally insufficient on its own to demonstrate the Petitioner's ownership and control, the RFE did not provide the Petitioner with adequate notice of this fact. Therefore, we will consider the Petitioner's supplemental evidence, which includes a complete copy of its operating agreement. The operating agreement identifies D-E-A- as the Petitioner's sole member and therefore supports the Petitioner's claimed affiliate relationship with the Beneficiary's foreign employer, which, as noted, is majority-owned by the same individual.

Accordingly, we withdraw the Director's determination that the Petitioner did not establish the required qualifying relationship with the foreign entity.

III. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The remaining issue to be addressed is whether the Petitioner established it will employ the Beneficiary in a managerial capacity.²

"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

¹ The Petitioner's initial evidence included its limited liability company certificate of formation and certificate of organization issued by the Puerto Rico Department of State, but these documents did not identify the company's ownership. The Director's RFE issued on November 8, 2023, addressed the qualifying relationship eligibility requirement and informed the Petitioner that it could submit additional evidence including, but not limited to "a detailed list of owners, including their percentages of ownership."

² The Petitioner did not claim that the Beneficiary would be employed in an executive capacity as defined at section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B).

organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function; 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).

To establish that a beneficiary is employed in a managerial capacity, a petitioner must show that the beneficiary performs all four of the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If the petitioner establishes that the offered position meets all four elements set forth in the statutory definition, it must then prove that the beneficiary is *primarily* engaged in managerial duties, as opposed to operational activities alongside the company's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

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

In a letter of support submitted at the time of filing, the Petitioner stated that the Beneficiary performs the following duties as its operations manager:

- Analyzing the efficiency and costs of existing business processes
- Creating and presenting process improvement reports
- Overseeing the development ... of new business processes and purchasing strategies
- Managing improvement teams and external contractors
- Troubleshooting and improving new processes
- Updating process and procedure policies
- Conducting ongoing analysis of processes in line with industry regulations
- Meeting with business managers to discuss business objectives
- Conducting feasibility analysis for each project to be implemented
- Execution of international purchases for both companies
- Managing supplier relations and negotiating contracts, prices, timelines, etc.
- Maintaining the supplier database, purchase records and related documentation.
- Coordinating with inventory control to determine and manage inventory needs
- Ensuring that all procured items meet the require quality standards and specifications
- Preparing cost estimates and managing budgets
- Working to improve purchasing systems and processes
- Training new employees in the purchasing process and how to use the purchasing system

The Petitioner indicated the Beneficiary "continues to carry out the Purchasing and Logistics" for both the Petitioner and its foreign affiliate.³ It further stated that the Beneficiary "oversees sales management" and was serving as "Interim Manager for the Commercial Paper division" at the time of

³ According to a letter from the foreign entity, the Beneficiary allocated 50 percent of his time to purchasing management for both the foreign and U.S. companies when employed by the Petitioner's foreign affiliate, performing tasks that included "placement of purchase orders and negotiations with suppliers." The foreign entity stated he "still executes these tasks for both companies."

filing. The Petitioner indicated that the Beneficiary directly supervises a warehouse manager, who manages three drivers and two warehouse assistants, and provided the warehouse manager's job description. However, the Petitioner did not detail the Beneficiary's duties related to "sales management" or management of the "Commercial Paper division," nor did it indicate that he supervised any of the company's sales staff, who were identified on the submitted organizational chart as subordinates of the "Commercial Labeling Manager."

In a request for evidence (RFE), the Director asked the Petitioner to provide a more detailed description of the Beneficiary's duties, explaining the specific daily tasks he performs and the amount of time he allocates to each one. In response, the Petitioner stated that the company underwent "small organizational changes" in "early April 2023," and noted that the Beneficiary "now leads two (2) major branches of the company, Commercial and Operations." The Petitioner provided a more detailed, but substantially revised, job description indicating that the Beneficiary spends a total of 65% of his time on managing the "Commercial division," including 50% of his time daily on directly supervising the company's "sales and customer service executives" and monitoring their results and performance. The Petitioner stated that the remaining 15% of his time relating to the commercial division would be allocated to duties performed on a weekly, monthly or annual basis. According to the Petitioner's letter in response to the RFE, the Beneficiary would allocate the remaining 35% of his time to management of the operations division, with most of that time (and 25% of his total time) spent on duties related to purchasing, procurement, and logistics, and managing "members of the purchasing team, warehouse and drivers."

The Director acknowledged the Petitioner's claim that the Beneficiary would allocate 50% of his time to oversight of the company's sales and customer service team. However, the Director emphasized that the evidence submitted at the time of filing showed that all of the company's sales and customer service staff reported to a "Commercial Labeling Manager," while the Beneficiary held an interim position as manager of the commercial paper division with no subordinate sales staff reporting to him. The Director therefore found the Petitioner had made material changes to the petition post-filing. The Director nevertheless determined that the job duties in the updated job description, including those related to the Beneficiary's claimed management of the "operations division" would require him to allocate a significant portion of his time to non-managerial operational aspects of the business.

On appeal, the Petitioner contends that the Beneficiary's duties are "strictly managerial," noting he is not responsible for selling or distributing the company's products, or for keeping the warehouse "organized and tidy." In support of the appeal, the Petitioner submits a new letter asserting that the Beneficiary has performed the same duties from the date of filing until the present time, with responsibility for managing the organization, including oversight of "sales management, supervision and control of the reception and dispatch of goods, as well as inventory control."⁴

⁴ The Petitioner's appeal also includes a new, revised description of the Beneficiary's job duties (with a breakdown that bears little resemblance to the description provided in response to the RFE) and a copy of the Beneficiary's original employment contract from November 2021, which includes another list of job duties. Because the Petitioner was put on notice and given a reasonable opportunity to provide a description of the Beneficiary's job duties, we will not consider job descriptions submitted for the first time on appeal. See 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

Upon review, we agree with the Director’s conclusion that the record contains unresolved ambiguities regarding the Petitioner’s staffing and structure, the Beneficiary’s areas of responsibility, and the nature of his day-to-day duties. The Petitioner has consistently claimed that the Beneficiary’s role will involve directing sales management, supervision and control of the receipt and dispatch of goods, and inventory control. However, it has also consistently listed the Beneficiary’s duties as including both managerial and non-managerial tasks and has not consistently quantified the amount of time he spends on specific duties. For this reason, we cannot determine that the Beneficiary would be primarily performing duties that fall within the definition of “managerial capacity.” *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

For example, the Petitioner stated at the time of filing on April 3, 2023, that the Beneficiary would “oversee sales management,” but did not identify any specific tasks he would perform to do so. As noted by the Director, the initial organizational chart depicted the Beneficiary as an “interim Commercial paper manager” with no sales staff or other subordinates reporting to that position. Rather, it showed that all sales staff reported to a “Commercial labeling manager” who, like the Beneficiary, reported to the general manager. Therefore, to the extent that the Beneficiary was serving as the “manager” of the “commercial paper department,” it appeared he was performing all duties associated with that area of responsibility, including non-managerial duties.

However, in response to the RFE, the Petitioner stated that, since “early April 2023” and due to the resignation of the commercial labeling manager, the Beneficiary had been managing the *entire* commercial division, including sales executives, a sales assistant and a customer service executive. The Petitioner also stated in the RFE response that the Beneficiary would spend a full 50 percent of his time supervising the commercial division’s employees, as well as additional time “managing members of the purchasing team, warehouse and drivers.” Given that the petition was filed in early April, the Petitioner did not adequately explain the changes made to the Beneficiary’s job description or establish exactly when the claimed reorganization took place.

Nevertheless, even if we determined that the job description submitted in response to the RFE accurately reflected the Beneficiary’s duties at the time of filing, the Petitioner did not demonstrate that he would be employed in a managerial capacity based on his performance of those duties.

The statutory definition of “managerial capacity” allows for both “personnel managers” and “function managers.” *See* section 101(a)(44)(A) of the Act. Here, the Petitioner indicated in response to the RFE that the Beneficiary allocates more than half of his time to supervising subordinate staff and did not articulate a claim that he would be employed as a function manager. 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.*⁵

⁵ 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,

The organizational chart submitted in response to the RFE indicates that the subordinate staff in the commercial division included four sales executives and a sales assistant.⁶ The record does not include evidence that any of these employees perform managerial or supervisory functions. Further, the Petitioner did not provide job descriptions or minimum educational requirements for any of the sales positions and therefore did not demonstrate that these are professional positions that require a bachelor's degree as a minimum requirement.

The Petitioner emphasizes on appeal that the Beneficiary is not directly involved in selling the company's products; however, his responsibility for first-line supervision of non-professional sales staff is not a managerial function within the meaning of section 101(a)(44)(A) of the Act. The record reflects the Beneficiary has one direct subordinate, the warehouse manager, who performs supervisory functions, but the Petitioner indicated in response to the RFE that he spends a relatively small portion of his time supervising this individual. The Petitioner's statement that the Beneficiary would spend half of his time acting as a first-line supervisor to non-professional sales employees precludes a determination that he would primarily perform duties that fall within the statutory definition of managerial capacity.

Further, as noted by the Director, the Petitioner's descriptions of the Beneficiary's job duties include a number of non-managerial duties. While the Petitioner asserts that the warehouse manager and his staff are responsible for organizing and maintaining the company's warehouse, the record reflects that the Beneficiary has several other areas of responsibility that are not supported by the warehouse manager and his staff, or by any other documented personnel.

As noted, at the time of filing, the Petitioner provided a letter from the foreign entity indicating that the Beneficiary spent up to 50% of his time carrying out "purchasing and logistics" for both the U.S. and foreign entities while employed abroad and that he continues to do so. Although the job description submitted in response to the RFE includes references to the Beneficiary's management of a "purchasing team," there is no such team depicted on the company's organizational charts nor is there any other explanation for who relieves the Beneficiary from directly performing purchasing activities for the Petitioner and its affiliate. At the time of filing, the Petitioner stated the Beneficiary executes international purchases for both companies, negotiates purchase contracts and timelines, maintains a supplier database, maintains all purchase records, and ensures that all procured items meet standards and specifications. In response to the RFE, the Petitioner added that he works on the purchasing report, prepares quote requests, schedules deliveries, ensures timely fulfillment of orders, researches potential vendors and suppliers, "keeps up with trends in procurement," keeps records of goods ordered and received, and determines timing of deliveries. As noted in the Director's decision, the record does not demonstrate that these are managerial duties, rather than operational duties necessary for the company's day-to-day activities.

colleges, academies, or seminaries." Therefore, we must focus on the level of education required by the position, rather than the degree held by subordinate employee.

⁶ Although the chart is claimed to depict the Petitioner's staffing as of April 2023, only one of the employees depicted in in the commercial division (R-L-) appeared on the initial organizational chart submitted at the time of filing. The record reflects one of the sales executives (N-F-) was hired in December 2023, one (T-M-) was hired in the third quarter of 2023, and another (M-F-) is identified in the record as an employee of the foreign affiliate.

We also observe that the record does not clearly corroborate the Petitioner's staffing levels when the petition was filed. The Petitioner claimed 11 employees at the time of filing. Its initial organizational chart identified a total of 14 positions but identified only 9 employees (including the Beneficiary) by name. Specifically, the chart did not identify who held the three driver positions and one of the warehouse assistant positions that report to the warehouse manager. Further, the Petitioner has stated that certain employees had resigned around the time of filing. The organizational chart submitted in response to the RFE was claimed to depict the company's structure as of April 2023, but clearly included individuals who had been hired at a later date. Therefore, we can not determine that either chart accurately reflects the company's staffing and structure as of April 2023. The record does not contain evidence of wages paid to the Petitioner's employees during the first two quarters of 2023, and therefore does not corroborate the company's actual staffing levels at the time of filing.

The Petitioner bears the burden of documenting what portion of the Beneficiary's duties will be managerial and what proportion will be non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991). Here, while the Petitioner indicates that the Beneficiary exercises discretion over activities related to sales, purchasing, and warehouse operations, it has not supported its claim the staffing and structure in place at the time of filing was sufficient to relieve him from having to primarily engage in first-line supervision of non-professional personnel and performance of other non-managerial duties necessary for the day-to-day operations of the business. As such, the record does not support the Petitioner's claim that the Beneficiary would be employed in a managerial capacity as defined at section 101(a)(44)(A) of the Act.

III. PRIOR L-1 VISA

The record reflects that the Beneficiary was previously granted L-1A nonimmigrant classification to work for the Petitioner as an intracompany transferee in a managerial or executive capacity. However, each petition is separate and independent and must be adjudicated on its own merits, under the corresponding statutory and regulatory provisions. Notwithstanding the previous L-1A approval, the facts and evidence submitted here, for the reasons discussed, do not support approval of this immigrant petition. We are not bound by service center or district director's decisions. *See, e.g., La. Philharmonic Orchestra v. INS*, 248 F.3d 1139 (5th Cir. 2001) (per curiam). 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).

IV. CONCLUSION

On appeal, the Petitioner has demonstrated that it has a qualifying relationship with the Beneficiary's foreign employer. However, it has not met its burden to establish that it would employ the Beneficiary in a managerial capacity in the United States. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.