



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

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

In Re: 19070570

Date: SEP. 29, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, describing itself as a hybrid electronic vehicle components manufacturer, seeks to permanently employ the Beneficiary as a “Senior Contracts Manager” 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).

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

On appeal, the Petitioner contends it submitted sufficient evidence to establish that the Beneficiary qualified abroad, and would qualify in the United States, as a function manager. The Petitioner asserts that the Director ignored detailed U.S. and foreign job duty descriptions provided for the Beneficiary. The Petitioner emphasizes that the Director indicated the Beneficiary would perform non-qualifying operational tasks but did not articulate them. The Petitioner also points to a recently approved L-1A nonimmigrant visa approved by United States Citizenship and Immigration Services (USCIS) and contends this reflects the Beneficiary’s eligibility for the benefit sought.

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 since the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. Since the identified basis for denial is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve its appellate arguments regarding whether the Beneficiary was employed abroad in a managerial or executive capacity. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also 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).

**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. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The sole issue we will address is whether the Petitioner established that the Beneficiary would be employed in a managerial capacity in the United States. The Petitioner does not claim that the Beneficiary would be employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary would be 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, 8 U.S.C. § 1101(a)(44)(A).

The Petitioner only contends that the Beneficiary would qualify as a function manager, indicating that he has no direct subordinates. The statutory definition of “managerial capacity” allows for both “personnel managers” and “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).

When examining the managerial capacity of a given beneficiary, we will review the petitioner’s description of the job duties. The petitioner’s description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in a managerial capacity. 8 C.F.R. § 204.5(j)(5).

## A. Duties

To be eligible for L-1A nonimmigrant visa classification as a manager, the Petitioner must show that the Beneficiary will perform 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 offered position meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

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

The Petitioner stated that it is "a designer and manufacturer of highly-engineered, precision operator interface controls, and power management systems for commercial and off-road industrial vehicles." The Petitioner indicated that the Beneficiary is tasked with providing "expert commercial and contracts support...and managing the commercial and contracts function" and "support on negotiating major contracts, resolving legal disputes and general commercial and contracts support." It further explained that the Beneficiary was responsible for formulating "contract policies, goals, procedures, methods, commercial practices and standards for Industrial and Valve Division and its business units and to negotiat[ing] and sign[ing] binding contracts on behalf of the company." In addition, it stated that the Beneficiary was tasked with providing "direction and advice" to the company's "vice-presidents, individual unit general managers, financial controllers, directors, and senior sales managers," while also supervising and providing "functional leadership" to sales, project, and quotation teams.

The Petitioner listed the following duties for the Beneficiary as its senior contracts manager:

- Formulates and drafts internal control policies, procedures, methods, commercial practices, and standards within Industrial and Valve business units. (typically about 5% of working hours)
- Directs general managers and senior sales managers within the Industrial and Valve business units on implementation of such policies, procedures, methods, and practices within their business units. (typically about 5% of working hours)
- Supervise work and provides functional leadership to projects and quotation teams within the Industrial and Valve Division. Monitors and audits business units' compliance with established contract policies and procedures on a regular basis. Provides reports to management with improvement recommendations. (typically about 10% of working hours)
- Provides commercial leadership on the bid strategy and negotiations to the sales teams and general managers of the business units. Reviews major (\$500K+) bids

- to ensure compliance with company policy and law. (typically about 10% of working hours)
- Leads negotiations of the terms and conditions of major (\$500K+) contracts and framework agreements. Organizes and manages cross-functional teams during this process. (typically about 10% of working hours)
  - Evaluates and executes major (\$500K+) commercial contracts for the business units. Provides sign-off of the major contracts entered into by the company subsidiaries. Responsible for ensuring that the terms and conditions of the contracts can be complied with. (typically about 5% of working hours)
  - Provides business units with commercial leadership on major commercial disputes, resolution of debts. Organizes and manages internal teams to institute or defend major contractual claims against customers and suppliers. Where disputes do go to court/arbitration, acts as a business point of contact to work with external lawyers to prepare court submissions. (typically about 15% of working hours)
  - As a subject matter expert, provides guidance on commercial and contract matters, including training to new sales and project managers in contracting practices and procedures (typically about 10% of working hours)
  - Serves as a contractual point of contact on mergers and acquisitions work. (typically about 5% of working hours)
  - Works with data protection team to ensure policies and contracts are in accordance with international data privacy legislation. (typically about 5% of working hours)
  - Supervises contracts support to sales representatives and distributors network of 250+ entities. (typically about 2% of working hours)
  - Works with finance to ensure adherence to broader finance and risk requirements such as revenue recognition. (typically about 2% of working hours)
  - Works with legal department and external lawyers to ensure performance of contracts and operations in compliance with law. (typically about 2% of working hours)
  - Support product management/marketing to ensure company products and services are offered with appropriate and competitive terms and conditions. (typically about 2% of working hours)
  - Monitors competitive terms and customer satisfaction, recommends and implements changes. (typically about 2% of working hours)
  - Ensures signed contracts are communicated to all relevant parties to provide visibility and support implementation. (typically about 2% of working hours)

The Beneficiary's duties and the submitted supporting evidence indicate his likely involvement in several non-qualifying operational duties related to providing contract support rather than managerial-level tasks overseeing a defined function within the organization. For instance, the Beneficiary's duties stated that he has, and would be, regularly responsible for providing advice to various company managers on contract issues, providing reports to senior leadership on improving policies and procedures, and reviewing bids and terms and conditions within contract documents. Likewise, the Beneficiary's duty description included other apparent non-managerial duties, such as him ensuring that claims in contract disputes were fully supported by evidence, acting as a point to contact on disputes with external counsel, assisting with mergers and acquisitions work, and monitoring compliance with various policies and laws, such as data privacy and revenue recognition. These

various support related operational tasks are included throughout the Beneficiary's duty description, making it difficult to discern how much time he devotes to say, reviewing and drafting terms and conditions and reviewing bid documentation, as compared to managing negotiation teams and exercising managerial authority over other senior managers within a defined function. In other words, the Beneficiary's duty description indicates that he is more likely performing his claimed function of contract management, rather than managing it and being primarily relieved from its non-qualifying operational aspects.

Likewise, the Petitioner submitted an "example business day" for the Beneficiary also including several support related non-qualifying operational tasks, such as him assisting on contract negotiation calls with sales and finance managers, reviewing "technical positions" in preparation for contract negotiations, and a conducting a "review of [a] strategic partnership proposal for a major American off-road vehicle manufacturer." In sum, although it appears that the Beneficiary is likely a key contributor in contract negotiations, it is not clear that he has ultimate authority over these negotiations and actual managerial authority over a specific function, as well as other colleagues as claimed. The Beneficiary's duty description reflects that he is more likely acting in a support role assisting senior managers and the legal department during contract negotiations and disputes. It is also noteworthy that the Petitioner states that the Beneficiary exercises managerial authority over "sales, projects, and quotation teams," but there is little supporting documentation to substantiate this assertion.

Whether the Beneficiary is a managerial employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial. *See* sections 101(a)(44)(A) of the Act. Here, the Petitioner does not document what proportion of the Beneficiary's duties would be managerial functions and what proportion would be non-qualifying. The Petitioner lists the Beneficiary's duties as including both managerial and administrative or operational tasks but does not sufficiently quantify the time he would spend on these different duties. For this reason, we cannot determine whether the Beneficiary is primarily performing the duties of a manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In contrast, the Petitioner submitted little supporting documentation to substantiate the Beneficiary's performance of managerial duties, such as him supervising sales, project, and quotation teams, organizing and leading "cross-functional teams," implementing contract policies, procedures, methods, commercial practices, and standards, directing senior managers, or holding ultimate managerial authority over contract negotiations and disputes. Although we do not expect the Petitioner to articulate every specific managerial task or document his performance of every managerial duty, it is reasonable to expect that it would provide sufficient credible detail and documentation to properly substantiate his primary performance of qualifying managerial duties. However, the provided evidence indicates that the Beneficiary is more likely primarily engaged in non-qualifying operational duties alongside his colleagues rather than delegating these tasks to others. 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).

Even though the Beneficiary holds as a managerial title and manages or directs a portion of the business does not necessarily establish eligibility for classification as a multinational manager within the meaning of section 101(a)(44)(A) of the Act. 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; however, the position description alone is insufficient to establish that her actual duties would be primarily managerial in nature.

## B. Staffing, Function Manager

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

As discussed, the Petitioner exclusively asserts that the Beneficiary would qualify as a function manager. The Petitioner submitted an organizational chart reflecting that the Beneficiary reported to a "Senior Director, Contracts CW- Industrial Division." This leaves uncertainty as to whether the Beneficiary would act at a senior level within the organizational hierarchy of his function and exercise discretion over the function's day-to-day operations. *See Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017). The Petitioner asserts that the Beneficiary is the senior manager of contracting within his division; however, the submitted organizational chart reflects that he reports to the apparent senior manager of the division's contracting function. The Petitioner must resolve this inconsistencies and ambiguities 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).

Further, the Petitioner indicated that the Beneficiary acts through delegations of authority from the company's chief executive officer, general counsel, and the senior contracting director, indicating that these senior managers have actual discretion over contracts within the division. The Petitioner has also not clearly defined and documented these stated delegations of authority to, in turn, fully understand the true nature of his function. As noted, the Petitioner provided little supporting evidence to substantiate that the Beneficiary was responsible for supervising sales, project, and quotation teams, organizing and leading "cross-functional teams," implementing contract policies, procedures, methods, commercial practices, and standards, directing senior managers, or holding ultimate managerial authority over contract negotiations and disputes.

Without this clarity, it appears more likely that the Beneficiary is regularly reporting to its legal department and the senior contract director within his own division for direction and approval with respect to the contract management function. Further, the submitted organizational chart reflected that the Beneficiary would have "indirect/functional management" over various sales and operations managers within the division. However, it has provided little supporting documentation to corroborate this assertion. Given the existence of a more senior contract director within the division, it appears more likely that the Beneficiary works alongside these colleagues in contract formulation and negotiation, rather than exercising defined managerial authority over them.

The Petitioner has also not clearly defined the Beneficiary's function. As discussed, the contracting function within the Beneficiary's division appears to be led by the senior director, contracts. As such, the Beneficiary's function within this structure is not sufficiently clear. The submitted evidence suggests that the Beneficiary works on numerous bids, contract negotiations, and disputes with various sales, operational, and other employees. For example, the Petitioner stated that the Beneficiary "may work with hundreds of [company] employees and therefore it is not possible to provide employment

details of all employees with whom [he] works.” It also noted that he works with various vice presidents, directors, officers, senior managers, and project, sales, and quotation teams; teams numbering from five to 30 individuals. Further, the Beneficiary’s daily schedule reflected that he worked on several of these teams at any given time. Therefore, the Beneficiary’s position appears very fluid, rather than a very clearly defined function over which he has specific managerial authority. Lastly, as we discussed at length in the previous section, the Beneficiary’s duty descriptions included several non-qualifying operational tasks, leaving substantial uncertainty as to whether he would primarily manage his function, rather than perform it, even if the function was clearly defined. For the foregoing reasons, the Petitioner has not sufficiently established that the Beneficiary would be employed as a function manager in the United States.

On appeal, the Petitioner also points USCIS’ approval of an L-1A intracompany transferee visa on behalf of the Beneficiary related to the same position “less than six months earlier.” The Petitioner emphasizes this was approved under the same legal standard. We acknowledge USCIS records indicate that the Beneficiary was previously approved for L-1A intracompany transferee nonimmigrant visas filed by the Petitioner, a category largely mirroring the immigrant classification for multinational executives or managers. However, it is important to note that each petition filing is a separate proceeding with a separate record and a separate burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii).

The Director’s decision does not indicate whether they reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same evidence contained in the current record, their approval would constitute an error on the part of the Director. 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. *Matter of Church Scientology Int’l*, 19 I&N Dec. 593, 597 (Comm’r 1988). Therefore, for the foregoing reasons, the Petitioner has not established in the current record of proceeding that the Beneficiary would be employed in a managerial capacity in the United States.

**ORDER:** The appeal is dismissed.