



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

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

In Re: 23607595

Date: AUG. 31, 2022

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, an asserted distributor of mechanical tools and supplies, seeks to 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 on multiple grounds, concluding the Petitioner did not establish that: 1) the Beneficiary was employed abroad in a managerial or executive capacity for at least one year in the three preceding the date the petition was filed, 2) the Beneficiary would be employed in a managerial or executive capacity in the United States, 3) the Petitioner had the ability to pay the Beneficiary's proffered wage, and 4) it would be a bona fide employer of the Beneficiary. On appeal, the Petitioner contends the submitted evidence demonstrates that the Beneficiary is eligible 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 as the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States. Since this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its appellate arguments regarding the Director's other bases for denying the petition. *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 OR EXECUTIVE CAPACITY

The sole issue we will address is whether the Petitioner established that the Beneficiary would be employed in a managerial or executive capacity in the United States.

As a preliminary matter, the Petitioner ambiguously discusses the Beneficiary qualifying as both a manager and an executive on the record. For instance, on appeal, the Petitioner asserts that the Beneficiary acts in both a managerial and an executive-level role in the United States. A petitioner claiming that a beneficiary will perform as a “hybrid” manager/executive will not meet its burden of proof unless it has demonstrated that the beneficiary will primarily engage in either managerial or executive capacity duties. *See* section 101(a)(44)(A)-(B) of the Act. While in some instances there may be duties that could qualify as both managerial and executive in nature, it is the petitioner’s burden to establish that the beneficiary’s duties meet each criteria set forth in the statutory definition for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the beneficiary will be primarily employed in either a managerial or executive capacity. As such, the Petitioner’s lack of clarity as to the Beneficiary’s proposed role in the United States leaves initial uncertainty as to whether he qualifies. Regardless, we will analyze both capacities in this decision.

“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).

“Executive capacity” means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

When examining the managerial or executive 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 or executive capacity. 8 C.F.R. § 204.5(j)(5).

A. Duties

To be eligible as a multinational executive or 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) and (B)(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 or executive 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 or executive-level duties, as opposed to ordinary operational activities alongside its 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 or executive, 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 in a business plan submitted with the petition that it "is a new company...that specializes in professional construction equipment and fastener accessories, including nails, screws, power tools, and hand tools." The Petitioner further noted that it would "launch these products in the U.S. market with the intention to explore a domestic manufacturing facility." In response to the Director's request for evidence (RFE), the Petitioner submitted some of the following duties for the Beneficiary as its proposed general manager:

- [The] General Manager has primary responsibility for all operations within their assigned store,
- Charged with leading a team in the continual delivery of customer services,
- Accountable for the achievement of sales and profitability goals,
- Motivate associates to deliver upon and achieve the Petitioner's vision, mission and core values,
- Hire, train, coach, and lead associates,
- Responsible for the supply chain of all products, dealing with the factory and development of our products, contacting overseas factories, and market research,
- Identify a profitable customer base, develop marketing campaigns and targeted marketing,
- Accomplishes marketing and sales human resource objectives by recruiting, selecting, orienting, training, assigning, scheduling, coaching, counseling, discipling employees, and enforcing policies and procedures,
- Achieves marketing and sales operational objectives by contributing marketing and sales information and recommendations to strategic plans and reviews, prepares and completes action plans, resolves problems, completes audits, and determines system improvements and changes,
- Prepares an annual budget, schedules expenditures, and initiates corrective actions,
- Develops annual sales quotas for regions, projects expected sales volume and profit for existing and new products, and establishes pricing strategies,

- Plans, develops, implements, and evaluates advertising, merchandising, and trade promotion programs,
- Develops field sales action plans,
- Coordinates new product development,
- Sustains rapport with key accounts,
- Manages budgets for goods, deals with customer queries and complaints, oversees pricing and stock control,
- Prepares promotional materials and displays,
- Prepares and updates employment records,
- Ensures new hire paperwork is completed and processed,
- Processes all personnel action forms and ensures proper approval,
- Coordinates job posts, reviews resumes, and performs reference checks,
- Conducts training sessions,
- Designs and implements an overall risk management process for the organization, and
- Develops and administers health and safety programs and conducts safety inspections.

The Petitioner has submitted a duty description and supporting documentation indicating that the Beneficiary would be primarily engaged in non-qualifying operational level duties in the United States. For instance, the Beneficiary's duties discuss him being responsible for the supply chain of *all* [emphasis added] products, dealing with the factory and the development of products, and contacting overseas factories. Likewise, the Beneficiary's duties mention him dealing with customer queries and complaints, overseeing pricing and stock control, and preparing promotional materials and displays. The Petitioner further indicated that the Beneficiary would be tasked with preparing and updating employment records, ensuring new hire paperwork is completed and processed, processing *all* [emphasis added] personnel action forms, coordinating job posts, and performing reference checks. As correctly noted by the Director, several of these duties suggest the Beneficiary's direct involvement in all operational aspects of the business, rather than his delegation of these lower-level non-qualifying duties to subordinates.

Supporting documentation provided by the Petitioner only further reinforces the indication that the Beneficiary would be primarily engaged in non-qualifying operational tasks. As noted, the Petitioner asserted that the Beneficiary was already in the United States when the petition was filed and provided several invoices related to his activities. For instance, the Petitioner submitted invoices from September 2017 reflecting the Beneficiary purchasing an oil change for the company's vehicle, paying a cable bill, and buying office supplies.¹ This supporting documentation only further supports a conclusion that the Beneficiary was, and would be, primarily engaged in performing non-qualifying operational-level duties. In contrast, there is no supporting evidence to support a conclusion that the Beneficiary was primarily delegating these non-qualifying tasks to his asserted subordinates.

Whether the Beneficiary is a managerial or executive employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the Petitioner does not document what proportion of the Beneficiary's duties would be managerial or executive functions and what proportion would be non-qualifying. The Beneficiary's duties and provided supporting documentation include proposed

¹ The petition was filed in April 2018.

managerial and executive tasks as well as administrative and operational tasks but the Petitioner does not quantify the time he would spend on these different duties. For this reason, we cannot determine whether the Beneficiary would primarily perform the duties of a manager or an executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In addition, the generic descriptions of the Beneficiary's proposed U.S. duties do not credibly demonstrate that he would be primarily engaged in qualifying managerial or executive-level tasks. For instance, the Petitioner did not detail or provide supporting documentation to substantiate the sales and profitability goals the Beneficiary would be accountable for, the marketing strategies he would develop, policies and procedures he would establish, or sales operational objectives he would achieve. Likewise, the Petitioner did not articulate or document the system improvements or changes he would implement, actions plans he would put in place, sales quotas or budgets he would set, or trade promotion programs he would establish. The Beneficiary's stated managerial and executive-level duties could apply to any managerial or executive-level employee acting in any business or industry. His duty description includes little detail as to his specific daily tasks and includes little detailed discussion of the actual business.

Although we do not expect the Petitioner to articulate and document every managerial or executive task to be performed by the Beneficiary, it is reasonable to expect that it would provide sufficient detail and documentation to corroborate his performance of qualifying duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily managerial or executive 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 or executive-level 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) or (B) 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 his actual duties would be primarily managerial or executive in nature.

B. Staffing, Managerial and Executive Capacity

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive 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.

In response to the Director's RFE, the Petitioner provided an organizational chart reflecting that the Beneficiary would oversee business development, procurement, logistics and warehouse, and design managers. The chart also showed that the business development manager supervised six sales and marketing assistants, the procurement manager oversaw a supply chain officer, the logistics and warehouse manager supervised an assistant manager, and the design manager oversaw two design associates. Further, the chart reflected that the sales and marketing assistants supervised an administrative assistant, that the supply chain officer oversaw a storekeeper, and that the assistant warehouse manager supervised a driver.

In denying the petition, the Director emphasized that despite the numerous positions in the Petitioner's organizational chart, the Beneficiary was shown to hold seven of these positions, including all the managerial positions subordinate to him, as well as the supply chain officer and design associate roles. The chart further reflected that another employee acted in several roles, including the assistant manager, driver, administrative assistant, and storekeeper positions. Lastly, the chart appeared to indicate that the company employed two sales and marketing assistants. In sum, the Director concluded the evidence demonstrated that it was likely that the Petitioner lacked sufficient staff to support the Beneficiary in a managerial or executive capacity.

We agree with the Director's conclusion and the Petitioner does not sufficiently articulate on appeal why this determination was in error. The provided evidence reflects that the Petitioner was only in an initial developmental stage with few employees and not sufficiently operational as of the date the petition was filed to support the Beneficiary in a managerial or executive capacity. For instance, in the petition, the Petitioner indicated that it had only two employees. The Petitioner also submitted an IRS Form 941, Employer's Quarterly Federal Tax Return corresponding with the date the petition was filed, from the second quarter of 2018, showing that it had only two employees at this time. This IRS Form 941 further did not reflect the wages the Petitioner paid during that quarter and indicated that it only withheld \$164 in payroll taxes. In addition, an IRS Form 941 from next quarter, the third quarter of 2018, reflected that it had only one employee, and again did not show the wages paid. On appeal, the Petitioner submits an IRS Form 1120 U.S. Corporation Income Tax Return indicating that it only paid \$29,000 in wages during that entire year, an amount not sufficient to support the Beneficiary² and its claimed organizational chart showing approximately 18 positions.

As discussed by the Director, the U.S. organizational indicated that the Beneficiary was acting in several roles and that another asserted employee performed the duties of four other positions. The Petitioner does not specifically explain this arrangement, how it is possible, nor how the Beneficiary is primarily relieved from the non-qualifying operational tasks inherent in these various roles, duties also widely discussed in his duty description. However, the Petitioner's staffing levels as of the date the petition was filed were consistent with hiring projections provided in a business plan submitted along with the petition reflecting that the company was only in an initial development stage. For instance, a submitted hiring timeline indicated that it planned to hire four employees during the first year of its operation, employees that were either not yet hired, or no longer employed, in the quarter following the date the petition was filed. On appeal, the Petitioner only leaves further uncertainty as to the extent of its operations, stating that it "will need two to three years to decide that the company [h]as a number of professionals," that it is "very small at the moment and has [had] difficulties to enter...a closed market," and it cannot be "judged by loss or profit" at the "beginning stage."

However, the first preference immigrant classification for multinational executives or managers is not a prospective petition where a petitioner can demonstrate eligibility on behalf of a beneficiary based on future development.³ The Petitioner must establish that it has sufficient staffing and operations to

² The Beneficiary's proffered salary in the Form I-140 was \$70,000 per year.

³ It is noteworthy that the Petitioner discusses an L-1A nonimmigrant petition in its business plan and not the current immigrant petition for a manager or executive. The L-1A nonimmigrant classification does allow for a prospective new office petition which takes into consideration the prospect of the petitioner's future development. See 8 C.F.R. § 214.2(l)(3)(v)(C). However, there is no such equivalent in the immigrant classification for multinational executives or

support and employ the Beneficiary in a managerial or executive capacity as of the date the petition was filed in April 2018. However, the submitted documentation and evidence indicates that the Petitioner was minimally operational at this time and had, at most, two employees, as well as only one employee during the following quarter. Therefore, as determined by the Director, the submitted evidence reflects that the Petitioner was insufficiently staffed to support the Beneficiary in a managerial or executive capacity as of the date the petition was filed. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). The Petitioner must resolve 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).⁴

The Petitioner also does not clearly articulate whether the Beneficiary would be employed in a managerial or executive capacity on appeal, vaguely indicating that he would oversee subordinate professionals when it develops further. As such, we will first analyze whether the Beneficiary would be 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). Since the Petitioner does not explicitly assert that the Beneficiary would qualify as a function manager, we will only analyze whether he would be employed as a personnel manager.

As discussed, the Petitioner has not established that it employed supervisors, managers, or professionals subordinate to the Beneficiary when the petition was filed or at any time thereafter. For example, as noted, a submitted IRS Form 941 for the first quarter of 2018 indicated that the Petitioner had only two employees and the provided organizational chart reflected that there were no managers subordinate to the Beneficiary. Again, the IRS Form 941 from the following quarter in 2018 showed that the Petitioner only had one employee. Therefore, the submitted evidence demonstrates that the Beneficiary did not have personnel authority over subordinate managers or supervisors when the petition was filed.

managers. A prospective employer filing a petition under this category must have been doing business for at least one year. 8 C.F.R. § 204.5(j)(3)(i)(D).

⁴ The regulations do provide for the possibility of a new office petition when a beneficiary petitions under the L-1A nonimmigrant classification for intracompany transferees. In order to qualify for L-1A nonimmigrant classification during the first year of operations, the regulations require a petitioner to disclose the proposed nature of the business and the size of the U.S. investment and establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. See 8 C.F.R. § 214.2(l)(3)(v)(C). However, there is no equivalent basis for a new office to petition for a beneficiary and similarly qualify under the immigrant classification for multinational executives or managers. It is noteworthy that in the submitted business plan the Petitioner discusses the L-1A nonimmigrant classification, suggesting that it believes that new office petitions are applicable in the case of the immigrant classification for multinational executives or managers.

The Director further concluded in the denial decision that the record did not establish that the Beneficiary would supervise professional subordinates.⁵ On appeal, the Petitioner acknowledges that it does not employ professionals subordinate to the Beneficiary, stating that it would “need two to three years to decide that the company as an entity [with] a number of professionals [*sic*].” The Petitioner has provided no evidence to substantiate that it employs individuals subordinate to the Beneficiary who hold bachelor’s degree or require such to perform the duties of their positions. As such, the Petitioner has not established that the Beneficiary would be employed as a personnel manager when the petition was filed, nor up to the date of this adjudication.

For similar reasons, the Petitioner did not demonstrate that the Beneficiary would be employed in an executive capacity. The statutory definition of the term “executive capacity” focuses on a person’s elevated position. Under the statute, a beneficiary must have the ability to “direct the management” and “establish the goals and policies” of an organization or major component or function thereof. Section 101(a)(44)(B) of the Act. To show that a beneficiary will “direct the management” of an organization or a major component or function of that organization, a petitioner must show how the organization, major component, or function is managed and demonstrate that the beneficiary primarily focuses on its broad goals and policies, rather than the day-to-day operations of such. An individual will not be deemed an executive under the statute simply because they have an executive title or because they “direct” the organization, major component, or function as the owner or sole managerial employee. A beneficiary must also exercise “wide latitude in discretionary decision making” and receive only “general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.” *Id.*

As we have discussed previously in this decision, the Petitioner provided supporting documentation and duties indicating the Beneficiary’s wide involvement in the provision of non-qualifying operational tasks directly related to all the operational aspects of the business. Further, as noted, the Petitioner provided no evidence to substantiate that it had sufficient employees as of the date the petition was filed to elevate the Beneficiary to an executive capacity and to primarily relieve him from non-qualifying operational tasks. The Petitioner also did not clearly articulate or document the Beneficiary’s asserted executive-level duties, such as the broad goals and policies he would be, or was, responsible for establishing. Therefore, the Petitioner has not demonstrated that the Beneficiary would be employed in an executive capacity.

For the foregoing reasons, the Petitioner has not established that the Beneficiary would be employed in a managerial or executive capacity in the United States.

ORDER: The appeal is dismissed.

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, 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. 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.