



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

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

In Re: 21564160

Date: AUG. 17, 2022

Appeal of Texas Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, an [redacted] firm, seeks to temporarily employ the Beneficiary as an Associate (Management Consultant) under the L-1A nonimmigrant classification for intracompany transferees. Section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to work temporarily in the United States in a managerial or executive capacity.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that: (1) the Beneficiary was employed abroad in a managerial capacity, and (2) the Beneficiary will be employed in the United States in a managerial capacity. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision.

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(1)(3).

"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.

II. ANALYSIS

The Petitioner seeks to employ the Beneficiary in the position of “Associate (Management Consultant)” in the United States and indicates that he was last employed by its affiliate in Pakistan as a “Management Consultant” from April 2015 until July 2019.¹ The Petitioner has consistently stated that the previous position and the offered position are essentially identical and indicates that both positions fall within the definition of managerial capacity at section 101(a)(44)(A) of the Act.

Based on the statutory definition, “managerial capacity” includes employees who act as “personnel managers” and those that serve as “function managers.” Personnel managers are required to primarily supervise and control the work of supervisory, professional, or managerial employees. If a beneficiary directly supervises such employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. *See* sections 101(a)(44)(A)(ii) and (iii) 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. Here, the Petitioner claims that the Beneficiary’s previous and proposed positions both involve the supervision and control of subordinate professional employees and management of an essential function.

In denying the petition, the Director determined that the Petitioner did not establish that the Beneficiary: (1) was employed abroad in a managerial capacity, and (2) will be employed in the United States in a managerial capacity. On appeal, the Petitioner maintains that the Director’s decision does not reflect that he reviewed and considered the totality of the evidence offered in support of the petition and in response to a request for evidence. We agree with the Petitioner’s contention that the Director’s decision contains an inadequate discussion of the evidence submitted in support of the petition.

As noted, the Petitioner has consistently claimed that the Beneficiary is eligible for L-1A classification as both a “personnel manager” and a “function manager,” and articulated the bases for these claims. The Director’s decision, however, focused almost exclusively on the Petitioner’s claim that the Beneficiary qualifies for L-1A classification as a personnel manager.

In discussing the Beneficiary’s foreign employment, the Director explained his reasons for determining that the position did not meet all four prongs of the statutory definition of “managerial capacity” as a personnel manager, noting, in part, that the record lacked sufficient corroborating evidence to demonstrate that the Beneficiary had the authority to hire or fire employees or to recommend those decisions. The Director summarily concluded “[y]ou have not established, in the

¹ The record reflects that the Beneficiary attended a university in the United States from August 2019 until May 2021 as a J-1 nonimmigrant exchange visitor.

alternative, that the beneficiary is employed as a function manager.” However, the decision offers no further explanation or discussion of the Petitioner’s claim that the Beneficiary managed an essential function while employed abroad.

With respect to the proposed U.S. employment, the denial notice consisted largely of long quotations from a prior request for evidence, with only a few sentences identifying the grounds for denial. In addressing the Petitioner’s claim that the Beneficiary would supervise and control the work of subordinate professionals, the Director noted that he had requested an organizational chart identifying the employees the Beneficiary would supervise in the United States. The Director determined, however, that the Petitioner’s response only included organizational charts for client engagements based in Pakistan, with no evidence that the staff identified on the charts “are employed by the U.S. entity and are engaged to perform the non-qualifying operational duties of the business.” The record reflects that the Petitioner did in fact submit an organizational chart illustrating the staffing for a U.S.-based client engagement that the Director did not acknowledge or consider; it is evident that the Pakistan-based client engagements pertained to the Beneficiary’s last position abroad.

Further, although the Petitioner also claimed that the Beneficiary would manage an essential function in the United States, the Director did not address this claim in the denial beyond a conclusory statement that the Petitioner had “not established, in the alternative, that the beneficiary will be employed primarily as a ‘function manager.’”

The denial notice must state the specific reasons for denial. *See* 8 C.F.R. § 103.3(a)(1)(i). For the reasons discussed, we conclude that the denial notice lacked the required specificity, was not based on a review of the entire record, and did not sufficiently address the Petitioner’s claims that the Beneficiary was employed abroad, and would be employed in the United States, as a function manager. Accordingly, we will withdraw the decision and remand the matter to the Director for further consideration and entry of a new decision.

We have also identified an area of ambiguity in the record with respect to the Beneficiary’s last position abroad. The Petitioner indicates that the Beneficiary’s job title from 2015 to 2019 was “Management Consultant.” The offered position in the United States is that of an “Associate (Management Consultant)” and the Petitioner indicates that the Beneficiary, upon assuming this role, would supervise lower-level professional employees with the title “Business Analyst (Management Consultant).” It is therefore evident that not every “management consultant” within the organization holds the same level of authority and performs the same duties.²

It has not been demonstrated whether the Beneficiary’s position abroad was that of an Associate, a Business Analyst, or another “management consultant” role. Although the Petitioner submitted payroll records from the foreign entity to corroborate his employment in Pakistan for a full year (July 2018 through June 2019), the submitted “salary advice” documents do not identify his job title. Further, the payroll documents show that the Beneficiary’s salary increased significantly after August 2018, which suggests that he may have received a promotion and did not hold the same job

² The submitted position description for the “Business Analyst (Management Consultant)” role does not include supervisory duties or duties that otherwise suggest a managerial level of authority. The Petitioner indicates that this role performs data collection, data analysis and database design under the supervision of a more senior Management Consultant.

title/position for a full year prior to taking his leave of absence to attend graduate school in the United States.³ As the matter will be remanded, the Director may request additional personnel records relating to the Beneficiary's foreign employment to verify his formal job title(s), employment history within the organization, and other details regarding his foreign employment in the three-year period immediately preceding the filing of the petition in May 2021.⁴

III. CONCLUSION

Considering the deficiencies noted above, we find it appropriate to remand the matter to the Director to reevaluate the submitted evidence and determine whether the Petitioner was employed abroad, and would be employed in the United States, in a managerial capacity. As noted, the Director may request additional evidence pertaining to the Beneficiary's foreign employment and any other relevant evidence deemed warranted, and allow the Petitioner a reasonable opportunity to respond, prior to issuing a new decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

³ The submitted "salary advice" documents show that the Beneficiary's salary was PKR 152,803 in July 2019, PKR 131,955 in August 2018, and well over PKR 300,000 thereafter.

⁴ The Petitioner submitted redacted personnel records for persons claimed to be supervised by the Beneficiary abroad which include data such as dates of employment, all job titles held, impact level, job role category, location, department, educational background, skill history and other details. It did not provide a similar record for the Beneficiary, but it appears that this type of personnel record would be readily available.