



November 8, 2017

PM-602-0148

Policy Memorandum

SUBJECT: *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017)

Purpose

This policy memorandum (PM) designates the attached decision of the Administrative Appeals Office (AAO) in *Matter of G- Inc.* as an Adopted Decision. Accordingly, this adopted decision establishes policy guidance that applies to and binds all U.S. Citizenship and Immigration Services (USCIS) employees. USCIS personnel are directed to follow the reasoning in this decision in similar cases.

Matter of G- Inc. clarifies that, to establish that a beneficiary will be employed in a managerial capacity as a “function manager,” 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.

Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate directorate channels to the AAO.



ADOPTED DECISION

MATTER OF G- INC.

ADMINISTRATIVE APPEALS OFFICE
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
DEPARTMENT OF HOMELAND SECURITY

November 8, 2017^[1]

- (1) To support a claim that a beneficiary will manage an essential function, the petitioner must establish that the function is a clearly defined activity and is core to the organization.
- (2) Once the petitioner demonstrates the essential function, it must establish that the beneficiary's position meets all criteria for "managerial capacity" as defined in 101(a)(44)(A) of the Act. Specifically, it must show that the beneficiary will: primarily *manage*, as opposed to *perform*, the function; act at a senior level within the organizational hierarchy or with respect to the function managed; and exercise discretion over the function's day-to-day operations.

FOR THE PETITIONER: Sara E. Herbek, Esquire, Atlanta, Georgia

The Petitioner, a multinational technology-based product development corporation, seeks to permanently employ the Beneficiary as its "Director, Financial Planning and Analysis (FP&A)" under the first preference immigrant classification for multinational executives or managers.² More specifically, the Petitioner seeks to classify the Beneficiary as a "function manager."

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding the Petitioner did not establish that it would employ the Beneficiary in a managerial capacity.³

¹ On February 17, 2017, we issued this decision as a non-precedent decision. We have reopened this decision on our own motion under 8 C.F.R. § 103.5(a)(5)(i) for the purpose of making revisions in preparation for U.S. Citizenship and Immigration Services designating it as an Adopted Decision.

² 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 an executive or managerial capacity. A labor certification is not required for this classification.

³ The Director also found the Petitioner did not establish, as required, that it had been doing business for at least one year prior to the petition filing date. See 8 C.F.R. § 204.5(j)(3)(i)(D). We disagree. The record amply demonstrates that the

On appeal, the Petitioner⁴ states that it has employed the Beneficiary as an L-1A nonimmigrant⁵ in a position with the same title as the proffered position since 2013. The Petitioner argued that the Director erroneously misstated facts and abused his discretion in denying the petition.

The central issue here is whether the Petitioner established that the Beneficiary will be employed in a qualifying “managerial capacity” as defined in the Act, and specifically, whether the Beneficiary will primarily manage an “essential function” within the organization.

Upon *de novo* review, we will sustain the appeal.

I. APPLICABLE LAW

To be classified as a multinational executive or manager, a beneficiary must have been employed abroad in that capacity for at least one year and seek to work in that capacity in the United States for the same employer (or for its parent, affiliate, or subsidiary). Section 203(b)(1)(C) of the Act.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A),⁶ defines the term “managerial capacity” as:

[A]n assignment within an organization in which the employee primarily—

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) 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;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

Petitioner has satisfied this requirement. Specifically, the Petitioner has 250 employees in the United States, provided services to clients in the United States for at least one year, and reported over \$100 million in earnings on its most recent tax return.

⁴ The Petitioner states that it is a leader in full-lifecycle product development services working across multiple industries to design and deliver innovative technology-based products. The Petitioner has 8000 employees worldwide, with offices in the United States, India, Argentina, the United Kingdom, and Ukraine.

⁵ The L-1A classification allows a company to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

⁶ The statutory definition for “managerial capacity” found at 101(a)(44)(A) of the Act applies to both multinational managers and L-1A managers; therefore, the following analysis applies equally to both classifications.

- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

(Emphasis added). This definition of “managerial capacity” allows for both “personnel managers” and “function managers.” Personnel managers must primarily supervise and control the work of other supervisory, professional, or managerial employees, whereas function managers must primarily manage an “essential function” within the organization.⁷ A function manager may also directly oversee personnel, if incidental to managing the function.⁸

II. ANALYSIS

A. Essential Function

The statute and regulations do not define the term “essential function,” so we consulted the dictionary to provide us with guidance in defining this term. Of the two words, “essential” is the easier to define; it means “necessary,” “core,” or “fundamental.”⁹ On the other hand, we located various definitions of “function.”¹⁰ Putting aside its mathematical usage, we discern two primary definitions of the word “function,” one that focuses on an activity and one that focuses on an organizational unit that performs an activity. Viewed within the context of the relevant statutory passage (“manages an *essential function* within the organization, or a department or subdivision of the organization”), it is clearly the former, activity-focused definition at play here, since the statutory passage draws a distinction between a function and an organizational unit (a department or subdivision). Construing the term “essential function” as a core activity of an organization is consonant with Congress’s purpose in creating this classification: to facilitate the transfer of key managers or executives within a multinational organization. These senior, managerial personnel advance their organizations’ core activities.¹¹

Whether the function is sufficiently related to an organization’s core activity or activities is inherently one of degree, and therefore, all relevant facts should be considered in making this determination. Ultimately, we will evaluate what is an “essential function” in the context of a given petition. The petitioner must (1) describe with specificity the activity to be managed, and (2) establish that the function is core to the organization.

⁷ See *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016).

⁸ Alternatively, a position that a petitioner claims to be primarily supervisory in nature should be evaluated as a personnel manager. See section 101(a)(44)(A)(ii) of the Act.

⁹ *Essential*, *Merriam-Webster Unabridged*, <http://unabridged.merriam-webster.com/unabridged/essential> (last visited Nov. 8, 2017).

¹⁰ *Function*, *Merriam-Webster Unabridged*, <http://unabridged.merriam-webster.com/unabridged/function> (last visited Nov. 8, 2017) (“an organizational unit performing a group of related acts and processes”); *Function*, *Cambridge Business English Dictionary* (Cambridge Univ. Press 2011) (“a particular area of responsibility of a company”); *Function*, *Black’s Law Dictionary* (10th ed. 2014) (an “[a]ctivity that is appropriate to a particular business or profession”); *Function*, *Webster’s New College Dictionary* (3rd ed. 2008) (“1. The action for which a person or thing is particularly fitted or employed. 2a. Assigned duty or activity. b. Specific occupation or role ...”).

¹¹ An organization may have more than one core activity, such as the manufacture or provision of an end product or service, and research and development into other products or services.

B. Function Manager

Once the petitioner demonstrates the essential function, it must then establish that the beneficiary's position meets all criteria for "managerial capacity" as defined in 101(a)(44)(A) of the Act. The petitioner must show that the beneficiary will *primarily manage* that essential function by clearly describing the beneficiary's duties and indicating the proportion of time dedicated to each duty. See 8 C.F.R. § 204.5(j)(5). While he or she may perform some operational or administrative tasks, the beneficiary must primarily manage the essential function.¹² In addition, the petitioner must establish that the beneficiary will occupy a senior position in the petitioner's organizational hierarchy or within the function managed and that the beneficiary will have discretionary authority over the day-to-day operations of that function. We will consider all factors relevant to these criteria, including the nature and scope of the petitioner's business; the organizational structure and staffing levels; the value of the budgets, products, or services that a beneficiary will manage; and any other factors, such as operational and administrative work performed by staff within the organization,¹³ that will contribute to understanding the beneficiary's actual duties and role in the business.

In sum, to establish that the beneficiary will be employed in a managerial capacity as a "function manager" 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.

C. Application of Law to Facts

1. The Function is a Clearly Defined Activity within the Petitioner's Organization

The Petitioner has clearly specified how FP&A (Financial Planning and Analysis) qualifies as a "function" that meets the business needs within its organization. The record substantiates that FP&A is a clearly defined activity that provides the Petitioner with financial strategies to optimize

¹² See *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988) ("[T]he employee's duties must be primarily at the managerial or executive level. 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."); see also *Brazil Quality Stones, Inc. v. Chertoff*, 531 F.3d 1063, 1070-71 (9th Cir. 2008) (explaining that the petitioner bore the burden of demonstrating the beneficiary "was primarily engaged in overseeing essential functions of [the] business rather than performing them himself"); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003) (determining that the former INS reasonably concluded that the position was "not primarily managerial" because the record failed to establish that the beneficiary was "not merely performing the functions of the company"); *IKEA US, Inc. v. U.S. Dep't of Justice INS*, 48 F. Supp. 2d 22, 24-25 (D.D.C. 1999) (sustaining agency's determination that a beneficiary did not qualify as a function manager where the petitioner failed to document what proportion of the beneficiary's duties would be managerial functions) (citing *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991)).

¹³ We may also consider employees of the wider "qualifying organization" when assessing a petitioner's staffing needs and determining whether a beneficiary will be sufficiently relieved from performing operational and administrative duties. See *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016).

business opportunities and growth. The role of the FP&A function is to generate accurate and complete data to properly assess global revenue.

2. The Function is Essential to the Petitioner's Organization

The record substantiates that FP&A is "essential" to the petitioning organization. The unit's revenue planning and forecasting process impacts every business unit and geographic area within the worldwide organization. Additionally, the Petitioner's executive team and board of directors depend on these FP&A reports and strategies to drive its financial health and make critical decisions regarding mergers and acquisitions. Given the type and scope of the Petitioner's business, size, and international reach, we find that financial analysis and planning is core to the Petitioner's business and therefore, it is an "essential" function to this business.

3. The Beneficiary Will Primarily Manage the Essential Function

The record also demonstrates that the Beneficiary will primarily manage the essential function. The Beneficiary primarily develops and directs revenue forecasts and analysis for the worldwide organization, leads mergers and acquisitions, and oversees strategic pricing analysis. The Petitioner has established that the Beneficiary will continue to manage the compilation and processing of raw financial data by the finance team to prepare forecasts and create short-and long-term financial strategies.

To complete the revenue forecasts, the Beneficiary will continue to direct the work of various teams across the Petitioner's five business units and six geographic delivery areas to provide revenue estimates to the chief executive team and the board of directors. The Petitioner submitted evidence, including organizational and workflow charts, which indicate that the Beneficiary leads an FP&A team that oversees the monthly revenue forecast process and collects financial data from delivery leads and global sales teams. The record reflects that the Beneficiary will continue to be supported by six direct and three indirect reports.¹⁴ These personnel perform the routine duties associated with the FP&A function, enabling the Beneficiary to primarily develop policies and goals and oversee the execution of long-term strategies. The Petitioner has shown that this staff will continue to relieve the Beneficiary from performing day-to-day administrative and reporting tasks, allowing him to primarily manage the FP&A function rather than perform it himself. That he supervises his direct reports does not detract from our finding that he primarily manages the function.

¹⁴ The following persons report directly to the Beneficiary: (1) an analyst; (2) assistant manager, FP&A; (3) senior associate, FP&A; (4) senior associate, finance; (5) manager, FP&A; and (6) manager, finance. His indirect reports are: (1) manager, finance; (2) assistant manager, finance; and (3) senior executive, finance.

4. The Beneficiary Will Act at a Senior Level Within the Organization and With Respect to the Function Managed¹⁵

Further, the record demonstrates that, as the director of the global FP&A team, the Beneficiary will continue to act at a senior level within the organization and with respect to the function managed. *See* section 101(a)(44)(A)(iii) of the Act; *see also* 8 C.F.R. § 204.5(j)(2). In an organization with over 8000 employees worldwide, the Beneficiary reports directly to the CFO and indirectly to the CEO, while working closely with other senior executives and managers. The record substantiates that the Beneficiary's revenue forecasts are used directly by the CFO and CEO to make critical financial decisions that impact the organization as a whole. For example, in overseeing the FP&A function, the Beneficiary managed \$50 to \$100 million in investments during fiscal year 2015 and is expected to manage similar high value investments in the proffered permanent position. Thus, the Petitioner has demonstrated that the Beneficiary will continue to act at a senior level within the organization and with respect to the function managed.

5. The Beneficiary Will Have Discretionary Authority Over the Day-to-Day Operations Related to the Function Managed

Finally, the Beneficiary will continue to have significant discretionary authority over the day-to-day operations related to the FP&A function. *See* section 101(a)(44)(A)(iv) of the Act; *see also* 8 C.F.R. § 204.5(j)(2). The Beneficiary establishes policies and processes used by staff to provide the financial information necessary to drive the FP&A function, and he has the discretionary authority to identify, execute, and finalize mergers and acquisitions.

III. CONCLUSION

The Petitioner has established that the Beneficiary will be employed as a function manager.

ORDER: The appeal is sustained.

Cite as *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017)

¹⁵ Section 101(a)(44)(A)(iii) of the Act is worded in the disjunctive, requiring a function manager to occupy “a senior level within the organizational hierarchy *or* with respect to the function managed.” (emphasis added). Although not required, both criteria have been satisfied in this case.