

Challenges with “Function Manager” Positions in the L-1A and EB-1 Multinational Manager Classifications

Article By:

Anita E. J. Ninan

In today’s world of evolving multinational organizations, from hierarchical to flat structures, and increased scrutiny of the L-1 visa category by U.S. Citizenship and Immigration Services (USCIS), the challenges of the “function manager” position within the L-1A visa and First Preference Employment-based immigrant visa for Multinational Managers or Executives (EB-1 MM) classifications continue to cause concern for immigration practitioners, petitioning U.S. companies, and beneficiaries.

Functional Manager petitions filed with USCIS continue to be challenged with lengthy requests for evidence, requiring detailed information of company payroll records and W-2 statements of professionals managed, detailed managerial job duties for the position abroad and the prospective U.S. position, and detailed organization charts evidencing names, job titles, salaries, academic qualifications, and brief summaries of duties of professionals managed by the beneficiary.

The L-1A visa classification enables U.S. employers to transfer executives or managers from an affiliated foreign office to an affiliated office in the United States for a temporary period of stay. Among other requirements, eligibility for this managerial classification requires the beneficiary to evidence that he or she:

- 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 the authority to hire and fire or recommend those as well as other personnel actions (if another employee or other employees are directly supervised); if other employees are not directly supervised, 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 over which the employee has authority.

See 8 CFR 214.2(l)(1)(ii).

To qualify for an EB-1 MM, the beneficiary must evidence that he or she was employed outside the United States in the three years preceding the proposed transfer for at least one year by a foreign affiliate, subsidiary, or parent of a U.S. corporation in a managerial or executive capacity. The “managerial” requirements for this category are the same as under the L-1A classification described above.

As noted above, “managerial capacity” for the L-1A and EB-1 MM classifications envisages “personnel” management or “functional” management. Unfortunately, while the rules relating to managing employees are fairly well established, there has been less clarity regarding what is required to qualify a manager of an essential function – referred to as a “function manager” or “functional manager.”

This ambiguity was clarified when USCIS issued a [policy memorandum](#) dated Nov. 8, 2017, which provides guidance for officers adjudicating L 1A petitions for function managers. This memo is based on the ruling from the Administrative Appeals Office (AAO) in [Matter of G- Inc.](#), which is now an adopted decision and binds all USCIS employees including adjudicating officers.

Matter of G- Inc and the USCIS Policy memorandum have helped us further understand USCIS’s concept of “function manager.” Under its prior decision in [Matter of Z-A](#), the AAO held that an L?1A intra-company manager who primarily manages an essential function [can also be supported by personnel outside the United States within an international organization](#) who perform the day-to-day administrative and operational duties.

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 meet a five prong test and 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.

In its decision, the AAO noted that “essential function” means a “necessary,” “core,” or “fundamental” activity of a petitioning organization. Once the petitioner demonstrates the essential or core function, it must then establish that the beneficiary’s position meets all the remaining criteria for “managerial capacity” as defined in INA 101(a)(44)(A). 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). The AAO noted that while he or she may perform some operational or administrative tasks, the beneficiary must primarily manage the essential function.

In determining whether the remaining criteria were satisfied, the AAO considered 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, that will contribute to understanding the beneficiary’s actual duties and role in the business. While it may be more challenging for a smaller organization to establish that a function is a clearly defined activity and is core to the organization, as well as to demonstrate that the manager is performing at a senior level, in a small organization the function manager may establish seniority with

respect to the function managed rather than within the organizational hierarchy, as clarified in the test established in *Matter of G- Inc.*

While the USCIS Policy memorandum binds all USCIS employees, it is not binding on decisions at U.S. Consular posts abroad. The challenge remains for interpretation of the scope of “functional manager” in L visa applications under Blanket L filed abroad at U.S. Consular posts. As per the Foreign Affairs Manual (FAM) that governs the responsibilities of the various organizations of the U.S. Department of State, 9 FAM 402.12-14(B)(d) states, “An executive or manager may direct a function within an organization. In general, however, individuals who control and directly perform a function within an organization, but do not have subordinate staff (except perhaps a personal staff), are more appropriately considered specialized knowledge employees.”

Despite USCIS’s policy memorandum based on the *Matter of G- Inc.*, denials of “functional manager” cases under the L visa classification by USCIS and at certain U.S. Consular posts abroad continue. In this regard, EB-1 MM cases involving function management continue to be misunderstood by USCIS, resulting in lengthy RFEs and in some cases leading to denials.

©2025 Greenberg Traurig, LLP. All rights reserved.

National Law Review, Volume VIII, Number 257

Source URL: <https://natlawreview.com/article/challenges-function-manager-positions-l-1a-and-eb-1-multinational-manager>