U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17696872

Date: AUG. 02, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a company stating that it owns and operates a chain of dry-cleaning businesses, seeks to temporarily employ the Beneficiary in the United States an executive manager under the L-1A nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish that the Beneficiary was employed abroad full-time for one continuous year in the three years preceding the date the petition was filed or his entry into the United States as a qualifying nonimmigrant. Further, the Director determined the Petitioner did not demonstrate that the Beneficiary was employed abroad in a managerial or executive capacity.

On appeal, the Petitioner submits the Beneficiary's foreign tax returns and contends that they demonstrate his employment abroad for one year "before application for admission to [the] United States." Further, the Petitioner asserts that the Director erred in concluding that the Beneficiary was not employed in a managerial capacity abroad. The Petitioner states that the submitted evidence establishes that the Beneficiary supervised professional subordinates abroad.

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 because the Petitioner did not establish that it the Beneficiary was employed abroad for one continuous year in the three years preceding the date the petition was filed. Because the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding whether he 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

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(l)(3).

II. ONE YEAR OF EMPLOYMENT ABROAD

The sole issue we will address is whether the Petitioner established that the Beneficiary was employed fulltime for at least one continuous year in the three years preceding the date the petition was filed or the Beneficiary's entry into the United States as a qualifying nonimmigrant. *See* 8 C.F.R. § 214.2(l)(3)(iii).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) defines "intracompany transferee" as:

> An alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive *or* involves specialized knowledge. Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.

The Petitioner stated that the Beneficiary was employed as executive manager of the foreign employer from April 2013 to April 18, 2015. The petition was filed on April 17, 2018. The Petitioner indicated in Part 5 of the Form I-129, Petition for a Nonimmigrant Worker, that the Beneficiary arrived in the United States on April 19, 2015 and that his nonimmigrant status as of the date the petition was filed was "F2" referring to dependents and spouses of F-1 nonimmigrant student visa holders. The Petitioner further provided documentation reflecting that he was present in the United States on a B-2 travel visa from April 19, 2015, until approximately April 18, 2016, and later that he adjusted to F-2 nonimmigrant status in June 2016 and remained in this status in the United States until the petition was filed in April 2018. On appeal, the Petitioner indicates that the Beneficiary was employed continuously for one year "before application for admission to [the] United States," or prior to his entry into the United States as a B-2 nonimmigrant on April 19, 2015.

The statute indicates that the relevant three-year period to be used as a reference point in determining whether the beneficiary had one year of continuous full-time employment with a qualifying entity abroad is the three years "preceding the time of [a beneficiary's] application for admission into the United States . . . ." Section 101(a)(15)(L) of the Act. However, the statue is silent with respect to those beneficiaries who have already been admitted to the United States in a different nonimmigrant classification. The regulation at 8 C.F.R. § 214.2(l)(3) clearly requires the petition be accompanied

by evidence that a beneficiary was employed abroad for one continuous year in the three-year period "preceding the filing of the petition." Given this contradiction, a United States Citizenship and Immigration Service (USCIS) policy memorandum clarified the agency's policy indicating that USCIS will use the date of filing of the initial L-1 petition as the reference point for determining the one-year foreign employment requirement. United States Citizenship and Immigration Services (USCIS) Policy Memorandum PM-602-0167, *Satisfying the L-1 1-Year Foreign Employment Requirement; Revisions to Chapter 32.3 of the Adjudicator's Field Manual (AFM)* (Nov. 15, 2018), https://www.uscis.gov/legal-resources/policy-memoranda ("*L-1 1-in-3 Policy Memo*") at 3.

However, the memorandum further indicates that, by regulation, time a beneficiary spent working in the United States "for" a qualifying organization does not count towards the one-year foreign employment requirement and that this time would result in an adjustment of the three-year period. 8 CFR 214.2(l)(1)(ii)(A). It also states that "a nonimmigrant in the United States will be considered to have been admitted to work "for" the qualifying organization if he or she is employed by that organization as a principal beneficiary of an employment-based nonimmigrant petition or application, such as H-1B or E-2 executive, supervisory, or essential employee." Policy Memorandum PM-602-0167, *Satisfying the L-1 1-Year Foreign Employment Requirement; Revisions to Chapter 32.3 of the Adjudicator's Field Manual (AFM)* (Nov. 15, 2018) at 4.

The memorandum also indicates that periods of time a beneficiary spent in the United States without working, or while working for an unrelated employer, interrupt the one continuous year foreign employment requirement, and officers should not adjust the three-year period. The memorandum indicates that in such cases "the relevant point in time for an officer to determine whether a beneficiary satisfies the one-year foreign employment requirement is *the date on which the petitioner filed the initial L-1 petition*, regardless of when the beneficiary was, or will be, admitted to the United States." The memorandum also stated explicitly that "if a beneficiary takes a break in employment with, or stops working for, the qualifying organization as a principal beneficiary for a period of more than two years during the three years preceding the petition filing, then he or she cannot meet the one-year foreign employment requirement and is disqualified for L-1 classification." *Ibid.* at 4, 5.

As discussed, the Petitioner asserts that the Beneficiary was employed abroad with the foreign employer from April 2013 to April 18, 2015. The Petitioner also indicates that the Beneficiary entered the United States in B-2 nonimmigrant status on April 19, 2015, and up until the date the petition was filed on April 17, 2018, remained in the United States on B-2 or F-2 nonimmigrant status. Clearly, he Beneficiary's time in the United States from April 19, 2015 until the date the petition was filed, or nearly two years, was not time working for a qualifying organization on an employment-based nonimmigrant visa, such as H-1B or E-2 executive, supervisory, or essential employee. Therefore, the Beneficiary's presence in the United States prior to the date the petition was filed does not adjust the three-year period within which the Petitioner must demonstrate the Beneficiary's foreign employment. *See* Policy Memorandum PM-602-0167, *Satisfying the L-1 1-Year Foreign Employment Requirement; Revisions to Chapter 32.3 of the Adjudicator's Field Manual (AFM)* (Nov. 15, 2018) at 4.

As such, the Petitioner must establish that the Beneficiary was employed abroad for one continuous year in the three years preceding the date the petition was filed, or between April 17, 2015, and April 17, 2018. *Ibid.* at 5. However, the Petitioner indicates that the Beneficiary was employed with the

foreign employer from April 2013 to April 18, 2015, or for only one day during the qualifying three-year period prior to the date the petition was filed.

For the foregoing reasons, the Petitioner did not establish that the Beneficiary completed one year of full-time continuous employment with a qualifying entity abroad during the three-year period preceding the filing of the petition.

ORDER: The appeal is dismissed.