U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18239135

Date: AUG. 05, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a provider of software and services to the biopharmaceutical, academic and government research markets, seeks to continue the Beneficiary's temporary employment as an Engagement Manager for a period of approximately two years. The Petitioner has employed the Beneficiary in an L-1B specialized knowledge capacity and requests an amendment of her status to the L-1A classification for intracompany transferees who work in a managerial or executive capacity. 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 that the Petitioner did not establish that the Beneficiary is entitled to a period of stay in L-1 status beyond the five-year limit imposed on L-1B nonimmigrant intracompany transferees by 8 C.F.R. § 214.2(l)(12)(i), and did not meet the conditions at 8 C.F.R. § 214.2(l)(15)(ii) that would allow U.S. Citizenship and Immigration Services (USCIS) to grant her an additional extension following her promotion to a managerial position. The matter is now before us on appeal.

In these proceedings, the petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will sustain the appeal.

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.*

Pursuant to section 214(c)(2)(D)(ii) of the Act, 8 U.S.C. § 1184(c)(2)(D)(ii), a nonimmigrant admitted to render services in a capacity that involves "specialized knowledge" under section 101(a)(15)(L) of the Act shall not exceed 5 years.

The regulation at 8 C.F.R. § 214.2(l)(12)(i) states in pertinent part:

> [A] new individual petition may not be approved for an alien who has spent the maximum time period in the United States under section 101(a)(15)(L) and/or (H) of the Act, unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year.

The regulation at 8 C.F.R. § 214.2(l)(15)(ii) states:

> The total period of stay may not exceed five years for aliens employed in a specialized knowledge capacity. The total period of stay for an alien employed in a managerial or executive capacity may not exceed seven years. No further extensions may be granted. When an alien was initially admitted to the United States in a specialized knowledge capacity and is later promoted to a managerial or executive position, he or she must have been employed in the managerial or executive position for at least six months to be eligible for the total period of stay of seven years. The change to managerial or executive capacity must have been approved by [USCIS] in an amended, new, or extended petition at the time that the change occurred.

II. ANALYSIS

At issue in this matter is whether a new individual petition may be approved for the Beneficiary under 8 C.F.R. § 214.2(l)(12)(i) and whether she is eligible for an extension of stay beyond the maximum five-year period granted to individuals who initially enter in L-1B nonimmigrant status, pursuant to 8 C.F.R. § 214.2(l)(15)(ii).

The Petitioner filed this petition on September 4, 2020. At the time of filing, the Beneficiary was in the United States in L-1B status, with two previously approved L-1B petitions that were valid for a combined period of five years, from September 8, 2015 until September 7, 2020.[1] The Petitioner requested that the Beneficiary be granted L-1A classification based on a "change in previously approved employment," and requested an extension of her status through July 19, 2022. In its letter in support of the petition, the Petitioner stated that the Beneficiary had been promoted to the position of "Engagement Manager" in November 2019 and provided a detailed description of her duties as well as an organizational chart and other supporting evidence in support of its claim that she would be employed in a managerial capacity, as defined at section 101(a)(44)(A) of the Act, under the extended petition.

In the denial decision, the Director stated that "the only issue to be evaluated in this case is whether the beneficiary is entitled to an extension of stay or whether the beneficiary is required to spend one year abroad before reapplying for L-1 classification."[2] The Director, citing to the regulations at 8

[1] The Petitioner stated on the Form I-129, L Classification Supplement, that the Beneficiary's period of stay in the United States was from "03/24/2016 to present." The Petitioner indicated that she continued her employment with its Indian subsidiary through March 22, 2016.

[2] Prior to issuing the decision, the Director issued a request for evidence (RFE) in which he addressed the Beneficiary's employment capacity abroad and her proposed employment capacity in the United States. The RFE did not raise the issue

C.F.R. §§ 214.2(l)(12)(i) and (15)(ii), emphasized that the Petitioner did not timely file its request to amend the Beneficiary's status from L-1B to L-1A, noting that such request must be filed "at least six months prior to the five-year limit in a specialized knowledge capacity." The decision does not include any further discussion of the facts or evidence presented.

Upon review, we disagree with the Director's determination that the Beneficiary had already reached the five-year limitation on stay applicable to L-1B nonimmigrants and that, under 8 C.F.R. § 214.2(l)(12)(i), a new individual petition may not be approved on her behalf until she has been physically present outside the United States for one year.

Although the two L-1B petitions filed on behalf of the Beneficiary have a combined validity period of five years (September 8, 2015 to September 7, 2020), the Petitioner has consistently stated that the Beneficiary's initial admission to the United States occurred on March 24, 2016, more than six months after the approval of the initial L-1B petition. USCIS records confirm that this was her initial date of admission in L-1B status, and at the time of filing, her total period of stay in the United States amounted to less than four and one-half years. As the Beneficiary has not been physically present in the United States in L-1B status for the maximum five-year period, the regulation at 8 C.F.R. § 214.2(l)(12)(i) does not bar the approval of this petition.

Further, we disagree with the Director's determination that the regulation at 8 C.F.R. § 214.2(l)(15)(ii) bars approval of this amended petition. This regulation sets forth conditions that must be met for a beneficiary initially admitted in L-1B status to be eligible for a full seven years in L-1 status after a promotion. However, a beneficiary may still be granted an amendment of status based on a promotion to a managerial position, even if these conditions are not met, if they have not reached the maximum period of stay in L-1B status. As discussed, based on the dates of the Beneficiary's physical presence in the United States, she had not reached this five-year limit.

As the Director raised no other grounds for denial, and we conclude that all other eligibility requirements for the requested amendment to L-1A classification have been met, we will withdraw the Director's decision and sustain the appeal.

We cannot conclude, however, that the Beneficiary is eligible for the full period of extension requested by the Petitioner. As noted, the regulation at 8 C.F.R. § 214.2(l)(15)(ii) allows an L-1B beneficiary who later receives a promotion to a managerial or executive position to be granted a total period of stay of seven years in L-1 status when two conditions are met: (1) the beneficiary has been employed in a managerial or executive position for at least six months; and (2) the petitioner obtains USCIS approval of the change to managerial or executive capacity in an amended, new, or extended petition at the time that the change occurred. If a petitioner does not establish that both conditions have been met, the beneficiary is not eligible for the seven-year period of stay available to those initially admitted as L-1A nonimmigrants.

On appeal, the Petitioner argues that the Beneficiary's promotion to a managerial position in November 2019 makes her eligible for both an amendment of her status from L-1B to L-1A and an

---

of the Beneficiary's prior L-1B petitions, the duration of her stay in L-1B status, or the timeliness of the Petitioner's request for an amendment of her status from L-1B to L-1A.

extension for the requested period of approximately 22 months. However, the record reflects that the Petitioner opted to wait ten months to file an amended petition rather than filing "at the time the change occurred" in November 2019. The requirement to obtain USCIS approval of an amended petition at the time of the promotion is clearly stated at 8 C.F.R. § 214.2(l)(15)(ii) and the ability to extend an L-1B beneficiary's status beyond the five-year limit is conditioned on meeting this requirement. Based on the facts presented here, the Petitioner has not established that the Beneficiary is eligible for a total period of stay of seven years. Rather, her extension will be limited to the remainder of the five-year period permitted by 8 C.F.R. § 214.2(l)(12)(i).

III. CONCLUSION

As discussed above, the Petitioner has established that the Beneficiary is eligible for an amendment of her status from L-1B to L-1A based on her promotion to a managerial position, and that she is eligible for an extension of stay for the remainder of the five-year maximum period applicable to individuals who initially entered the United States in L-1B status.[3] Accordingly, we will sustain the appeal.

ORDER: The appeal is sustained.

[3] In this case, as the Beneficiary was initially admitted to the United States on March 24, 2016, the record reflects that she is eligible for an extension through March 23, 2021.