U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35942559

Date: JAN. 13, 2025

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1B Specialized Knowledge Worker)

The Petitioner, an engineering and consulting services business, seeks to temporarily employ the Beneficiary as a staff electrical engineer under the L-1B nonimmigrant classification for intracompany transferees. See Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1B classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee with "specialized knowledge" to work temporarily in the United States.

The Director of the California Service Center denied the petition, concluding the record did not establish that the Beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition. The Director further determined that the Petitioner did not demonstrate that the Beneficiary possesses specialized knowledge, that he was employed abroad in a capacity that was managerial, executive or involved specialized knowledge, that he would be employed in the United States in a specialized knowledge capacity, and that his proposed U.S. assignment complies with the off-site employment provisions of the L-1 Visa Reform Act of 2004. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for the L-1B 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 specialized knowledge 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. ANALYSIS

1. One Year Foreign Employment Requirement

The primary issue we will address is whether the Petitioner provided evidence that the Beneficiary has at least had at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition, as required by section 101(a)(15)(L) of the Act and 8 C.F.R. § 214.2(l)(3)(iii). For the reasons provided below, the Petitioner has not demonstrated that the Beneficiary satisfies this eligibility requirement.

Evidence in the record demonstrates that the Petitioner's Indian affiliate employed the Beneficiary abroad in the position of mechanical engineer from January 13, 2020, until January 5, 2022. The Beneficiary was admitted to the United States as an F-1 nonimmigrant student on January 13, 2022. He completed a U.S. master's degree in May 2023 and commenced F-1 post-completion optional practical training with the Petitioner on June 19, 2023. On May 21, 2024, the Petitioner filed the instant petition and requested that U.S. Citizenship and Immigration Services (USCIS) grant the Beneficiary a change of status from F-1 to L-1B and extend his stay in the United States.

The Director denied the petition, concluding the Petitioner did not establish that the Beneficiary was employed abroad for at least one year in the three years immediately preceding the filing of the petition in May 2024. The Director emphasized that between May 21, 2021, and May 21, 2024, the Beneficiary was employed by a qualifying organization abroad for a period of approximately seven and one-half months (from May 21, 2021 through January 5, 2022).

In reaching this determination, the Director cited to guidance published in USCIS Policy Memorandum PM-602-0167, *Satisfying the L-1 One Year Foreign Employment Requirement; Revisions to Chapter 32.3 of the Adjudicator's Field Manual (AFM) (Nov. 15, 2018).* We note the cited memorandum has been superseded by the publication of 2 *USCIS Policy Manual* L, https://www.uscis.gov/policy-manual.[1]

This policy guidance addresses the one year foreign employment requirement applicable to nonimmigrant petitions for L-1 intracompany transferees. Generally, a beneficiary's one year of employment abroad must occur within the three years preceding the filing of an initial L-1 petition. USCIS will adjust this three-year period based on time a beneficiary spent working for a qualifying U.S. entity as a principal beneficiary of an employment-based nonimmigrant petition. *See* 8 C.F.R. § 214.2(l)(1)(ii)(A) (stating that periods spent in the United States in lawful status for a qualifying organization shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted towards fulfillment of that requirement); s*ee generally* 2 *USCIS Policy Manual*, *supra*, at L.6(G)(4).

However, for purposes of L-1 adjudications, the time a beneficiary spends in the United States as an F-1 nonimmigrant does not result in a similar adjustment of the three-year period. *Id.* The relevant point in time for USCIS to determine whether a beneficiary satisfies the one year foreign employment

[1] *See* USCIS Policy Alert PA-2022-20, *L-1 Intracompany Transferees* (Aug. 16, 2022), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220816-IntracompanyTransferees.pdf.

requirement is the date on which the petitioner filed the L-1 petition, regardless of when the beneficiary was admitted to the United States. *Id.*

On appeal, the Petitioner, citing to USCIS Policy Memorandum PM-602-0167, asserts that "time spent 'working in the United States for a qualifying organization does not count towards the one-year foreign employment requirement; however, this time does result in an adjustment of the three-year period.'" The Petitioner therefore contends that "the 3-year look back period would begin upon his start date with [the Petitioner] in the [United States] in June 2023." The Petitioner maintains that the Beneficiary had more than one continuous year of employment with a qualifying organization abroad between June 2020 and June 2023 and therefore satisfies the one year foreign employment requirement.

The Petitioner's assertions are not persuasive. As noted, USCIS Policy Memorandum PM-602-0167, cited by both the Director and the Petitioner, has been superseded by the publication of 2 *USCIS Policy Manual* L. However, the Director's error is harmless as USCIS policy guidance on this issue has not changed. *See generally Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors).

Current guidance states that "if a beneficiary was admitted as an F-1 nonimmigrant and later applies for optional practical training (OPT) employment with the qualifying organization, the time spent in F-1 nonimmigrant status does not result in an adjustment to the 3-year period, because the purpose of admission was for study and not to work for the qualifying organization." *See generally* 2 *USCIS Policy Manual*, *supra*, at L.6(G)(4). The same guidance was published in the cited policy memorandum. *See* USCIS Policy Memorandum PM-602-0167, *supra*, at 4.

Again, USCIS considers a nonimmigrant in the United States to have come to this country to work "for" the qualifying organization if the nonimmigrant is employed by that organization as a principal beneficiary of an employment-based petition or application, such as H-1B or E-2. *See generally* 2 *USCIS Policy Manual*, *supra* at L.6(G)(4). While the Beneficiary began working for the Petitioner on June 19, 2023, as an F-1 student with approved optional practical training, he has never been the principal beneficiary of an employment-based petition or application, and therefore, there is no tolling of the three-year period. The Petitioner must establish that he had at least one year of employment abroad in the three-year period preceding the filing of this petition on May 21, 2024.

As determined by the Director, the Beneficiary was employed abroad by the Petitioner's affiliate for less than eight months during this period and therefore does not meet the one-year foreign employment requirement. Accordingly, the Petitioner did not establish his eligibility for L-1B classification.

2. Reserved Issues

Because the Beneficiary is ineligible for L-1B classification, we need not reach, and therefore reserve, the Petitioner's appellate arguments regarding his claimed possession of specialized knowledge, his employment abroad and proposed U.S. employment in a specialized knowledge capacity, and the petition's compliance with the provisions of the L-1 Visa Reform Act. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

III. CONCLUSION

The Petitioner has not established, as required, that the Beneficiary had at least one continuous year of full-time employment abroad with a qualification organization within the three years preceding the filing of the petition. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.