U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31825207

Date: JULY 5, 2024

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, initially described as a wholesaler but later as a retailer of novelty gifts and souvenirs, seeks to temporarily employ the Beneficiary as sales director of its new office under the L-1A 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-1A classification allows a corporation or other legal entity, including its affiliate or subsidiary, to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the California Service Center denied the petition, concluding that the record did not establish that: (1) the Beneficiary was employed abroad; (2) the Beneficiary's claimed employment abroad was in a managerial or executive capacity; and (3) the Petitioner's new office would support a managerial or executive position within one year after approval of the new office petition. The matter is now before us on appeal under 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.

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, a petitioner must submit evidence that the beneficiary has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(iii) and (v)(B). 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 submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. *See generally* 8 C.F.R. § 214.2(l)(3)(v).

The Director determined that the Petitioner did not establish that the Beneficiary was employed abroad as required. We agree with this determination, for the reasons explained below.

The Petitioner filed the Form I-129 petition in June 2023. The Petitioner claimed that the Beneficiary began working as the sales director for the Petitioner's foreign parent company in January 2021. The Petitioner also claimed that the Beneficiary had last entered the United States on June 1, 2022, as a B-1 nonimmigrant visitor for business.

The Director issued a request for evidence (RFE), stating that the Petitioner had not submitted "independent, objective documentary evidence of [the Beneficiary's] employment" outside the United States. The Director also stated:

> Additionally, our records show the beneficiary last entered the United States with B1 status on April 1, 2014 and has not departed. Our records also indicate the beneficiary's B1 status expired on September 20, 2014. Your petition indicates the beneficiary has worked abroad . . . since January 2021 and last arrived in the United States on June 1, 2022. However, the record does not show the beneficiary was abroad from January 2021 to June 1, 2022.

In response, the Petitioner stated that, after his April 2014 entry into the United States, "the beneficiary did leave the U.S. timely . . . and continued working for the foreign company. . . . The beneficiary returned to the U.S. on June 1, 2022 with a B2 visa." The Petitioner did not specify when the Beneficiary purportedly left the United States. The Petitioner submitted copies of the foreign employer's purported payroll documents, dated between January 2021 and January 2022, naming the Beneficiary as the sales director.

The Director denied the petition, stating that the Petitioner had not submitted evidence "to refute [government] records showing the beneficiary has been physically present in the United States since April 1, 2014." The Director also noted that "the record does not show how [the Beneficiary purportedly] obtained a new visa for his claimed arrival on June 1, 2022." The Director acknowledged the purported payroll records dated 2021, but the Director stated that these records do not establish that the Beneficiary was "physically outside the United States" at the time.

On appeal, the Petitioner states that the Director "has not presented any supporting documents to support the travel history for this beneficiary." While the Director did not identify the specific records systems consulted for the Beneficiary's travel history, the Director did provide specific dates and other information, and government travel records corroborate the Director's assertions.

These government travel and visa records originated outside the record of proceeding. When such information will be used to make a decision unfavorable to a petitioner, the regulations require the Director to advise the petitioner of the information and offer the petitioner an opportunity to present a rebuttal. *See* 8 C.F.R. § 103.2(b)(16)(i). The Director followed this procedure, issuing an RFE to advise the Petitioner of the derogatory information and then considering the Petitioner's response.[1]

It remains that the burden of proof is on the Petitioner to submit evidence to establish eligibility. The Petitioner did not submit any evidence to show that the Beneficiary left the United States after his April 2014 entry; obtained a B-2 nonimmigrant visa after that date; and re-entered the United States

[1] The Director included additional derogatory information for the first time in the denial notice, which we have not considered here because the Petitioner had not received prior notice.

in June 2022. Each of these activities would create government records, and the Director duly advised the Petitioner that the expected records for these claimed events do not exist.

One such record would be in the form of a Form I-94 Arrival and Departure Record. The Form I-129 petition instructed the Petitioner to provide the Form I-94 number for the Beneficiary's most recent entry into the United States, but the Petitioner left that line of the petition form blank without explanation. The Petitioner also submitted a partial copy of the Beneficiary's Indian passport, but the partial copy does not include any U.S. visa that was valid in 2022 or any pages with entry and exit stamps that would document the Beneficiary's international travel.

We agree with the Director's assertion that salary payments alone are not sufficient evidence of employment abroad, because the Beneficiary could have received those payments while in the United States. Even then, the Petitioner did not submit financial documentation that would corroborate those claimed salary payments from 2021. The Petitioner stated that its initial submission included the foreign employer's bank statements showing "transactions from May 2020 – March 2023," but the earliest listed transaction is from April 2022, several months after the last claimed salary payment to the Beneficiary. The uncorroborated list of claimed salary payments does not outweigh government records that indicate the Beneficiary never left the United States after he entered in 2014.

For the above reasons, we agree with the Director's determination that the Petitioner has not shown that the claimed foreign employer employed the Beneficiary outside the United States for at least one year. Therefore, the Petitioner has not satisfied this eligibility requirement.

We will dismiss the appeal, because the Petitioner has not met its burden of proof to establish that the Beneficiary was employed abroad full-time for at least one year during the three years preceding the filing of the petition. Because this issue determines the outcome of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether the claimed employment abroad qualifies as a managerial or executive capacity, and whether the new office would support a managerial or executive position within one year after approval of the petition. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

ORDER: The appeal is dismissed.