U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30908184

Date: JUNE 5, 2024

Appeal of California Service Center Decision

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

The Petitioner intends to operate a retail cellphone and accessories business. It filed this petition as a new office[1] seeking to employ the Beneficiary temporarily as its president under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States 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 California Service Center denied the petition, concluding that the record did not establish that: 1) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; 2) the Beneficiary had been employed abroad in a managerial or executive capacity for at least one year in the three years prior to filing the instant petition; and 3) the Petitioner would employ the Beneficiary in a managerial or executive capacity within one year of the petition's approval. 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 because the Petitioner did not establish that the Beneficiary had been employed abroad in a managerial or executive capacity for at least one year in the three years prior to filing the instant petition. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the remaining grounds for denial. *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).

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity, or in a position requiring specialized knowledge for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(1). The beneficiary must also be seeking 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. 8 C.F.R. § 214.2(l)(3)(ii).

In addition, regarding a new office petition, the petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

II. EMPLOYMENT ABROAD FOR ONE YEAR

The issue to be addressed is whether the Petitioner provided sufficient evidence establishing that the Beneficiary met the foreign employment requirement. Considerations in addressing this issue are two-fold, as the Petitioner must not only establish that the Beneficiary worked for the foreign employer for at least one continuous year in the three years prior to filing this petition, but it must also establish that the employment abroad was full-time. *See* 8 C.F.R. § 214.2(l)(3)(iii).

In this matter, the petition form identifies the Beneficiary's foreign employer as [redacted] and lists his dates of employment with that organization as June 2017 through the date the petition was filed in May 2021. Although the supporting statement lists the June 2017 employment date, it also states that supporting evidence would demonstrate "the beneficiary's Executive position with the foreign entity since 2010," thus resulting in an inconsistency in the Petitioner's claim regarding the Beneficiary's foreign employment. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (requiring that inconsistencies be resolved with independent, objective evidence).

The Petitioner also provided the Beneficiary's foreign job duty breakdown and the foreign entity's 2021 organizational chart listing the Beneficiary in the CEO position. However, information in the petition form states that the Beneficiary entered the United States in October 2020 and remained in the United States at least through the date this petition was filed in May 2021.[2] In addition, the Petitioner provided a list of the foreign entity's claimed employees as well as their respective job titles, hiring dates, and salaries.

The Director subsequently issued a request for evidence (RFE) notifying the Petitioner that it did not provide sufficient evidence establishing that the Beneficiary has at least one year of continuous full-time employment abroad during the relevant period. The Director also informed the Petitioner that

[2] The petition form states that the Beneficiary arrived in the United States as a B-2 nonimmigrant visitor in October 2020 and that such status was not due to expire until October 2021, thus indicating that the Beneficiary was still in the United States in May 2021, when this petition was filed.

pay, personnel, or training records would be acceptable forms of evidence in meeting the noted requirement. In response, the Petitioner submitted copies of the previously submitted foreign organizational chart and employee list, referring to the latter as a "payroll report." The Petitioner also offered new evidence in the form of an employment verification letter from the foreign entity's president. The letter includes the Beneficiary's job duty breakdown and states that the Beneficiary had "served as our Chief Executive Officers [sic] since 12 June, [sic] 2017."

In the denial, the Director pointed out that the employment verification letter does not state whether the Beneficiary's employment was in full-time status. The Director further noted that the Petitioner did not provide pay, personnel, or training records, which the RFE suggested as acceptable forms of evidence for the purpose of addressing concerns about the Beneficiary's period of foreign employment. The Director also added that according to USCIS records, the Beneficiary last entered the United States in February 2008 and has not departed since then.[3] In light of the facts presented, the Director determined that the Petitioner did not provide sufficient evidence to show that the Beneficiary has been working outside the United States for one continuous year of full-time employment prior to filing the petition.

On appeal, the Petitioner asserts that the "standard evidence used as proof of employment is a letter of employment, [sic] or pay records," arguing that these documents had been previously submitted. We disagree that the evidence submitted in this matter is sufficient. While we recognize that the Petitioner previously submitted an employment verification letter, the letter made no mention of the Beneficiary's foreign employment being full-time as required by the regulation. Nor did the Petitioner provide "pay records" as claimed.

In fact, the Petitioner provided an internally generated employee list containing the names, position titles, and "rate of pay" and hire date of each of [redacted] claimed employees. Unlike a pay record, this document does not constitute evidence of ongoing compensation to the listed individuals over a specific time period. And no information was provided as to the date this document was produced or whether the listed "rate of pay" represented weekly, monthly, or annual compensation; nor does the record contain documentation clarifying whether the compensation is claimed to be in exchange for full- or part-time employment relevant to the Beneficiary's employment. Furthermore, according to this document, the Beneficiary was hired on June 3, 2017. However, the previously submitted employment verification letter states that the Beneficiary's employment commenced on June 12, 2017, thus resulting in another inconsistency concerning the Beneficiary's claimed period of employment with [redacted] And, as noted above, the initial supporting statement suggests his employment began in 2010. *See Matter of Ho*, 19 I&N Dec. at 591-92. Additionally, on appeal, the Petitioner does not address the Director's notation that the Beneficiary entered the U.S. in 2008 and has not left.

In sum, the Petitioner did not adequately address the evidentiary deficiencies in the record or provide evidence that the Beneficiary was a full-time employee of [redacted] abroad for at least one continuous year during the relevant period. Because the Petitioner has not established that

[3] USCIS has clarified that "[t]he one-year foreign employment requirement is only satisfied by the time a beneficiary spends physically outside the United States. . . ." 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).

the Beneficiary met these requirements, the petition cannot be approved. As noted above, as the basis for dismissal of this appeal is dispositive, we reserve our decision on the remaining grounds that were cited in the denial.

ORDER: The appeal is dismissed.