U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-O-A-A- (USA) LTD

DATE: JUNE 26, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an international producer and distributor of foods, seeks to temporarily employ the Beneficiary as a plant manager under the L-1B nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) § 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 on multiple grounds concluding that the Petitioner did not establish that: 1) 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; 2) the Beneficiary was employed abroad in a specialized knowledge capacity; 3) the Beneficiary was qualified to perform the intended services in the United States; and 4) the Beneficiary would be employed in the United States in a specialized knowledge capacity.

The matter is now before us on appeal. On appeal, the Petitioner submits two additional support letters explaining the Beneficiary's accomplishments while working as a plant manager in the United States and contends that he qualifies for the benefit sought.

Upon *de novo* review, we will dismiss the appeal because the Petitioner has not established that the Beneficiary was employed for the requisite one-year period abroad with a qualifying organization in the three years preceding the date the petition was filed. As this is a fundamental element of eligibility the Petitioner has not established, we will reserve the remaining issues addressed by the Director.

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).

According to the regulations, a beneficiary must have "one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition." 8 C.F.R. § 214.2(l)(3)(iii).

The term "intracompany transferee" is defined 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.

8 C.F.R. § 214.2(l)(1)(ii)(A).

II. ONE YEAR OF FOREIGN EMPLOYMENT ABROAD

For the reasons discussed below, the Petitioner has not established that the Beneficiary was employed full-time for one continuous year with his qualifying foreign employer.

A. Procedural History

The Petitioner explained that it and its affiliated companies around the world are engaged in the import, manufacture, and distribution of cashews, dried fruits, rice crackers, snack foods, spices, and other dried food goods. In Section 1 of the Form I-129, the Petitioner indicated that the Beneficiary had been employed as deputy plant manager with the foreign employer from April 2017 to the date the petition was filed in September 2018. The Petitioner explained in the Form I-129 that this foreign employment had "no interruptions" and that it was "continuous employment." The Petitioner did not provide a duty description related to the Beneficiary's asserted deputy plant manager position, but submitted paystubs reflecting his payment by the foreign employer from April 2017 to August 2018.

The Director later issued a request for evidence (RFE) stating that United States Citizenship and Immigration Services' (USCIS) records reflected that the Beneficiary had been in the United States for over 13 months during his claimed employment abroad. The Director correctly noted that periods in the United States could not be counted towards fulfilling the Beneficiary's required one year of foreign employment. Therefore, the Director requested that the Petitioner submit additional evidence to clarify this apparent discrepancy.

In response, the Petitioner provided a support letter from the foreign employer which did not directly address the issue of the Beneficiary's substantial time in the United States during his claimed employment abroad. The Petitioner indicated that the Beneficiary had "been trained with alternative ways from on the job training (OJT) to [be] the fully internal plant manager ready to handle the position of plant manager in [the] [redacted] [U.S.] plant." The Petitioner stated that the Beneficiary was "still working under [the foreign employer] and receiving his full packages from Vietnam and there is no payment to him in US." The Director subsequently denied the petition pointing to the aforementioned USCIS records. The Director concluded that the Beneficiary had spent over 13 months in the United States during his asserted 16 month employment abroad; and therefore, he did not have the requisite one year of continuous employment abroad.

B. Analysis

To qualify as an intracompany transferee, a beneficiary must have been employed abroad continuously for one year during the three years before the petition filing date, by the petitioner or a qualifying related entity. 8 C.F.R. § 214.2(l)(1)(ii)(A).

The one-year foreign employment requirement is only satisfied by the time a beneficiary spends physically outside the United States working full-time for the petitioner or a qualifying organization. A petitioner cannot use any time the beneficiary spent in the United States to meet the one-year foreign employment requirement, even if the qualifying foreign entity paid the beneficiary and continued to employ the beneficiary while he or she was in 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)* 4 (Nov. 15, 2018), https://www.uscis.gov/legal-resources/policy-memoranda ("*L-1 1-in-3 Policy Memo*").

As noted by the Director, USCIS records reflect that the Beneficiary spent more than 13 months in the United States on B1 and B2 visas during his asserted foreign employment as a deputy plant manager from April 2017 until the petition was filed in September 2018.[1] The Director requested that the Petitioner submit evidence to demonstrate the Beneficiary's employment abroad given his apparent presence in the United States for most of this time. However, the Petitioner submitted little evidence, and still provides little evidence on appeal, to substantiate the Beneficiary's required one year of employment abroad. For instance, the Petitioner submitted paystubs indicating the Beneficiary's payment by the foreign entity from April 2017 through the date the petition was filed and states on appeal that the Beneficiary "remains an employee of the Vietnamese company…[and that] he flies in to train and teach the operators." However, as noted above, the Petitioner cannot use time the Beneficiary spent in the United States to meet the one-year foreign employment requirement, even if the foreign employer paid and continued to employ him while he was in the United States.

In fact, the Beneficiary's resume reflects that he joined the foreign employer in April 2017 from a dairy company and very soon entered the United States on April 20, 2017, leaving question as to

[1] Specifically, USCIS records indicate that the Beneficiary spent the following periods of time in the United States during his asserted foreign employment: April 20, 2017 to July 20, 2017, September 10, 2017 to February 10, 2018, April 8, 2018 to August 24, 2018, and September 9, 2018 to September 26, 2018 (the date the instant petition was filed). Therefore, our records reflect that the Beneficiary spent a total of 399 days in the United States during his asserted foreign employment.

whether he was ever employed abroad by the foreign employer as a deputy plant manager prior to entering the United States. The Petitioner also provides few details related to his duties and accomplishments as a claimed deputy plant manager abroad; but in contrast, submits an additional support letter on appeal detailing the Beneficiary's accomplishments while working in the United States for the Petitioner. Likewise, the Petitioner provided a "Client Profile" dated in February 2018 listing the Beneficiary's contact information and certain compliance information related to the company's products, leaving further question as to its assertion that he was engaged in employment abroad and only flying in to "teach the operators."

In addition, the record reflects that the Petitioner also filed a motion to reopen on December 31, 2018, three weeks after this appeal was filed. In a support letter provided with this motion the Petitioner stated the following with respect to the Beneficiary's foreign employment:

> The Director noted that although the Beneficiary has worked for the [foreign employer] for a continuous 18 months (April 2017-August 2018), government records indicate that during that period, the Beneficiary made several trips to the United States totaling over 13 months in duration.
>
> While it is true that the Beneficiary did spend approximately 13 months in the United States, it is also true that the Beneficiary did hold employment for a qualifying company in Vietnam for the continuous 12 months as required for the L1 visa.

As such, the Petitioner appears to acknowledge that the Beneficiary was in the United States for over 13 months during his asserted 18 months of foreign employment. Again, as we have noted, time spent in the United States cannot count toward the Beneficiary's required one year period of employment abroad. *Id.*

III. CONCLUSION

The appeal will be dismissed because the Petitioner did not establish that the Beneficiary had one year of full-time continuous employment with a qualifying entity abroad in the three years preceding the filing of the petition. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of D-O-A-A- (USA) Ltd*, ID# 3790166 (AAO June 26, 2019)