U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30595115

Date: MAR. 27, 2024

Appeal of California Service Center Decision

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

The Petitioner, a wholesale and distribution company, seeks to temporarily employ the Beneficiary as the sales director of its new office[1] 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 the Beneficiary had one continuous year of qualifying employment abroad during the three years preceding the filing of the petition or that he had been employed abroad in a managerial or executive capacity. The matter is now before us on appeal. 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-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 their 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 them to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

[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.

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, 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. ONE YEAR OF CONTINUOUS EMPLOYMENT ABROAD

The primary issue we will address is whether the Petitioner established that the Beneficiary was employed abroad full-time for at least one continuous year in the three years preceding the date the petition was filed or the Beneficiary's entry into the United States as a qualifying nonimmigrant. *See* 8 C.F.R. § 214.2(l)(3)(iii). As the instant petition was filed on April 3, 2023, the Petitioner must provide evidence to show that the Beneficiary was employed abroad for one continuous year by a qualifying entity during the three-year period from April 3, 2020 to April 3, 2023.

The regulation at 8 CFR 214.2(l)(1)(ii)(A) defines an intracompany transferee, in part, as one "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 [qualifying entity], 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 . . . ." The regulation further states "[p]eriods 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." *Id.*

On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner claimed that it was the subsidiary of [redacted] a Ugandan company. The Petitioner stated that the Beneficiary has been employed with the Ugandan company since January 2020 as a corporate senior executive, and submitted an undated list of his job duties signed by the Ugandan company's president/executive partner.

In a request for evidence (RFE), the Director noted that U.S. Citizenship and Immigration Services (USCIS) records show that the Beneficiary entered the United States in 2013 on a B-2 nonimmigrant visa and never departed. Therefore, the Director requested additional evidence demonstrating that the Beneficiary was employed abroad by the Ugandan company during the three-year period preceding the petition's filing.

In response, the Petitioner asserted that "[y]our officer failed to present any evidence that the beneficiary entered the U.S. 10 years ago and never left," and further claimed that "when the beneficiary entered the U.S. she was waived thru and her passport was not stamped."[2] The Petitioner

[2] The Petitioner mistakenly and repeatedly references the Beneficiary in the female pronoun case in the RFE response, and further claims to submit "her" educational credentials, although the credentials submitted pertain to [redacted] who appears to be the Beneficiary's spouse. Moreover, the Petitioner's assertion that the Beneficiary was "waived thru and her passport was not stamped," in addition to misgendering the Beneficiary, directly contradicts USCIS records.

also submitted documents entitled "Register for Wages" for the period from January 2020 through December 2020.

The Director denied the petition, concluding that the Petitioner did not establish that the Beneficiary completed one year of full-time continuous employment with a qualifying entity abroad during the three-year period preceding the filing of the petition. On appeal, the Petitioner asserts that the Director's decision was erroneous.

Upon de novo review, we concur with the Director's determination.

Preliminarily, although the Petitioner maintains that "[y]our officer failed to present any evidence that the beneficiary entered the U.S. 10 years ago and never left," the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

The Petitioner challenges the Director's reliance on USCIS records regarding the Beneficiary's entry into the United States as a B-2 visitor in 2013. We note, however, that the Beneficiary's interactions with USCIS are a matter of USCIS record.[3] Although the Petitioner submitted a partial copy of the Beneficiary's passport, the submitted portions do not include visas or entry and exit stamps. The Petitioner, on whom the burden of proof rests, does not offer evidence or credible argument establishing that the Beneficiary departed the United States after his arrival in 2013 and had one continuous year of qualifying employment abroad during the three years preceding the filing of this petition on April 3, 2023.

We acknowledge the submission of documents entitled "Register for Wages" for the period from January 2020 through December 2020. These documents, however, appear to be internally generated and the Petitioner has not provided corroborating evidence, such as evidence of tax filings, bank accounts, or work documents establishing the Beneficiary's work for the foreign entity during any time period to verify that the figures listed in the wage registers represent actual salary payments. Moreover, as previously noted, the Petitioner must demonstrate the Beneficiary's continuous full-time

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The Petitioner provides no explanation for these inconsistencies and discrepancies. It is incumbent upon the petitioner to resolve any inconsistencies in the record by submitting independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

[3] In response to the RFE and again on appeal, the Petitioner asserts that USCIS has not presented evidence of the Beneficiary's presence in the United States because relevant records in E-Verify "have been disposed of." We again note that the burden of proof in this matter rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I& N Dec. at 375-76. Moreover, E-Verify is not a USCIS system but rather an internet-based system that compares information from Forms I-9, Employment Eligibility Verification, to records available to the U.S. Department of Homeland Security and Social Security Administration to confirm that an individual is authorized to work in the United States. The reason for the Petitioner's reference to, and reliance on, records in that system in support of the Beneficiary's eligibility is unclear.

employment abroad for at least one year between April 3, 2020 and April 3, 2023. Even if we were to afford evidentiary weight to these wage registers, they are insufficient evidence of the Beneficiary's qualifying foreign employment because they account for only nine months (April 2020 to December 2020) of employment during the requisite period.

The Petitioner does not include probative, credible evidence that the Beneficiary in this matter had at least one year of full-time continuous employment with a qualifying entity abroad in the three years preceding the filing of the petition. *Matter of Chawathe*, 25 I& N Dec. at 375-76. Without additional evidence demonstrating the Beneficiary's actual employment during the pertinent period, the record is insufficient to establish this essential requirement for eligibility for this nonimmigrant visa.

III. RESERVED ISSUES

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its appellate arguments regarding the Director's separate determination that it did not establish that the Beneficiary was employed abroad in a managerial or executive capacity. *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).

IV. CONCLUSION

For the reasons discussed, the Petitioner has not established that the Beneficiary had one continuous year of qualifying employment abroad during the three years preceding the filing of the petition.

ORDER: The appeal is dismissed.