U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31067934

Date: MAY 2, 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 director of marketing 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 the Petitioner had a qualifying relationship with the foreign employer. 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 March 24, 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 March 25, 2020, to March 24, 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.*

In a letter of support, 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 in the position of controller and submitted an undated list of her 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 2015 on a nonimmigrant visitor 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 stated that the Beneficiary entered the United States as a F-1 student, and submitted copies of her Forms I-20, Certificate of Eligibility for Nonimmigrant Student Status issued on May 22, 2020, May 13, 2021, November 19, 2021, and March 16, 2022, respectively. Although the Petitioner also asserted that she was employed abroad by the Ugandan company during this time, no additional evidence was submitted in support of this assertion.

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 proper

standard of proof was not applied in this matter, noting that USCIS "refuses to either refute or acknowledge the evidence." The Petitioner also submits an affidavit from its president stating that the Beneficiary began her employment with the Ugandan company in January 2020 and is currently still employed as its controller, earning an annual salary of 3,080,000 UGX.

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

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 maintains that the Beneficiary has been employed abroad by the Ugandan company since January 2020. We note, however, that USCIS records indicate that the Beneficiary entered the United States in May of 2015 and never departed. Moreover, the Petitioner stated in Part 3, Number 5 of the Form I-129, Petition for a Nonimmigrant Worker that the Beneficiary's last arrival in the United States was May 26, 2015.

The Petitioner offers insufficient and inconsistent evidence to support the claim that the Beneficiary was employed abroad for one continuous year between March 2020 and March 2023. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Here, the Form I-129 petition, attesting that the Beneficiary last arrived in the United States in May 2015, was signed by the Petitioner's president, who certified, under penalty of perjury, that he "reviewed this petition and that all of the information contained in the petition, including all responses to specific questions, and in the supporting documents, is complete, true, and correct." In contrast, the affidavit submitted on appeal, claiming that the Beneficiary has been employed abroad by the Ugandan company since January 2020, was also signed by the Petitioner's president. The Petitioner provides no explanation for these two contradictory statements presented by the same individual. Moreover, the Beneficiary's Forms I-20, dated between May 2020 and March 2022 and issued for the reason of "continued attendance," indicate that the Beneficiary was present in the United States as a student during that time. It is the Petitioner's burden to resolve any inconsistencies in the record with independent, objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* In the present matter, the Petitioner has not offered evidence to resolve the noted discrepancies.

The Petitioner does not offer evidence or credible argument establishing that the Beneficiary departed the United States after her arrival in 2015 and had one continuous year of qualifying employment abroad during the three years preceding the filing of this petition on March 24, 2023. Without additional evidence demonstrating the Beneficiary's actual employment abroad 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 it had a qualifying relationship with the foreign employer. *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.