U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19979923

Date: MAR. 28, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Multinational Managers or Executives

The Petitioner, a "global professional services firm," seeks to permanently employ the Beneficiary in the position of "principal consultant" under the first preference immigrant classification for multinational managers or executives. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

Section 203(b)(1)(C) of the Act makes an immigrant visa available to a beneficiary who "has been employed for at least 1 year by" the petitioning employer or a related entity "in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph," i.e., the filing of the immigrant petition. We will refer to this three-year period as the "qualifying period."

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that its organization employed the Beneficiary abroad for at least one year during a three-year qualifying period before the filing of the petition.[1]

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will remand the matter to the Director for the entry of a new decision.

Because the statutory language does not distinguish between beneficiaries who are already in the United States when the immigrant petition is filed, and those who are still abroad, the regulations at 8 C.F.R. § 204.5(j)(3)(i)(A) and (B) address the two different situations by adjusting the timing of the qualifying period. If the beneficiary is outside the United States at the time of filing, then the qualifying period is "the three years immediately preceding the filing of the [immigrant] petition." *See* 8 C.F.R. § 204.5(j)(3)(i)(A). For a beneficiary who is "already in the United States working for the same employer

[1] The record shows that the Director issued two adverse decisions regarding this petition. The first decision, issued in January 2021, denied the petition based on the determination that the Petitioner did not demonstrate one year of employment during the qualifying three-year period. In response to the Petitioner's motion to reopen and reconsider, the Director issued a second decision in July 2021, affirming the basis for the initial denial. The record shows that in February 2021 the Petitioner filed another petition (with receipt no. [redacted]), which was denied in September 2021.

or a [related employer]," 8 C.F.R. § 204.5(j)(3)(i)(B) sets the qualifying period as "the three years preceding entry as a nonimmigrant."

Here, the record shows that the Beneficiary has a lengthy period of continuous employment within the same multinational organization, which includes working for the Petitioner and its affiliate in India. The Beneficiary's employment with this organization started with the Indian affiliate in November 2011 and continued until June 2013, when the Beneficiary came to the United States to work for the Petitioner pursuant to an approved L-1 nonimmigrant visa. The Beneficiary continued to work for the Petitioner until April 2018, when he returned to India and resumed his employment with the foreign affiliate. After remaining in India until November 2018, the Beneficiary returned to the United States, again as an L-1 nonimmigrant, and resumed his position with the Petitioner.

In denying the petition, the Director relied on the Beneficiary's latest U.S. entry in November 2018 as "the three[-]year mark looking back" to determine whether the Beneficiary satisfied the foreign employment requirement. Because the Beneficiary was only employed abroad from April to November 2018 during the three-year period that preceded November 2018, the Director concluded that the Beneficiary did not have the required one year of employment abroad. The Director reasoned that "[i]t is irrelevant that the [B]eneficiary worked for a foreign affiliate of the [P]etitioner." Rather, the Director determined that "[w]hat is relevant is that the [B]eneficiary no longer meets the criteria of working in the United States during the time spent at the overseas affiliate."

We disagree with the Director. The full text of 8 C.F.R. § 204.5(j)(3)(i)(B) requires the Petitioner to demonstrate that:

> If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity.

In promulgating the implementing regulations, the former Immigration and Naturalization Service concluded that it was not the intent of Congress to disqualify "nonimmigrant managers or executives who have already been transferred to the United States" to work within the same corporate organization. *See* 56 Fed. Reg. 30,703, 30,705 (July 5, 1991). Thus, the regulation at 8 C.F.R. § 204.5(j)(3)(i)(B) allows USCIS to look beyond the three-year period immediately preceding the filing of the I-140 petition, when the beneficiary is already working for a qualifying U.S. entity. Without such a provision, a beneficiary employed in the United States by a qualifying organization in a nonimmigrant status for more than two years would not be eligible for immigrant classification as a multinational manager or executive.

There is no dispute that the Beneficiary was working for the Petitioner at the time the immigrant petition was filed and that at all times he remained in the employment of the same multinational organization.

Further, in a 2018 policy memorandum, U.S. Citizenship and Immigration Services (USCIS) stated that "the proper reference point for determining the one-year foreign employment requirement is the date the petitioner files the initial L-1 petition on the beneficiary's behalf, the starting point in the

alien's application for admission in L-1 status." 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)* at 3 (Nov. 15, 2018), https://www.uscis.gov/legal-resources/policy-memoranda. Although the memorandum specifically addresses L-1 nonimmigrant petitions for intracompany transferees, the same reasoning applies to immigrant petitions for multinational managers and executives, because both classifications require calculation of at least one year of qualifying employment abroad during a three-year period.[2]

The same memorandum states:

> By regulation, time a beneficiary spent working in the United States "for" a qualifying organization does not count towards the one-year foreign employment requirement; however, this time does result in an adjustment of the three-year period (8 CFR 214.2(l)(1)(ii)(A)). A nonimmigrant in the United States will be considered to have been admitted to work "for" the qualifying organization if he or she is employed by that organization as a principal beneficiary of an employment-based nonimmigrant petition or application, such as H-1B or E-2 executive, supervisory, or essential employee.

USCIS Policy Memorandum PM-602-0167 at 4.

Applying the reasoning of the above memorandum to the matter at hand, the Beneficiary's departure from the United States and return to India from April to November 2018 did not trigger a reset of the three-year qualifying period to the date of the Beneficiary's latest U.S. entry as an L-1 nonimmigrant in November 2018. Rather, the relevant timeframe to consider employment abroad would still be the three-year period from June 2010 to June 2013, which preceded the Beneficiary's initial U.S entry as an L-1 nonimmigrant coming to work for the Petitioner. During that three-year period, the Beneficiary was employed abroad by a qualifying foreign employer for more than the required one year. As contemplated in the memorandum, the Beneficiary's 2013 U.S. entry was for the purpose of working for the Petitioner and therefore it did not disrupt the continuity of his accrued period of qualifying foreign employment. Likewise, that continuous period was not interrupted by the Beneficiary's subsequent return to India from April to November 2018, during which the Beneficiary resumed his former employment with the foreign affiliate.

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[2] The regulation at 8 C.F.R. § 214.2(l)(12) provides:

> ***Limits.*** An alien who has spent . . . seven years in the United States in a managerial or executive capacity under section 101(a)(15) (L) and/or (H) of the Act may not be readmitted to the United States under section 101(a)(15) (L) or (H) of the Act unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year . . . In view of this restriction, a new individual petition may not be approved for an alien who has spent the maximum time period in the United States under section 101(a)(15)(L) and/or (H) of the Act, unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year.

Here, the Beneficiary did not remain outside the U.S. for over a year to warrant calculation of a new L-1 time-period. His entry time-period to calculate his maximum stay in L-1 status is still viewed from the June 2013 time-period.

As the AAO previously observed on this question, "both the statute and the regulations focus on the continuity of the beneficiary's employment with the same multinational organization. This is not inconsistent with the purpose of the intracompany transferee visa classification, which is to facilitate the international transfer of multinational businesses' key personnel." *Matter of S-P-, Inc.*, Adopted Decision 2018-01 at 3 (AAO Mar. 19, 2018). Thus, whether a beneficiary is now in the United States or abroad at the time of filing the immigrant petition, the determinative issue is whether there has been a two-year interruption in that beneficiary's qualifying employment within the larger multinational organization. In other words, "the statute and regulations clearly sever eligibility for this multinational visa classification for a beneficiary who is outside the United States if there was an interruption in employment with the petitioner's multinational organization for more than two years during the three years prior to filing the immigrant visa petition." *Id.* Here, there was no such interruption.

Therefore, the Director's determination that the Beneficiary's L-1 entry in November 2018 is the new reference point for calculating the qualifying three-year timeframe is incorrect. As discussed above, the Beneficiary's entire time-period in the United States as an L-1 nonimmigrant was spent working for the Petitioner and is not interruptive of the previously accrued period of foreign employment. Likewise, the six-month period the Beneficiary spent abroad in 2018 was also spent working for the same multinational national organization and similarly was not interruptive of the Beneficiary's original period of employment abroad.

For the above reasons, we will withdraw the Director's decision and remand the matter for consideration of the petition on its merits.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision.