U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 20811822

Date: OCT. 31, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Multinational Manager or Executive

The Petitioner, a real estate investment and development company, seeks to permanently employ the Beneficiary as its senior vice president 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). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Beneficiary had at least one year of employment with a qualifying entity abroad in the three-year period preceding the filing of the petition. The Petitioner subsequently filed a motion to reopen and reconsider. The Director granted the motion in order to consider the arguments presented and affirmed the affirmed the denial of the petition. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc*., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will sustain the appeal.

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 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. However, the regulations at 8 C.F.R. § 204.5(j)(3)(i)(A) and (B) provide different reference points for purposes of calculating the relevant 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

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."

The regulations draw this distinction because, as we stated in *Matter of S-P-, Inc.*, Adopted Decision 2018-01, at 3 (AAO Mar. 19, 2018):

> 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.

The present case shows the following timeline:

- May 2015: The Petitioner's foreign parent company hired the Beneficiary as "senior vice president, purchasing and cost control center."
- July 2017: The Beneficiary was admitted to the United States as a B-1 nonimmigrant visitor for business while still employed by the foreign parent company.
- December 2017: During the Beneficiary's authorized stay in B-1 status, the Petitioner filed a nonimmigrant petition (Form I-129) on the Beneficiary's behalf, seeking to change her nonimmigrant status from B-1 visitor to L-1A intracompany transferee. The Beneficiary was granted the change of status and authorized to work for the Petitioner in L-1A status from December 19, 2017 until December 17, 2020.
- October 2020: The Petitioner filed this immigrant petition on the Beneficiary's behalf with evidence that it had continued to employ her pursuant to the approved L-1A petition.

In denying the petition, the Director stated:

> The record shows that the beneficiary departed her home country . . . and entered the United States on July 11, 2017 as a B-1 nonimmigrant visitor . . .. An I-129 Petition for a Nonimmigrant Worker, was filed on behalf of the beneficiary on December 08, 2017, to change the visa classification to an L-1A, that was approved on December [19], 2017. Thus, it cannot be concluded that the beneficiary entered the United States for the purpose of "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."
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> Accordingly, the beneficiary does not meet the criterion described in 8 C.F.R. § 204.5(j)(3)(i)(B) and must have her period of employment abroad analyzed under the criterion described at 8 C.F.R. § 204.5(j)(3)(i)(A), which states that the relevant three-year time period is that which falls within the three years prior to the filing of the instant petition. As the instant petition was filed on October 15, 2020, and it is well established that the beneficiary was present in the United States since prior to October 15, 2017, it cannot be concluded that the beneficiary was employed abroad during the relevant three-

> year time period, regardless of whether or not the petitioner is able to provide evidence of the beneficiary's qualifying employment abroad.

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.

The regulation does not address the manner in which a given beneficiary first enters the United States, and there is no dispute that the Beneficiary was working for the Petitioner in L-1A status at the time the Petitioner filed the immigrant petition.

The Director acknowledged that 8 C.F.R. § 204.5(j)(3)(i)(B) provides that, for beneficiaries who are currently in the United States in L-1A status, the relevant qualifying period mentioned in the statute should be the three-year period preceding the time of their admission in L-1A status. The Director also recognized that Congress did not intend for the statute to exclude managers or executives who have already been transferred to the United States to work for a qualifying entity. However, the Director applied an overly restrictive interpretation of 8 C.F.R. § 204.5(j)(3)(i)(B) by concluding this provision could not apply to a beneficiary who was granted a change of status to L-1A subsequent to admission in a different nonimmigrant status. Contrary to the Director's determination, the Beneficiary's five-month period of stay in B-1 status, during which she remained an employee of the foreign entity, does not impact the applicability of 8 C.F.R. § 204.5(j)(3)(i)(B) to this case.

Statutes and regulations must be read as a whole, and interpretations should be consistent with the purpose of the Act. As we emphasized in *Matter of S-P-*, both the statute and the regulations focus on the continuity of a given beneficiary's employment with the same multinational organization. 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.

Unlike the facts presented in *Matter of S-P-*, where the beneficiary had a lengthy interruption in their employment within the petitioner's multinational organization that made them ineligible for classification under 203(b)(1)(C) of the Act, the record here establishes that the Beneficiary has been continuously employed by foreign and U.S. entities within the same multinational organization since May 2015. While she was not working for the Petitioner in the United States between her admission in July 2017 and the approval of the L-1A petition in December 2017, the provision at 8 C.F.R. § 204.5(j)(3)(i)(B) nevertheless applies because she was working for the Petitioner in L-1A status at the time of filing and did not have break in her employment that was lengthy enough to be considered interruptive of her qualifying employment abroad. An interpretation of 8 C.F.R. § 204.5(j)(3)(i)(B)

that excludes its applicability to the facts presented here would not be consistent with the purpose of the statute and regulations.

In this case, the "three years preceding entry as a nonimmigrant" is calculated from the Petitioner's filing of the L-1A petition on the Beneficiary's behalf in December 2017.[1] The record establishes that the Beneficiary was employed by a qualifying foreign entity outside the United States from May 2015 until her admission in July 2017. She therefore had more than one year of qualifying employment during the relevant three-year period and the requirements of the statute and of 8 C.F.R. § 204.5(j)(3)(i)(B) have been satisfied. Accordingly, the Director's decision is withdrawn.

As we have withdrawn the sole grounds for denial, and the record establishes, by a preponderance of the evidence, that all other eligibility requirements for the requested classification have been met, we will sustain the appeal.

**ORDER:** The appeal is sustained.

[1] This interpretation of 8 C.F.R. § 204.5(j)(3)(i)(B) is supported by 2 *USCIS Policy Manual* L.6(G), which addresses the one-year foreign employment requirement applicable to adjudication of L-1 petitions. 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. The referenced policy states that, with regard to L-1 beneficiaries who had initially entered the United States under a different nonimmigrant classification, "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."