U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25937337

Date: MAR. 31, 2023

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Multinational Managers or Executives)

The Petitioner buys and sells cars, yachts, and industrial equipment and seeks to permanently employ the Beneficiary as its president and general manager. The company requests his classification under the first-preference, immigrant visa category for multinational managers or executives. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Texas Service Center denied the petition. The Director concluded that, contrary to the Act and regulations, the Petitioner did not demonstrate:

- the Beneficiary's employment abroad for at least one of the three years immediately preceding his U.S. entry as a nonimmigrant;
- his foreign and proposed U.S. employment in the claimed executive capacity;
- or the company's ability to pay the offered position's proffered wage.

We dismissed the Petitioner's following appeal and combined motions to reopen and reconsider. Our decisions affirmed the Director's finding that the company did not demonstrate the Beneficiary's qualifying foreign employment during the relevant three-year period and reserved our consideration of the other denial grounds. *See In Re: 18347872* (AAO Sep. 21, 2022).

The matter returns to us on the Petitioner's motion to reconsider. The company contends that we miscalculated the three-year period within which the Beneficiary had to work abroad for at least one year.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we conclude that the company has not established our alleged legal error. We will therefore dismiss the motion.

I. LAW

A motion to reconsider must demonstrate that our prior decision misapplied law or U.S. Citizenship and Immigration Services (USCIS) policy based on the record at the time of the decision. 8 C.F.R.

§ 103.5(a)(3). We may grant a motion to reconsider that meets these criteria and demonstrates eligibility for the requested benefit.

II. ANALYSIS

The Beneficiary works in the United States for the Petitioner, a subsidiary of his purported former employer in Uruguay. Thus, the Petitioner must demonstrate that its Uruguayan parent employed the Beneficiary abroad for at least one year "in the three years preceding [his U.S.] entry as a nonimmigrant." *See* 8 C.F.R. § 204.5(j)(3)(i)(B). His entire year of foreign employment must have "occurred in the three years preceding [his] entry as a nonimmigrant." *Matter of S-P-, Inc.*, Adopted Decision 2018-01, *2 (AAO Mar. 19, 2018); *see generally* 6 *USCIS Policy Manual* F.(4)(A), https://www.uscis.gov/policy-manual ("The petitioner must demonstrate that the beneficiary was employed abroad by a qualifying organization for 1 year out of the previous 3 years.")

In our two prior decisions, we found the Beneficiary's three-year window for foreign employment to run from June 2004 to June 2007, when he *entered* the United States in L-1A nonimmigrant visa status to work for the Petitioner. *See* section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L) (describing requirements for nonimmigrant intracompany transferees). On motion, the Petitioner contends that the three-year period should span January 2004 to January 2007, when the company *filed* its L-1A petition for the Beneficiary.

The dates of the three-year period potentially matter. Although the Petitioner originally asserted the Beneficiary's work abroad for at least one year from January 2005 to January 2006 within the June 2004 to June 2007 window, we found insufficient evidence of that purported one-year period of employment. The Petitioner contends that - within the proposed January 2004 to January 2007 window - Uruguayan social security records show that the foreign parent employed the Beneficiary for at least one year from January 2004 to January 2005.

In our prior decision, however, we considered the Uruguayan social security records and found them unreliable and insufficient to demonstrate the parent's purported employment of the Beneficiary abroad. The records state that they cover his payroll history in Uruguay from April 1996 to February 2021. But they indicate the parent's employment of him from only March 2003 to January 2005. The Petitioner's motion does not explain why the social security records do not reflect his purported, continued work for the parent from January 2005 to January 2006. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies). Also, the Petitioner's motion does not allege that we erred in evaluating the social security records or previously submitted evidence of his purported foreign employment from January 2005 to January 2006. Thus, even if we agreed that the appropriate three-year window for the Beneficiary's foreign employment spans January 2004 to January 2007, the motion would not demonstrate his required one year of work abroad within that period. The unresolved inconsistencies between the social security records and the Petitioner's prior claim and evidence of foreign employment cast too much doubt on the authenticity and accuracy of the social security records. We will therefore dismiss the motion.

Also, contrary to the Petitioner's contention, the motion does not demonstrate our alleged miscalculation of the three-year period. To support its proposed three-year period, the Petitioner cites

USCIS policy for L-1 nonimmigrant visa petitions. The company argues that L-1 nonimmigrant policy should also apply to immigrant petitions for multinational managers and executives "because both classifications require at least one year of foreign employment during a three-year period."[1] The Petitioner notes that, under the Agency's L-1 policy, "the proper reference point for determining the 1-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 noncitizen's application for admission in L-1 status." 2 *USCIS Policy Manual* L.(6)(G)(2). The Petitioner therefore contends that, for purposes of immigrating as a multinational executive, the three-year window for the Beneficiary's foreign employment should immediately precede the January 2007 filing date of the company's L-1A petition for him.

The Petitioner, however, cites a portion of the USCIS L-1 policy addressing determination of the one-year period of foreign employment, not the three-year window in which that work must occur. *See* 2 *USCIS Policy Manual* L.(6)(G)(2). The Petitioner's citation supports the policy that a "beneficiary must meet the 1-year foreign employment requirement at the time that the petitioner files the L-1 petition." *Id.* That policy derives from the regulatory rule requiring a petitioner to demonstrate eligibility "at the time of filing the benefit request." *See* 8 C.F.R. § 103.2(b)(1).

Another section of USCIS L-1 policy, however, addresses determination of the three-year window for foreign employment. *See* 2 *USCIS Policy Manual* L.(6)(G)(4). This policy section indicates that a three-year period precedes the date of a beneficiary's U.S. nonimmigrant admission "to work for a qualifying organization." *Id.* The policy states: "USCIS considers a nonimmigrant in the United States to have come to this country to work for the qualifying organization if the nonimmigrant is employed by that organization as a principal beneficiary of an employment-based nonimmigrant petition or application." *Id.* Thus, USCIS L-1 policy does not support the Petitioner's proposed January 2004 to January 2007 window for foreign employment based on the filing date of the L-1A petition for the Beneficiary. Rather, the policy supports the June 2004 to June 2007 window that we found stemming from his L-1A admission date. The Petitioner's motion therefore does not demonstrate our alleged miscalculation of the three-year period for the Beneficiary's foreign employment.

For the foregoing reasons, the Petitioner's motion does not establish the Beneficiary's qualifying foreign employment during the relevant three-year period. We will continue to reserve decisions on the Director's other denial grounds. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule, courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.")

ORDER: The motion to reconsider is dismissed.

[1] Similar to petitioners for multinational managers and executives, prospective employers of L-1 nonimmigrants must submit "[e]vidence that the alien has at least 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).