U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19429491

Date: FEB. 14, 2022

Appeal of California Service Center Decision

Form I-129, Petition for L-1B Specialized Knowledge Worker

The Petitioner, a developer of optical and ethernet transport solutions, seeks to temporarily employ the Beneficiary as its service manager under the L-1B classification for intracompany transferees. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1B classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee with "specialized knowledge" to work temporarily in the United States.

The Director of the California Service Center denied the petition concluding the record did not establish that: (1) the Beneficiary is employed abroad by a qualifying branch of the Petitioner, as claimed; or (2) the Beneficiary 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. 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. 1101 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for the L-1B 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 his or her services to the same employer or a subsidiary or affiliate thereof in a specialized knowledge capacity. *Id.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

A "qualifying organization" means a United State or foreign firm, corporation or other legal entity which: (1) meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary as defined at 8 C.F.R. § 214.2(l)(1)(ii); (2) is or will be doing business

as an employer in the United States in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the noncitizen's stay in the United States as an intracompany transferee; and (3) otherwise meets the requirements of section 101(a)(15)(L) of the Act. 8 C.F.R. § 214.2(l)(1)(ii)(G).

II. ANALYSIS

The issue to be addressed is whether the statute and regulations for L-1 intracompany transferees permit the transfer of a foreign employee who has been employed abroad by the petitioning U.S. entity, rather than by a separate foreign entity within the same qualifying organization.

The Director determined that the Beneficiary, who resides and works in Mexico, is employed by the petitioning U.S. entity, despite the Petitioner indicating on the Form I-129 L Classification Supplement that his employer abroad is a "branch" office in Mexico.[1] The Director concluded that based on the definition of "qualifying organization" at 8 C.F.R. § 214.2(l)(1)(ii)(G), the Petitioner must establish that the Beneficiary is employed abroad by the Petitioner's foreign "parent, branch, affiliate or subsidiary." Because the Petitioner did not establish that it has a branch, affiliate, subsidiary or parent in Mexico, the Director determined it did not demonstrate that it has a qualifying relationship with the Beneficiary's foreign employer or that the Beneficiary has been employed abroad by a qualifying organization.

On appeal, the Petitioner asserts that based on the statute and relevant case law, the L-1 classification does not require a petitioner to establish that a beneficiary has been employed abroad by a separate foreign entity or branch office. The Petitioner asserts that direct employment with a qualifying U.S. entity, if based outside the United States, allows a noncitizen to accrue the required one year of continuous employment abroad with a qualifying organization in the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(iii). The Petitioner emphasizes that the statute specifically provides for L-1 classification to be granted to a noncitizen who has been "employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof," and who seeks to enter the United States temporarily in order "to continue to render his services to the same employer or to an affiliate or subsidiary thereof." Section 101(a)(15)(L) of the Act.

In support of its assertions, the Petitioner relies on *Matter of Chartier*, 16 I&N Dec. 284 (BIA 1977), in which the Board of Immigration Appeals determined that a Canada-based employee of a U.S. petitioner was eligible to be classified as an L-1 nonimmigrant despite the petitioner not having a

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[1] The Form I-129 L Classification supplement requires a petitioner to indicate whether the U.S. company and the company abroad have a "parent," "branch," "subsidiary," "affiliate" or "joint venture" relationship. The Petitioner marked "branch" but added a clarifying statement that the Beneficiary "works under the control and supervision of the Petitioner in Mexico." We observe that the form does not provide an option for direct employment in a foreign endeavor and note that the "branch" option most closely matches the facts of this case. *See* 8 C.F.R. § 214.2(l)(1)(ii)(J) (defining "branch" as an "operating division or office of the same organization housed in a different location").

The Director determined that the Petitioner submitted sufficient evidence to establish that it supervises and controls the Beneficiary's work and serves as his employer in Mexico. As we agree with the Director's conclusion, we decline to reach any argument based on *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318 (1992) or *Clackamas Gastroenterology Assocs. P.C. v. Wells*, 538 U.S. 440 (2003). Instead, as will be discussed, the matter may be resolved by applying the regulations and binding precedent that govern L-1 qualifying relationships.

related legal entity in Canada. The Board held that there should be no distinction between "United States companies with subsidiaries abroad and United States companies with employees abroad who work directly for the parent company."

The Petitioner's assertions are persuasive. The former Immigration and Naturalization Service directly addressed *Chartier* when it published the final rule defining "qualifying organization," at which time it clarified that all L-1 petitioners must establish the existence of at least one parent, branch, affiliate, or subsidiary that is doing business outside the United States:

> The Service's position is that the requirement to continue to do business in the U.S. and at least one other country for the duration of the L's stay does not conflict with *Chartier*. That case involved a United States company with an employee stationed abroad. The employee was not employed by a subsidiary or other legal entity of the U.S. employer but reported directly to the parent company in the United States. The U.S. company was an international corporation with a subsidiary in Belgium. The facts of this case are consistent with L classification, and the Service has not attempted to alter the situation where a U.S. company can have employees abroad unattached to a foreign entity and qualify to transfer such employees to the United States under the L classification.

52 Fed. Reg. 5738, 5741 (Feb. 26, 1987).

The current definition of "qualifying organization" at 8 C.F.R. § 214.2(l)(1)(ii)(G) was implemented by final rule in 1991, but no substantive changes were made to the prior definition, and the agency did not indicate an intent to overturn *Chartier* as a precedent decision. *See* 56 Fed. Reg. 61111 (Dec. 2, 1991). More recently, in a policy memorandum addressing the one-year foreign employment requirement, USCIS stated that "[t]he one-year foreign employment requirement is only satisfied by the time a beneficiary spends physically outside the United States working full-time for the petitioner or a qualifying organization." *See* 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)*, 3 (Nov. 15, 2018), https://www.uscis.gov/laws-and-policy/policy-memoranda.

An L-1 petitioner that meets the definition of "qualifying organization" by doing business in the United States and through a qualifying branch, parent, affiliate or subsidiary abroad, and which will continue to do business through at least one qualifying entity abroad for the duration of a beneficiary's intended stay in the United States, is eligible to transfer its foreign employee to the United States. Following *Matter of Chartier*, the petitioner remains eligible even if that employee is working in a country in which the petitioner has no branch, affiliate, subsidiary or parent. *See* 16 I&N Dec. at 287-88.

As noted, the Director determined that the Beneficiary is employed by the U.S. Petitioner in Mexico. The record contains ample evidence of the Petitioner's business activities in the United States, Mexico, and the Latin American region. The record further establishes that the Petitioner meets the definition of qualifying organization, as it is a subsidiary of a German parent company and has qualifying subsidiaries and affiliates doing business in approximately 15 countries worldwide, as evidenced by the 2019 annual report for the Petitioner's corporate group and USCIS' approval of its blanket L petition in 2020.

For the reasons discussed, we conclude that the Petitioner has established that the Beneficiary has the required one continuous year of employment abroad with a qualifying organization in the three years preceding the filing of the petition. As the Petitioner has overcome the Director's stated grounds for denial of the petition, the appeal will be sustained.

ORDER: The appeal is sustained.