U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29565705

Date: DEC. 28, 2023

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a bakery and cafe, seeks to temporarily employ the Beneficiary as the general manager of its new office 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 the record did not establish that the Beneficiary had 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 Director further determined that the Petitioner did not establish the Beneficiary was employed abroad, or would be employed in the United States, in a managerial or executive capacity. 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 as a new office,[1] a qualifying organization must have employed the beneficiary abroad in a managerial or executive capacity for one continuous year out of the preceding three years. Section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l)(3)(v)(B). 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.*

[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.

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. ANALYSIS

The primary issue we will address is whether the Petitioner demonstrated that 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, as required by 8 C.F.R. § 214.2(l)(3)(iii) and (l)(3)(v)(B).

This foreign employment requirement is only satisfied by the time a beneficiary spends physically outside the United States working full-time for a qualifying entity; a petitioner cannot use any time that the beneficiary spent in the United States to meet the one year of foreign employment requirement, even if a qualifying foreign entity continued to employ and pay the beneficiary. *See* 8 C.F.R. § 214.2(l)(1)(ii)(A) (providing that periods spent in the United States shall not be counted toward fulfillment of the one year of continuous employment abroad requirement); *see generally* 2 *USCIS Policy Manual* L.6(G), https://www.uscis.gov/policy-manual (discussing the one-year foreign employment requirement).

The Petitioner filed the petition on April 7, 2023, and therefore must establish that the Beneficiary was employed by a qualifying foreign entity abroad on a full-time basis for one continuous year in the three years preceding this date.

On the L Classification Supplement to Form I-129, Petition for a Nonimmigrant Worker, The Petitioner indicated that the Beneficiary had been employed by its Peruvian parent company from "02/01/2001 to Present." The Petitioner also submitted the Beneficiary's monthly pay slips issued by the foreign entity between February 2021 and February 2022 showing that she worked as an administrative assistant during this 13-month period. The pay slips indicate her "date of entry" with the foreign company as February 1, 2021. Finally, an undated letter from the foreign entity's manager indicated that the Beneficiary had worked as a logistics assistant during her first two years with the company, prior to being hired to work remotely as an administrative assistant. However, the letter did not provide her dates of employment in the logistics assistant position, nor was it accompanied by any corroborating evidence of her employment with the foreign entity prior to February 1, 2021.

In a request for evidence (RFE), the Director acknowledged the Petitioner's claim that the Beneficiary had been employed by a qualifying foreign entity since at least February 1, 2021, but emphasized that she had spent most of her time physically present in the United States since that date and therefore did not appear to have the required one year of full-time employment abroad during the three years preceding the filing of the petition. In response to the RFE, the Petitioner submitted a June 2023 letter from the foreign entity's general manager and owner, who stated that the Beneficiary was employed abroad as a logistics assistant from January 2019 until January 2021. However, as noted by the Director, the letter does not indicate that her employment was full-time and it was not accompanied

by documentary evidence such as the Beneficiary's pay statements, personnel records or other evidence to corroborate her foreign employment during that two-year period.

On appeal, the Petitioner maintains that "the applicable one-year foreign managerial period started with the beneficiary's position as Logistics Assistant in January 2019 to January 2021, and then continued from February 2021 to February 2022 as the Administrative Assistant (Management Assistant)." However, the Petitioner does not address the Director's determination that it provided insufficient evidence to corroborate the Beneficiary's full-time employment with its parent company prior to February 2021.

The Petitioner also emphasizes on appeal that the Beneficiary worked for the foreign entity abroad for at least one year in the three years preceding her last admission to the United States in January 2022. However, in determining whether a beneficiary satisfies the one-year foreign employment requirement, U.S. Citizenship and Immigration Services (USCIS) will consider the three-year period preceding the date the L-1 petition is filed, regardless of when the beneficiary was, or will be, admitted to the United States. *See generally* 2 *USCIS Policy Manual*, *supra*, at L.5(G)(4). Therefore, even if the Petitioner had established that the Beneficiary worked for the foreign entity as a logistics assistant between January 2019 and January 2021, the relevant three-year period is between April 7, 2000, and April 7, 2023. The record does not reflect that the Beneficiary had one year of full-time employment abroad during this period.

As discussed above and in the Director's decision, a petitioner cannot use any time that the beneficiary spent in the United States to meet the one-year foreign employment requirement, even if the qualifying foreign entity paid the beneficiary and continued to employ the beneficiary while the beneficiary was in the United States. *See generally* 2 *USCIS Policy Manual*, *supra*, at L.6(G)(1). As noted by the Director in the RFE, Department of Homeland Security arrival and departure records indicate the Beneficiary's physical presence in the United States in B-2 and F-1 nonimmigrant status during the following periods:

Arrival	Departure	Length of Stay
January 9, 2021	April 29, 2021	111 days
May 17, 2021	June 26, 2021	41 days
June 28, 2021	December 20, 2021	177 days
January 26, 2022	Remained in the United States as of April 7, 2023	437 days

Therefore, in the three years preceding the filing of the petition, the Beneficiary spent 766 days (approximately two years and one month) physically present in the United States and only 329 days outside the United States. As the Beneficiary did not spend at least one year outside the United States working for the foreign entity during this three-year period, the Petitioner did not establish that she met the one-year foreign employment requirement at the time of filing. Accordingly, we will dismiss the appeal.

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 the Beneficiary was employed abroad, or would be employed in the United States, in a managerial or executive capacity. *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 record does not establish that the Beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.