U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27443845

Date: JUL. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner,[1] an online retailer of pet grooming products, seeks to temporarily employ the Beneficiary as the chief executive officer (CEO) 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 Texas Service Center revoked the approval of the petition, concluding that 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,[2] a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one

[1] The Form I-290B, Notice of Appeal or Motion, was filed by [redacted] which is consistently identified in the record as the Beneficiary's intended U.S. employer. The Form I-129, Petition for a Nonimmigrant Worker, identified the individual who signed the petition (Y-Z-, an owner and officer of the foreign entity) as the "individual petitioner" and did not identify a "company or organization name" in Part 1. Although the Director's decision identifies Y-Z- as the petitioner in this case, we are issuing this decision to the U.S. employer in accordance with the updated information provided on the Form I-290B. There is no indication that the individual identified on the Form I-129 intended to employ the Beneficiary in L-1 status.

[2] The term "new office" refers to an organization which has been doing business in the United States for less than one year.

continuous year within three years preceding the beneficiary's application for admission into the United States. 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 his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

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).

Under U.S. Citizenship and Immigration Services (USCIS) regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, a director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B). If the intended revocation is based in whole or in part on derogatory information that is discovered outside the record of proceedings, USCIS is obligated to provide notice of such information, and to make that derogatory information part of the record along with any rebuttal provided by the Petitioner. 8 C.F.R. § 103.2(b)(16)(i).

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).

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.

The Petitioner filed the petition on February 22, 2022, and therefore must establish that the Beneficiary was employed by a qualifying foreign entity for one continuous year in the three years preceding this date. The record reflects that the Beneficiary had been admitted to the United States in F-1 nonimmigrant status on January 10, 2021 and was seeking a change of nonimmigrant status; he did spend any time physically outside the United States after January 10, 2021. Therefore, although the Petitioner indicates he has continued to receive a salary from the foreign entity, his period of stay in F-1 status cannot be counted towards his employment abroad. The Petitioner must show that he had

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.

one year of continuous full-time employment abroad between February 2019 and his January 2021 entry to the United States.

On the Form I-129, L Classification Supplement, the Petitioner identified a Chinese company as the Beneficiary's foreign employer and stated that it has an affiliate relationship with this company. However, it did not complete the section of the petition that requested his dates of employment with this entity and other details regarding his foreign employment.

In a cover letter submitted with the petition, former counsel indicated that the Beneficiary has been employed by the Petitioner's claimed parent company in Singapore for "a couple of years." Her letter does not directly mention the Chinese entity identified as the Beneficiary's foreign employer on the Form I-129 but notes that the Singapore company maintains a location in [redacted] China. The initial evidence also included a "letter of dispatch" dated December 20, 2020. The letter bears the corporate seal of the Singapore company and is on the letterhead of a Malaysian company with a similar name. The letter states that the Beneficiary "acted as Secretary of CEO of the Senior Manager department of our company" but does not provide his dates of employment. Finally, the Petitioner submitted the Beneficiary's resume, in which he indicates that he has served as "Assistant to the President" for the Chinese entity identified on the Form I-129 since July 2018.

The Director initially approved the petition in April 2022, despite the lack of evidence establishing that the Beneficiary had the required one year of full-time employment with a qualifying entity abroad. Based on the foregoing evidence, we note that the initial evidence did not consistently identify the name of his foreign employer, his job title, or his dates of employment, nor did it include any independent, objective evidence that might resolve these inconsistencies, such as copies of payroll or personnel records corroborating his employment abroad.

The Director issued a notice of intent to revoke (NOIR) on September 21, 2022, and then issued a second NOIR on October 26, 2022, after reviewing the Petitioner's response to the initial notice.[3] The issue of the Beneficiary's continuous employment abroad was primarily addressed in the latter NOIR, which discussed, in part, information obtained from the Beneficiary as part of an administrative site visit conducted by USCIS Fraud Detection and National Security (FDNS) officers in May 2022 and information obtained from Department of Homeland Security (DHS) systems regarding the Beneficiary's arrivals, departures and periods of stay in the United States.

The Director advised the Petitioner that it was evident that the Beneficiary spent much of his time in the United States between February 2019 and the filing of the petition in February 2022 and therefore could not establish that he was employed abroad on a full-time basis for at least one year during this period. The record reflects that the Petitioner did not respond to the Director's second NOIR. Accordingly, the Director revoked the approval of the petition, in part, based on the lack of evidence that the Beneficiary meets the foreign employment requirement for this classification.

On appeal, the Petitioner asserts that the Director "misread the case facts in its decision . . . questioning Beneficiary's employment history in China" and "failed to consider evidence submitted in total." The

[3] In its response to the first NOIR, the Petitioner sought to demonstrate that the Beneficiary's foreign employer was in fact the Chinese entity identified on the Form I-129.

Petitioner indicates that additional evidence or explanation would be submitted to "clarify the past employment history," but has not submitted a brief and/or evidence in support of the appeal, despite requesting a 30-day extension in which to do so.

Upon review, we agree that the Petitioner did not establish that the Beneficiary had the required one year of continuous full-time employment abroad in the three years preceding the filing of this petition. The Director emphasized in the NOID that DHS records of the Beneficiary's arrivals and departures show a significant amount of time spent in the United States during this relevant period (February 22, 2019 until February 22, 2022). Specifically, he was in the United States as a B-2 visitor or F-1 student during the following periods:

- May 11-18, 2019 (8 days)
- August 22, 2019 until December 10, 2019 (111 days)
- February 2, 2020 until September 26, 2020 (238 days)
- January 10, 2021 until February 22, 2022 (date of filing – 409 days)

Based on this information, the Beneficiary spent 766 days (approximately two years and one month) physically in the United States in the three years preceding the filing of the petition. Therefore, the Petitioner cannot establish that he had the required one year of continuous full-time employment abroad during this period. As discussed, 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. Here, the Petitioner did not establish that the Beneficiary met this requirement at the time of filing. Accordingly, we will affirm the Director's decision to revoke the approval of the petition.

III. RESERVED ISSUES

Since the identified basis for revocation 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 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. Accordingly, we affirm the Director's decision to revoke the approval of the petition.

ORDER: The appeal is dismissed.