U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19068937

Date: JUNE 2, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Multinational Managers or Executives

The Petitioner, a logistics services company, seeks to permanently employ the Beneficiary as its chief executive officer (CEO) 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).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the petitioning organization employed the Beneficiary abroad for at least one year during a three-year qualifying period before the filing of the petition.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will remand the matter to the Director for the entry of a new decision.

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."

Because 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, the regulations at 8 C.F.R. § 204.5(j)(3)(i)(A) and (B) address the two different situations by adjusting the timing of the 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 an adopted decision:

> 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.

Matter of S-P-, Inc., Adopted Decision 2018-01, at 3 (AAO Mar. 19, 2018). In that same decision, we reasoned that, whether a beneficiary is now in the United States or abroad, the determinative issue is whether or not there has been a two-year interruption in that beneficiary's qualifying employment within the larger organization.

The present case shows the following timeline:

- June 2016 to December 2017: The Petitioner's foreign affiliate employs the Beneficiary.
- December 2017: The Beneficiary enters the United States as an F-2 spouse of a nonimmigrant student.
- June 2019: While the Beneficiary is still in the United States, the Petitioner files a nonimmigrant petition on the Beneficiary's behalf, seeking to change his nonimmigrant status from F-2 to L-1A.
- August 2019: The Beneficiary begins working for the Petitioner in the United States upon approval of the L-1A nonimmigrant petition.
- September 2020: The Petitioner files an immigrant petition on the Beneficiary's behalf.

In denying the petition, the Director stated that, because the Beneficiary entered the United States in December 2017 but did not change to L-1A nonimmigrant status until September 2019, the Beneficiary did not enter the United States for the purpose of working for the Petitioner or a related, qualifying employer. As a result, the Director stated that the three-year qualifying period must be calculated under 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," i.e., from September 28, 2017 until September 28, 2020. The Director concluded that the Beneficiary could not have been employed abroad for at least a year during that period, because he has been in the United States since December 2017.

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 at the time the Petitioner filed the immigrant petition.

In a 2018 policy memorandum, U.S. Citizenship and Immigration Services (USCIS) stated, 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."[1] Although the memorandum specifically addresses L-1 nonimmigrant 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 same memorandum states:

> By regulation, time a beneficiary spent working in the United States "for" a qualifying organization does not count towards the one-year foreign employment requirement; however, this time does result in an adjustment of the three-year period (8 CFR 214.2(l)(1)(ii)(A)). A nonimmigrant in the United States will be considered to have been admitted to work "for" the qualifying organization if he or she is employed by that organization as a principal beneficiary of an employment-based nonimmigrant petition or application.[2]

In this case, the Beneficiary entered the United States as a nonimmigrant in F-2 status in December 2017, and the Petitioner filed an L-1 petition on the Beneficiary's behalf in June 2019. Following the reasoning of the USCIS policy memorandum, the relevant time frame to consider employment abroad would be from June 2016 to June 2019. During that three-year period, the Beneficiary was employed abroad by a qualifying foreign employer for more than the required one year.

For the above reasons, we will withdraw the Director's decision and remand the matter for consideration of the petition on its merits.

We also note that there are issues of concern that may bear further inquiry. When the Beneficiary applied for his F-2 nonimmigrant visa in November 2017, he described his position with the foreign company as "CEO ASSISTANT." This brief description, provided without elaboration on his visa application, raises the question of whether the Beneficiary was the CEO, as the Petitioner now asserts, or the assistant to an unnamed CEO.

Also, the record contains what purport to be printouts from the foreign employer's website, [redacted] dated April 2019. We have not been able to confirm that this website exists, or that it did exist in 2019. This issue raises questions about the extent to which the claims of the petitioning employer, and its affiliate abroad, are amenable to verification.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision.

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[1] 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/legal-resources/policy-memoranda.

[2] *Id.*