U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28184353

Date: SEP. 25, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a manufacturer and distributor of flooring products, seeks to permanently employ the Beneficiary in the position of senior director, customer service and supply chain for North America, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary, who had resided in the United States in L-2 nonimmigrant status since October 2019, had the required one year of employment abroad in the three years immediately preceding the filing of the petition. The Director further determined that the Petitioner did not demonstrate that the Beneficiary was employed abroad in a managerial 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 sustain the appeal.

Section 203(b)(1)(C) of the Act makes an immigrant visa available to a noncitizen who "has been employed for at least one year" by the petitioning employer or a related entity abroad "in the three years preceding the time of the [noncitizen's] application for classification and admission into the United States under this subparagraph."

In addressing this qualifying period of employment abroad, 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. However, the regulations at 8 C.F.R. § 204.5(j)(3)(i)(A) and (B) provide different reference points for purposes of calculating the relevant 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."

In *Matter of S-P-, Inc.*, Adopted Decision 2018-01, at 3 (AAO Mar. 19, 2018), we emphasized that the focus of the statute and regulations is on the continuity of a beneficiary's employment with the same multinational organization. Therefore, whether a beneficiary is in the United States or abroad at the time of filing, the determinative issue is whether there has been a two-year interruption in that beneficiary's qualifying employment within the larger multinational organization. For a beneficiary who is working for a qualifying entity in the United States, such interruptions may include periods of intervening employment with a non-qualifying U.S. employer or periods of stay in a nonimmigrant status without work authorization. *Id.* at 4.

Here, the record indicates that the Beneficiary was employed within the Petitioner's multinational organization in France from June 2016 until October 27, 2019, when he ended his employment abroad to enter the United States in L-2 status as the spouse of an L-1 intracompany transferee. He was not employed between October 27, 2019 and August 15, 2020. The Petitioner hired the Beneficiary, who had a valid employment authorization document, to serve in his current U.S.-based position on August 16, 2020, and filed the instant petition on May 12, 2022. The Beneficiary remained in L-2 status with valid work authorization at the time of filing the immigrant visa petition.

The Director denied the petition, concluding the Petitioner did not establish that the Beneficiary was employed abroad for at least one year in the three years immediately preceding the filing of the petition in May 2022. The Director relied on guidance published in USCIS Policy Memorandum PM-602-0167, *Satisfying the L-1One Year Foreign Employment Requirement*; *Revisions to Chapter 32.3 of the Adjudicator's Field Manual (AFM) (Nov. 15, 2018).* We note the cited memorandum has been superseded by the publication of 2 *USCIS Policy Manual* L, https://www.uscis.gov/policy-manual.[1]

This policy guidance addresses the one-year foreign employment requirement applicable to nonimmigrant petitions for L-1 intracompany transferees. Generally, a beneficiary's one year of employment abroad must occur within the three years preceding the filing of an initial L-1 petition. USCIS will adjust this three-year period based on time a beneficiary spent working for a qualifying U.S. entity as a principal beneficiary of an employment-based nonimmigrant petition. However, for purposes of L-1 adjudications, time a beneficiary spends working in a dependent status (such as L-2 status) does not result in a similar adjustment of the three-year period. *See generally* 2 *USCIS Policy Manual*, *supra*, at L.6(G)(4).

The Petitioner concedes that, based on this policy guidance, the Beneficiary was not eligible for L-1 nonimmigrant status when it filed this immigrant petition on his behalf. However, the Petitioner emphasizes that USCIS has never advised that the same policy shall be applied to immigrant petitions for multinational managers and executives. The Petitioner maintains that the regulation at 8 C.F.R. § 204.5(j)(3)(i)(B) clearly applies to the facts presented here and that it met its burden to establish that the Beneficiary was employed abroad for at least one year in the three years preceding his entry to the United States as a nonimmigrant on October 27, 2019.

The Petitioner's assertions are persuasive. USCIS has not advised that the cited L-1 policy guidance shall be applied to the adjudication of immigrant petitions for multinational managers and executives.

[1] *See* USCIS Policy Alert PA-2022-20, *L-1 Intracompany Transferees* (Aug. 16, 2022), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220816-IntracompanyTransferees.pdf.

Further, we do not interpret the language at 8 C.F.R. § 204.5(j)(3)(i)(B) as limiting applicability to only those individuals who are working for a qualifying entity as principal beneficiaries of employment-based nonimmigrant petitions. Where, as here, a beneficiary is "already in the United States working for" a qualifying entity, 8 C.F.R. § 204.5(j)(3)(i)(B) sets the qualifying period as "the three years preceding entry as a nonimmigrant."

In applying 8 C.F.R. § 204.5(j)(3)(i)(B) in cases involving beneficiaries who are already in the United States working for a qualifying entity, we must consider a beneficiary's continuity of employment within the petitioner's multinational organization to ensure there has been no interruption of two years or longer. *See Matter of S-P-, Inc.*, Adopted Decision 2018-01 at 4. While the Beneficiary had a break in employment between October 2019 and August 2020, immediately following his entry to the United States, this period of less than ten months is not considered interruptive of his continuous employment within the Petitioner's multinational organization.

Therefore, the Director should have looked at the three-year period between October 2016 and October 2019, the period immediately preceding the Beneficiary's initial entry as an L-2 nonimmigrant on October 27, 2019, in determining whether he met the one-year foreign employment requirement. The record establishes his employment abroad within the multinational organization's French headquarters from June 2016 until October 2019. Accordingly, we withdraw the Director's determination that the Beneficiary did not accrue the requisite one year of employment abroad.

The remaining issue is whether the Petitioner established the Beneficiary was employed abroad in a managerial capacity as defined at section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). The record reflects that the Beneficiary held the position of customer experience director for the Europe, Middle East, and Africa (EMEA) region, in which he reported to a vice president, and had six direct reports who in turn, oversaw their respective subordinates. A letter from the foreign entity's CEO explained that the Petitioner "was responsible for managing all EMEA activities related to the areas of Customer Service, Customer Experience, Logistics and Supply Chain."

The Director's adverse determination was based on a conclusion that the position description in the record was inadequate. However, the decision lacked any discussion of other evidence in the record relevant to this eligibility requirement. After considering the stated job duties in context with the nature of the business, the foreign entity's documented staffing levels and organizational structure, and other pertinent evidence, we conclude the Petitioner met its burden to establish the Beneficiary was employed abroad in a managerial capacity based on his management of a department of the organization, his supervision and control of subordinate managers, his authority to make hiring and firing decisions, and his exercise of discretion over the day-to-day activities of the department under his authority. *See* section 101(a)(44)(A)(i)-(iv) of the Act. Moreover, the record establishes that his duties were, more likely than not, primarily managerial in nature.

Based on the foregoing discussion, the Petitioner has overcome the grounds for denial of the petition. As all other eligibility requirements for the requested classification have been met, the appeal will be sustained.

ORDER: The appeal is sustained.