U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21698857

Date: DEC. 1, 2022

Appeal of California Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, which describes its business as real estate investment and "[d]evelopment of K-12 boarding schools," seeks to temporarily employ the Beneficiary as president and chief executive officer of its new office[1] under the L-1A nonimmigrant 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-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 that the record did not establish, as required, that the Beneficiary will be employed in the United States in a managerial or executive capacity. The Director also concluded that the Petitioner does not qualify as a new office. The matter is now before us on appeal. While reviewing the record before us, we encountered additional potentially disqualifying information and issued a notice of intent to dismiss (NOID) in order to afford the Petitioner an opportunity to respond and address the issue. We have received and considered that response.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 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.*

[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. EMPLOYMENT ABROAD

To qualify for L-1A status, an individual must have been employed abroad by the petitioning U.S. employer or a related entity for at least one continuous year within three years of filing the petition. *See* 8 C.F.R. § 214.2(l)(1)(ii)(A). Periods spent in the United States shall not be counted toward fulfillment of that requirement. *Id.*

The Beneficiary arrived in the United States on March 30, 2019 in B-2 nonimmigrant status, and has remained in the United States since that time. The Petitioner filed the new office L-1 petition more than two years later, on April 19, 2021. It was filed as a petition for new employment, seeking to change the Beneficiary's status from B-2 to L-1A. Therefore, the Beneficiary was employed abroad for less than one year during the three-year period from April 19, 2018 to April 18, 2021.

Under certain circumstances, employment in the United States for a qualifying employer does not interrupt the continuity of employment abroad, but such employment must be authorized and must take place while the individual is in lawful status relating to that employment. In this case, the Beneficiary's only nonimmigrant status has been as a B-2 nonimmigrant visitor for pleasure. A B-2 nonimmigrant may not engage in any employment in the United States. *See* 8 C.F.R. § 214.1(e).

In our NOID, we advised the Petitioner of our intention to dismiss the appeal, based in whole or in part on the above information. In response, the Petitioner correctly notes that the regulations do not directly address beneficiaries who are already in the United States at the time the petition is filed. The Petitioner cites 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)* (Nov. 15, 2018), https://www.uscis.gov/legal-resources/policy-memoranda. We note that, on August 16, 2022, the Policy Memorandum was superseded by the publication of 2 *USCIS Policy Manual* L.6(G), https://www.uscis.gov/policymanual.

The Petitioner quotes the 2018 Policy Memorandum, stating that, with regard to beneficiaries who entered the United States under other nonimmigrant classifications, "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." USCIS Policy Memorandum PM-602-0167, *supra*, at 3. Similar guidance now appears at 2 *USCIS Policy Manual*, *supra*, at L.6(G)(2).

The Petitioner notes that, a year before it filed the current petition, it filed an earlier nonimmigrant petition on the Beneficiary's behalf on April 13, 2020. The Petitioner contends that the April 2020 petition should be considered to be "the initial L-1 petition." In April 2020, the Beneficiary had spent just over one year in the United States, a period which would not have foreclosed eligibility.

We disagree with the Petitioner's contention. The USCIS Policy Memorandum on which the Petitioner relies states that the "initial L-1 petition" is "not necessarily the first L-1 petition filed on behalf of a given beneficiary." USCIS Policy Memorandum PM-602-0167, *supra*, at 1, n.1. Consideration of the "initial" petition is relevant, for instance, in circumstances where a petitioner seeks to extend the L-1 status of a beneficiary who has already held that status for three years. A beneficiary seeking an extension of L-1 status will usually have spent all or most of the preceding three years in the United States, and therefore the period of qualifying employment should be calculated not from the filing date of the extension petition, but rather from the filing date of the "initial" *approved* petition that preceded it, granting the status that the beneficiary and petitioner then seek to extend.

In this case, the April 2020 petition was denied, and therefore the Beneficiary never derived L-1A status from that petition, and instead remained in the U.S. in a non-work authorized B-2 status. The Petitioner did not contest the denial by filing either a motion to reopen, a motion to reconsider, or an appeal. The Petitioner did not return to his home country to continue his employment with his foreign employer.[2] Unlike an extension petition, or a petition to change status from L-1A to L-1B or vice versa, the Petitioner's April 2021 petition did not seek to continue or build upon any status granted by the April 2020 petition; the April 2020 petition granted no such status because it was denied.

A break longer than two years in employment with the qualifying organization during the three years preceding the filing of the L-1 petition renders the beneficiary unable to meet the one-year foreign employment requirement. 2 *USCIS Policy Manual*, supra, at L.6(G)(4). The superseded 2018 Policy Memorandum includes a similar passage, stating: "if a beneficiary takes a break in employment with, or stops working for, the qualifying organization as a principal beneficiary for a period of more than two years during the three years preceding the petition filing, then he or she cannot meet the one-year foreign employment requirement and is disqualified for L-1 classification." USCIS Policy Memorandum PM-602-0167, *supra*, at 5. Here, the record unambiguously establishes a break in employment lasting more than two years, from March 30, 2019 to the date of filing on April 19, 2021. The filing of a denied petition in April 2020 did not end or shorten this break in employment.

The filing of an L-1 petition within two years of a beneficiary's arrival in the United States does not vest any long-term rights to ensure the beneficiary's continued eligibility for as long as he remains in the United States.[3] The 2020 petition was never approved and never conveyed L-1 status on the Beneficiary. As such, it was not the "initial" petition for the purposes of this petition. Rather, the Petitioner initiated an entirely new proceeding when it filed the petition now before us on appeal. The Petitioner has not submitted evidence that overcomes the two-year break in the Beneficiary's employment.

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[2] The Petitioner cites various factors that, it claims, prevented the Beneficiary from departing the United States to resume his employment abroad, but none of these factors were in effect throughout the entire period from March 2019 to April 2021. Even then, the Petitioner cites no statute, regulation, case law, or other policy that waives the statutory requirement for continuous employment under the circumstances described.

[3] Denied or rejected petitions generally do not vest or confer any petition rights. *See generally* 8 C.F.R. § 103.2(a)(7)(ii), "[a] benefit request which is rejected will not retain a filing date." In the immigrant visa context 8 C.F.R. § 204.5(e)(3) states that "[a] denied petition will not establish a priority date."

The Petitioner has not established that we should calculate the Beneficiary's qualifying employment abroad from the filing date of the denied petition from 2020. The interruption in the Beneficiary's qualifying employment from March 2019 to April 2021 renders him ineligible for L-1 status until after he has accrued an additional year of continuous employment abroad.

The above discussion is sufficient to determine the outcome of this proceeding. Detailed discussion of the other stated grounds for denial cannot change that outcome of this appeal. Therefore, we reserve those grounds.[4]

III. CONCLUSION

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

[4] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).