U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28650547

Date: OCT. 12, 2023

Appeal of California Service Center Decision

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

The Petitioner, describing itself as a company investing in sustainability, recycled goods and materials, and real estate, seeks to temporarily employ the Beneficiary as its chief financial officer 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: 1) the Petitioner would employ the Beneficiary in a managerial or executive capacity within one year of the date the petition was filed,[1] 2) the Beneficiary was employed fulltime for at least one continuous year in the three years preceding the date the petition was filed, and 3) the Beneficiary was employed abroad 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 as the Petitioner did not demonstrate that the Beneficiary had been employed fulltime for at least one continuous year in the three years preceding the date the petition was filed or that she was employed abroad in a managerial or executive capacity. 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. Since these issues are dispositive, we decline to reach and hereby reserve the

[1] The Director indicated in the denial decision that the Petitioner filed a new office petition relevant to U.S. offices doing business for less than one year. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). However, the Petitioner here did not clearly articulate an intention to file a new office petition. For instance, the Petitioner checked "No" in Section 1, Item 12 of the L Classification Supplement when asked whether the Beneficiary was coming to the United States to establish a new office. In addition, the Director requested that the Petitioner specify whether it was filing a new office petition in response to the request for evidence (RFE); and in response, it did not clearly indicate that it had filed a new office petition. As such, we will not treat the petition as a new office petition in any future proceedings.

Petitioner's arguments with respect to whether the Beneficiary would be employed in the United States in a managerial 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).

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. 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 also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. EMPLOYMENT ABROAD FOR AT LEAST ONE CONTINUOUS YEAR

As discussed, in denying the petition, the Director concluded that the Petitioner did not establish that the Beneficiary had been employed fulltime for at least one continuous year in the three years preceding the date the petition was filed. The regulation at 8 C.F.R. § 214.2(l)(3)(iii) clearly requires that the petition be accompanied by evidence that the beneficiary had been employed for one continuous year in the three-year period "preceding the filing of the petition" in an executive or managerial capacity.

More specifically, the Director determined that inconsistencies in submitted foreign paystub documentation called into question whether the Beneficiary had been employed abroad for the required one continuous year. For instance, the Director pointed to the fact that the Petitioner had provided wholly different foreign paystubs in support of the petition and in response to the RFE, despite both dating from January to December 2022. In addition, the Director indicated that the updated paystubs provided with the RFE listed the Beneficiary's "join date" with the foreign employer as October 16, 2018, while the prior paystubs from July to December 2022 listed his entry date as July 1, 2022.

On appeal, the Petitioner does not directly address the issue of the Beneficiary's required one year of continuous foreign employment and the discrepancies discussed by the Director in the denial decision, but only addresses the prospects of its development and the Beneficiary's proposed role in the United States. The Petitioner also submits yet another set of foreign paystubs dating from January 2022 to April 2023. However, the new set of foreign paystubs provided on appeal include additional discrepancies when compared to the previously submitted documentation, leaving further question as to whether the Beneficiary was employed for the required one year abroad. For example, the foreign paystubs provided in response to the Director's RFE reflect that the Beneficiary worked as a director from July to December 2022 and indicate that she only received a raise for one month, from 48,000[2]

[2] The foreign paystubs, and record generally, do not specify in what currency the Beneficiary was paid abroad.

to 80,000, in July 2022. The RFE paystubs further show that the Beneficiary earned 48,000 as director from August to December 2022. In contrast, the foreign paystubs submitted on appeal reflect that the Beneficiary's title from July 2022 to April 2023 was "CFO" and that she earned 80,000 during this entire time.

Therefore, the Petitioner has not addressed the discrepancies reflected in submitted foreign paystubs discussed by the Director in the denial decision. Further, the Petitioner has provided new foreign paystubs on appeal reflecting additional inconsistencies, leaving substantial uncertainty as to the validity of the provided foreign pay documentation. The discrepancies between these three sets of foreign paystubs are particularly noteworthy since each includes a company stamp indicating that they had been authenticated upon their issuance, leaving doubt as to whether the provided foreign paystubs represent actual contemporaneous evidence of the Beneficiary receiving pay and being employed for the required one continuous year abroad. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

Therefore, we adopt and affirm the Director's conclusion that the Petitioner did not establish that the Beneficiary had been employed fulltime for at least one continuous year in the three years preceding the date the petition was filed. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). For this reason, the appeal must be dismissed.

III. EMPLOYMENT ABROAD IN A MANAGERIAL OR EXECUTIVE CAPACITY

In denying the petition, the Director also determined that the Petitioner did not provide sufficient evidence to demonstrate with specificity the Beneficiary's asserted managerial or executive role abroad. The Director indicated that the Beneficiary's duty description did not adequately describe his daily tasks abroad or how they were managerial or executive in nature. The Director likewise noted that the Petitioner did not submit additional documentary evidence to substantiate the Beneficiary's claimed managerial or executive capacity abroad. In addition, the Director emphasized that the Petitioner did not provide job duties, qualifications, or employment statuses for the Beneficiary's claimed subordinates abroad, as requested in the RFE, nor evidence to corroborate that his foreign subordinates primarily relieved him from performing the day-to-day tasks of the foreign business.[3]

[3] To be eligible for L-1A nonimmigrant visa classification as a manager or executive, the Petitioner must show that the Beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A) and (B)(i)-(iv) of the Act. If the record does not establish that the offered position meets all four of these elements, we cannot conclude that it is a qualifying managerial position.

If the Petitioner establishes that the foreign position meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary was *primarily* engaged in managerial or executive duties abroad, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's foreign duties were primarily managerial or executive, we consider

As discussed, the Petitioner only discusses its prospects for development and the Beneficiary's proposed role in the United States on appeal and does not contest the Director's conclusion it did not establish that the Beneficiary was employed in a managerial or executive capacity abroad. See Hristov v. Roark, No. 09-CV-2731, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). For this additional reason, the appeal will be dismissed and the issue as to whether the Beneficiary was employed abroad in a managerial or executive capacity will be considered abandoned.

ORDER: The appeal is dismissed.

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the description of the Beneficiary's foreign job duties, the foreign employer's organizational structure, the duties of a beneficiary's subordinate employees abroad, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the foreign business, and any other factors that will contribute to understanding a beneficiary's actual duties and role with the foreign employer.