U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22023035

Date: JAN. 12, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, a software development and services company, seeks to permanently employ the Beneficiary as a senior project manager 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). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Beneficiary had at least one year of employment with a qualifying entity abroad in the three-year period preceding his admission to the United States to work for the Petitioner in a nonimmigrant status. 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 beneficiary 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 alien's application for classification and admission into the United States under this subparagraph." We will refer to this three-year period as the "qualifying period."

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."

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 multinational organization.

The record demonstrates that the Beneficiary has been continuously employed within the Petitioner's multinational organization since December 2010, with the following timeline:

- December 2010 through December 2014: The Beneficiary was employed by the Petitioner's Indian subsidiary in a managerial capacity.
- December 2014 to September 2017: The Petitioner employed the Beneficiary in the United States as an L-1A nonimmigrant intracompany transferee.
- September 2017 to February 2018: The Beneficiary returned to his employment with the Petitioner's Indian subsidiary.
- February 2018: The Beneficiary returned to the United States in L-1A nonimmigrant status to resume his employment with the Petitioner in a managerial capacity.
- June 2020: The Petitioner filed this immigrant petition with evidence that it had continued to employ the Beneficiary pursuant to the approved L-1A petition.

In denying the petition, the Director referenced 8 C.F.R. § 204.5(j)(3)(i)(B) and stated:

> [T]he beneficiary last entered the U.S. on February 12, 2018 in L-1 nonimmigrant status to work for the petitioner. Therefore, the beneficiary must have one year of experience abroad working for the same employer or a subsidiary between February 12, 2015 through February 12, 2018. From February 12, 2015, to September 2017, the beneficiary was working for the petitioner. The beneficiary only has 6 months of work experience abroad working for [the Indian subsidiary] from September 2017 to February 2018.

The Director determined that, because the Beneficiary returned to India to work for the Petitioner's subsidiary in 2017, he must re-establish his one year of qualifying employment abroad and can no longer rely on his employment with the Petitioner's subsidiary between December 2010 and December 2014. We conclude that the Director applied an overly restrictive interpretation of 8 C.F.R. § 204.5(j)(3)(i)(B) based on the facts presented here.

Statutes and regulations must be read as a whole, and interpretations should be consistent with the purpose of the Act. As we emphasized in *Matter of S-P-*, both the statute and the regulations focus on

the continuity of a given beneficiary's employment with the same multinational organization. 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. Without such a provision, a beneficiary employed in the United States by a qualifying organization in a nonimmigrant status for more than two years would not be eligible for immigrant classification as a multinational manager or executive.

Unlike the facts presented in *Matter of S-P-,* where the beneficiary had a lengthy interruption in their employment within the petitioner's multinational organization that made them ineligible for classification under 203(b)(1)(C) of the Act, the record here establishes that the Beneficiary has been continuously employed by foreign and U.S. entities within the same multinational organization since December 2010. He established his qualifying period of employment abroad between December 2010 and December 2014. Neither the Beneficiary's period of stay in L-1A nonimmigrant classification nor his temporary transfer back to the Petitioner's Indian subsidiary is considered interruptive. As such, we can continue to reach back to the period preceding his initial entry to the United States in L-1A status in December 2014 in calculating whether he meets the foreign employment requirement. A more restrictive interpretation of 8 C.F.R. § 204.5(j)(3)(i)(B) would result in a determination that is not consistent with the purpose of the statute and regulations.[1]

Therefore, the Director's determination that the Beneficiary's L-1 entry in February 2018 is the appropriate reference point for calculating the qualifying three-year timeframe is incorrect; the Beneficiary's entire time-period in the United States as an L-1 nonimmigrant was spent working for the Petitioner. This period spent in L-1A status is not interruptive of the previously accrued period of foreign employment and does not disqualify him from eligibility for this immigrant classification. The record reflects the statutory and regulatory requirements have been satisfied with respect to the Beneficiary's qualifying employment abroad. Accordingly, the Director's decision is withdrawn.

As we have withdrawn the sole grounds for denial, and the record establishes, by a preponderance of the evidence, that all other eligibility requirements for the requested classification have been met, we will sustain the appeal.

ORDER: The appeal is sustained.

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[1] This interpretation of 8 C.F.R. § 204.5(j)(3)(i)(B) is supported by USCIS policy guidance. *See generally*, 2 *USCIS Policy Manual* L.6(G), https://www.uscis.gov/policy-manual (addressing the one-year foreign employment requirement applicable to adjudication of L-1 nonimmigrant petitions). Although the Director disregarded the L-1 policy as irrelevant to this matter, we find it instructive. Similar 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 referenced L-1 policy states that 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 results in an adjustment of the 3-year period, in that the running of the three-year period is tolled while a beneficiary is working for a qualifying U.S. entity. *Id.*