U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31360342

Date: OCT. 11, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a manufacturer of high-performance lasers, seeks to permanently employ the Beneficiary as its vice president, process engineering under the first preference immigrant classification for multinational executives or managers. *See* 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 a managerial or executive capacity.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish the Petitioner has the required qualifying relationship with the Beneficiary's foreign employer, that there is "a valid office conducting business abroad in which the Beneficiary was employed," and that the Beneficiary was employed abroad by a qualifying entity for at least one year in the three years preceding the time of filing this petition. The matter is now before us on appeal pursuant to 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.

I. LAW

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 a firm or corporation or other legal entity or an affiliate or subsidiary thereof" in the three years preceding the filing of an immigrant petition, and who "seeks to enter the United States in order to continue render services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial or executive."

Under the implementing regulations, a petitioner seeking to classify a noncitizen as a multinational executive or manager must demonstrate that "in the three years immediately preceding the filing of the petition the [noncitizen] has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity" or by its affiliate or

subsidiary, and that "[t]he prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the [noncitizen] was employed overseas." *See* 8 C.F.R. § 204.5(j)(3)(i)(A) and (C).

II. ANALYSIS

The issues to be determined are whether the Petitioner established that the Beneficiary has been employed outside the United States by a qualifying entity and whether his prospective U.S. employer is "the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity" that has employed him abroad.

The Petitioner is a publicly traded U.S. corporation with six foreign subsidiaries located in China, South Korea, Austria, Finland, Italy and Cayman Islands. Therefore, as acknowledged by the Director, the Petitioner satisfies the definition of "multinational" at 8 C.F.R. § 204.5(j)(2), which requires that "the qualifying entity, or its affiliate or subsidiary conducts business in two or more countries, one of which is the United States."

The record reflects that the Petitioner directly employs the Beneficiary, an Australian citizen and resident, in the position of vice president, process engineering, in which he is responsible for managing process engineering across the organization's United States and Asia sites, with approximately 75 direct and indirect reports worldwide. The record contains copies of the Beneficiary's annual income statements issued by the Australian Taxation Office, which identify the Petitioner as his employer for the years 2019 through 2022, as well as evidence substantiating his performance of his assigned responsibilities through a combination of remote work and international travel. The Petitioner now seeks to transfer the Beneficiary to the United States to continue his employment in this same position and requests his classification as a multinational manager under section 203(b)(1)(C) of the Act.

The Director concluded that because the Beneficiary is directly employed by the Petitioner, as opposed to a branch office, affiliate, or subsidiary in Australia, the Petitioner did not meet its burden to establish that: (1) it has a qualifying relationship with an "employing entity" in Australia; (2) the Beneficiary's foreign employer will continue to exist and conduct business in Australia; and (3) the Beneficiary has the required one year of employment with a qualifying entity abroad in the three years preceding the filing of the petition.

In reaching these conclusions, the Director acknowledged that the regulations "allow for a qualifying relationship when the prospective employer in the United States is the same employer . . . by which the [noncitizen] was employed overseas." However, the Director determined that this language "implies that there is an office abroad in which the beneficiary was employed" and emphasized that the Petitioner does not have an office in Australia and is not conducting business there.

On appeal, the Petitioner contends that the plain language of the statute and regulations allows for the direct employment of an "unattached" foreign worker by a U.S. employer and that the Beneficiary satisfies this classification's foreign employment requirement based on his current Australia-based employment for the Petitioner. It further maintains that the prospective U.S. employer in this case is plainly "the same employer" that has employed the Beneficiary abroad, as the Beneficiary has been and would continue to be the Petitioner's employee. The Petitioner objects to the Director's

determination that the use of the term "the same employer" in the statute and regulations "implies" the existence of a separate foreign office or entity that is doing business in a beneficiary's country of residence, and asserts the Director failed to provide sufficient reasoning to support this interpretation of the statutory and regulatory language.

The Petitioner's assertions are persuasive. The plain language of the statute makes an immigrant visa available to a noncitizen who "has been employed for at least one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof" in the three years preceding the filing of an immigrant petition, and who "seeks to enter the United States in order to continue render services to *the same employer* or a subsidiary or affiliate thereof in a capacity that is managerial or executive." Section 203(b)(1)(C) of the Act (emphasis added). As noted, the implementing regulations at 8 C.F.R. § 204.5(j)(3) closely mirror the statutory language. The principal focus of the statute and regulations is on the continuity of a beneficiary's employment within the same multinational organization. This interpretation is consistent with Congress' purpose in creating this classification as a means of permanently transferring key managers and executives within a multinational organization.[1]

Here, the Beneficiary has been continuously employed within the Petitioner's multinational organization during the three years preceding the filing of the petition. Specifically, the record reflects that the Petitioner has directly employed the Beneficiary outside the United States since 2019, that it seeks to have him continue rendering his services to the Petitioner ("the same employer") in the United States, and that the organization will continue to do business in the United States and at least one other country.

We recognize that most immigrant petitions seeking a noncitizen's classification under 203(b)(1)(C) of the Act seek to transfer a managerial or executive employee from a separate foreign entity or established office in their country of residence. However, we discern no statutory or regulatory prohibition on the transfer of an overseas-based employee who is directly employed by and reports to a U.S. company within a qualifying multinational organization, provided that all other eligibility requirements are met. We therefore disagree with the Director's determination that the statutory and regulatory use of the term "the same employer" implicitly requires that a petitioner have a foreign branch office conducting business in a beneficiary's country of residence that serves as the "employing entity" abroad.

For the foregoing reasons, we conclude that the Petitioner demonstrated that the Beneficiary has been employed abroad by a qualifying entity for at least one year within the three years preceding the filing of the petition, that he is coming to the United States to provide services to the same employer within a qualifying multinational organization, and that the Petitioner will continue to do business in the United States and at least one other country.

The remaining issue is whether the Petitioner established the Beneficiary was employed abroad and would be employed in the United States in a managerial capacity as defined at section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). Although the Director requested additional evidence related to

[1] Congress noted "the need of multinational business to transfer key personnel around the world as nonimmigrants is paralleled in this category to allow a basis upon which these individuals may immigrate." *See* H.R. REP. NO. 101-723 (1990), reprinted in 1990 U.S.C.C.A.N. 6710, 6739, 1990 WL 200418.

his current and proposed positions, and acknowledged the Petitioner's response in the decision, they did not reach a final determination on these issues.

As noted, the Beneficiary currently holds the position of vice president, process engineering and would continue to serve in the same position after permanently relocating to the Petitioner's U.S. headquarters. The Petitioner provided evidence that he reports directly to the U.S.-based chief operating officer of the global organization and explained in detail how he acts as a senior manager of process engineering for the manufacture of laser products for the organization's U.S. and Asian operations through 75 direct and indirect reports located across several company sites worldwide. The Petitioner also provided evidence corroborating the Beneficiary's performance of his assigned responsibilities and explained how a combination of modern business technology and international travel have enabled him to perform the duties of the position and oversee this function and his direct reports while based primarily in Australia.

After considering the stated job duties in context with the nature of the Petitioner's business, the organization's documented staffing levels and management reporting structure, the duties performed by the Beneficiary's direct and indirect reports, and other pertinent evidence, we conclude the Petitioner met its burden to establish the Beneficiary was employed abroad, and would be employed in the United States, in a managerial capacity. The record reflects that the Beneficiary manages an essential function of the organization, serves at a senior level both within the organizational hierarchy and with respect to the function managed, and exercises discretion over the day-to-day operations of the activity or function for which he has authority. *See* section 101(a)(44)(A)(i)-(iv) of the Act. Moreover, the record establishes that his duties, more likely than not, have been and would be, 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, we will sustain the appeal.

ORDER: The appeal is sustained.