U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-C-C-, INC.

DATE: JUNE 19, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner,[1] a residential real estate developer, seeks to temporarily employ the Beneficiary as executive director of its new office[2] 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 that the record did not establish, as required, that the Beneficiary: (1) had at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition; (2) was employed abroad in a managerial or executive capacity; and (3) would be employed in the United States in a managerial or executive capacity within one year of approval of the petition.

On appeal, the Petitioner disputes the three grounds for denial, contending that it met all eligibility requirements. The Petitioner asserts that the Director erred by disregarding evidence that demonstrates the Beneficiary's continued employment for the foreign entity.

Upon *de novo* review, we will dismiss the appeal because the Petitioner has not established that the Beneficiary was employed for the requisite one-year period within the three years prior to filing this petition. As this is a fundamental element of eligibility and the Petitioner has not satisfied this element, we will reserve the two remaining issues.

I. LEGAL FRAMEWORK

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

[1] The Petitioner incorrectly identified its name as [redacted] on the Form I-129, Petition for a Nonimmigrant Worker. The record shows that the Petitioner is registered in the state of Florida as [redacted],

[2] 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.

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.* 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).

According to the regulations, a beneficiary must have "one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition." 8 C.F.R. § 214.2(l)(3)(iii).

The term "intracompany transferee" is defined as:

> An alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive *or* involves specialized knowledge. Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.

8 C.F.R. § 214.2(l)(1)(ii)(A).

II. EMPLOYMENT ABROAD

The issue to be discussed in this decision is whether the Petitioner has established that the Beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years immediately preceding the filing of the petition. Based on our review of the record and for the reasons discussed below, we find that the Petitioner has not established that the Beneficiary has one year of full-time continuous employment with the foreign entity during the relevant three-year period.

A. Procedural History

The Petitioner filed the instant Form I-129 on September 21, 2018. The Petitioner stated on the petition form that the Beneficiary has been employed with the foreign entity, [redacted] in the Republic of Belarus from December 1, 2016 to present. The Beneficiary's curriculum vitae indicated that he has been employed with the foreign entity in the Republic of Belarus from October 2016 to present. Records show that the Beneficiary entered the United States in B-2 nonimmigrant status on February 23, 2018, and remained in that status until his departure on August 22, 2018. The Beneficiary

resided in the United States as a nonimmigrant visitor for approximately six months before the instant petition was filed.

The initial evidence included: (1) the Beneficiary's translated work record card that was issued by the Ministry of Finance of the USSR, State Tax Inspection of [redacted] District of City of [redacted], on December 1, 2016; and (2) the foreign entity's translated reference letter identifying the Beneficiary's monthly gross salary, income tax and pension contribution deductions, and net salary from January 2017 to December 2017.

In a request for evidence (RFE), the Director observed that the Beneficiary filed DS-160, Online Nonimmigrant Visa Application, with the U.S. Department of State on May 2, 2017, where he claimed that from the date of the application, he was employed with [redacted] in [redacted] Cyprus, in the position of business owner. The Beneficiary also indicated that from January 1, 2012, to December 31, 2014, he was employed with [redacted] in [redacted] Estonia, in the position of consultant. The Petitioner was instructed to provide an explanation and evidence substantiating why the Beneficiary attested under penalty of perjury to the U.S. Department of State on May 2, 2017, that he was employed by [redacted] as a business owner and made no mention of the Beneficiary's employment with the foreign entity. Specifically, the Petitioner was instructed to submit copies of the Beneficiary's pay records and corresponding bank statements, personnel records, or training records.

In response, the Petitioner's attorney stated:

> [A]s seen from the provided documents, at the time of submitting DS-160 to the U.S. Department of State, Beneficiary indeed was and he still is an owner and director of [redacted], incorporated and operated in Cyprus. Being the owners of the business entity (or even several business entities for this matter) does not preclude Beneficiary from being full-time employed in an executive capacity by [redacted] Thus, the Beneficiary provided accurate information on his DS-160 at the time of filing . . . .

The Petitioner's response also included: (1) declaration of the Beneficiary, explaining the facts of the matter; (2) declaration of trust of [redacted] evidencing that the Beneficiary is an owner of 1,000 shares of [redacted] since July 4, 2014; and (3) certificate of [redacted] listing the Beneficiary as one of the directors of the company. The declaration of the Beneficiary stated:

> [I], [redacted] being duly sworn, under the penalty of perjury, state the following . . . .
>
> I hold the position of the director of development at [redacted], a Belarusian-based entity, since December 1, 2016. I also have equity interest in [redacted] a business entity incorporated and operated in Cyprus . . . .

> The reason I did not indicate my employment at [redacted] at that time is that I did not notice additional space on DS-160, if such existed, to list several professional engagements that I might have. The reason I have chosen to put [redacted] and not [redacted] is that first of all, I was associated with [redacted] longer than with [redacted] second, in case the consular had requested any documentation demonstrating my association with a company, it would be easier for me to provide such documentation of the company which I own, rather than request it form the human resources department of [redacted]. Providing documents of [redacted] would also be more expeditious . . . .

In the denial, the Director determined that the Petitioner had not established that the Beneficiary had one year of continuous full-time employment abroad in the three years preceding the filing of the petition. Specifically, the Director noted that it is possible for an individual to own and work at several companies; however, the Beneficiary's declaration does not sufficiently establish that he is and has been employed by the foreign entity continuously for one year on a full-time basis. The Director also concluded that the Beneficiary's declaration does not sufficiently overcome the discrepancies provided on the Form I-129 petition and the DS-160 application submitted by the Beneficiary to the U.S. Department of State.

On appeal, the Petitioner disputes the denial and asserts that "[t]he service center made a factual mistake and erroneously stated that no evidence of one-year employment abroad at a qualifying organization was provided besides the Beneficiary's 'declaration' and a Counsel's cover letter . . . ." The Petitioner points to the foreign entity's reference letter identifying the Beneficiary's monthly gross salary, income tax and pension contribution deductions, and net salary from January 2017 to December 2017.

B. Analysis

The statute indicates that the relevant three-year period to be used as a reference point in determining whether the beneficiary had one year of continuous full-time employment with a qualifying entity abroad is the three years "preceding the time of his application for admission into the United States . . . ." Section 101(a)(15)(L) of the Act.

The regulation at 8 C.F.R. § 214.2(l)(3) clearly requires that the petition be accompanied by evidence that the beneficiary has been employed for one continuous year in the three year period "preceding the filing of the petition" in an executive or managerial capacity. When the definition of "intracompany transferee" is construed together with the regulation at 8 C.F.R. § 214.2(1)(3) and section 101(a)(15)(L) of the Act, the statutory phrase "preceding the time of his application for admission into the United States" refers to a beneficiary whose admission or admissions were "for a branch of the same employer or a parent, affiliate, or subsidiary thereof" or for "brief trips to the United States for business or pleasure."

The Beneficiary filed DS-160 with the U.S. Department of State on May 2, 2017, where he indicated that from the date of the application, he was employed with [redacted] in [redacted]

Cyprus, in the position of business owner. The Beneficiary made no mention of his employment with the foreign entity on his DS-160 application. The Beneficiary claims in a declaration that he did not provide the name of the foreign entity as his current employer at the time of that application because the form did not provide space for listing additional, concurrent employers. The Beneficiary says that he only provided his employment with [redacted] on the application because he was associated with [redacted] for a longer period of time than with the foreign entity and it would have been easier for him to provide documentation from a company he owns rather than the foreign entity.

Upon review of the evidence in the record, we find that the Petitioner has not established by a preponderance of the evidence that the Beneficiary was employed by the foreign entity since December 1, 2016 as claimed on the Form I-129.[3] Not only is this claim in conflict with the employment claim that the Beneficiary made to the U.S. State Department in the DS-160 application, there are other documents in the record that call into question the foreign employment claim. Specifically, the Beneficiary's own curriculum vitae has the Beneficiary commencing employment with the foreign entity in October 2016, rather than December 2016. Further, an "ORDER" appointing the Beneficiary to the position of Deputy Director for Development and signed by the Beneficiary and the "Director" of the foreign entity, [redacted] states that the Beneficiary started employment on September 1, 2015, more than one year before the other two claimed start dates, December 1, 2016 and October 2016. Although we acknowledge other evidence such as the Beneficiary's work card which indicates the Beneficiary began employment on December 1, 2016, the work card does not provide any other work details or corroborating information.

The foreign entity's reference letter indicated that in 2017, the Beneficiary received a monthly salary of $271.56 BYN,[4] had a monthly deducted income tax of $23.12 BYN,[5] had monthly deducted pension contributions of $2.72 BYN,[6] and was paid $245.63 BYN[7] monthly. The reference letter does not demonstrate that the Beneficiary was employed by the foreign entity in 2017 and as a result, received a salary as remuneration for this year. The reference letter provides information, however, it is not corroborated by sufficient documentary evidence.

Further, even if, as claimed by the Petitioner on appeal, the Beneficiary was concurrently employed by the foreign entity and [redacted], it is not clear how the Beneficiary was able to perform duties as a business owner of [redacted] located at [redacted] Cyprus,[8] while simultaneously working full-time for the foreign entity at [redacted] Belarus, [redacted].[9]

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[3] The Petitioner does not claim other dates of employment with the foreign entity on the Form I-129.

[4] $271.56 Belarusian Ruble (BYN) converts to $131.49 US Dollar (USD). *See* https://www.xe.com/currencyconverter/ (last visited June 18, 2019).

[5] $23.12 BYN converts to $11.20 USD. *See* https://www.xe.com/currencyconverter/ (last visited June 18, 2019).

[6] $2.72 BYN converts to $1.32 USD. *See* https://www.xe.com/currencyconverter/ (last visited June 18, 2019).

[7] $245.63 BYN converts to $118.94 USD. *See* https://www.xe.com/currencyconverter/ (last visited June 18, 2019).

[8] The present work, education, and training section of the Beneficiary's DS-160 application that was submitted to the U.S. Department of State on May 2, 2017, identified [redacted] address as [redacted] Cyprus.

[9] The foreign entity's reference letter identified its business address as [redacted] Belarus, [redacted]

Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by submitting independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The record does not contain sufficient, objective evidence that explains or reconciles the inconsistencies as it relates to the Beneficiary's employment abroad with the foreign entity.

For these reasons, we conclude that the Petitioner did not establish that the Beneficiary had one year of full-time continuous employment with a qualifying entity abroad in the three years preceding the filing of the petition.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of N-C-C-, Inc.*, ID# 3730029 (AAO June 19, 2019)