U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7051849

Date: JUNE 30, 2020

Appeal of California Service Center Decision

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

The Petitioner, a distributor of electrical products, seeks to continue the Beneficiary's temporary employment as its "President/CEO" under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition concluding that the Petitioner did not establish, as required, that the Beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the Beneficiary's admission to the United States in the L1A nonimmigrant classification.[1] The matter is before us on appeal.

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. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity, or in a position requiring specialized knowledge 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)(1). 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. 8 C.F.R. § 214.2(l)(3)(ii).

With regard to the foreign employment requirement, the regulations state that 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). It is further noted that periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or

[1]Section 101(a)(15)(L) of the Act and 8 CFR 214.2(l)(1)(ii)(A) require that the beneficiary work abroad for one continuous year within the three years preceding the "application for admission into the United States." The Beneficiary was admitted to the United States as an L-1A nonimmigrant pursuant to a previously approved petition, which the Petitioner filed on December 16, 2015.

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 in this proceeding 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 prior L-1A petition that was filed on December 16, 2015. The prior petition was approved and resulted in the Beneficiary's change of status to that of an L-1 nonimmigrant.

A. Procedural History

In the supporting statement submitted with the instant petition, the Petitioner listed [redacted] Electrical Co., Ltd., its parent entity in China, as the Beneficiary's former employer abroad. The Petitioner claimed that the Beneficiary worked as that entity's vice president since March 2013. The Petitioner provided a translated business license, which shows that the foreign entity's "Date of Establishment" was March 26, 2013, as well as the foreign entity's monthly wage reports, which list employee names and monthly salaries from March 2013 through September 2014. The Beneficiary's name was included in all 19 wage reports, which show that he received the same salary during each of the 19 pay cycles.

Upon further review, the Director issued a notice of intent to deny (NOID) informing the Petitioner that the Beneficiary does not have the required one year of employment abroad with the foreign parent entity. First, the Director pointed to the Beneficiary's admissions to the United States as an F-2 nonimmigrant on January 22, 2014, and again on September 11, 2014, noting a departure from the United States on June 4, 2014, in between these two admissions. However, having considered the Beneficiary's period of claimed employment from the foreign entity's March 2013 "Date of Establishment" to the date of his January 2014 admission to the United States in F-2 status, the Director determined that the Beneficiary did not meet the foreign employment requirement because his period of continuous qualifying employment abroad could not have exceeded 10 months.

In addition, the Director questioned the credibility of the Petitioner's claims regarding the Beneficiary's employment abroad based on the contents of the Beneficiary's June 2014 nonimmigrant visa (NIV) application, which contained information about the Beneficiary's place and dates of employment that was inconsistent with evidence the Petitioner offered in support of this petition. Namely, the Director pointed out that in the NIV application's queries about his current employer, the Beneficiary named [redacted] Sign Company and stated that he was employed as that entity's "US Market Sales Manager." The Director further pointed out that the Beneficiary named [redacted] Academy in Arkansas as his former employer and stated that he was employed there from August 1, 2008 to August 1, 2013. The Director noted that this information is also inconsistent with the

Petitioner's claim that the Beneficiary was employed by [redacted] Electrical from 3/2013 to 12/2015 with "no interruption."

In response to the NOID, the Petitioner cited 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), asserting that the Beneficiary's admission to the United States as an F-2 nonimmigrant in January 2014 was "to visit his wife" and should therefore be deemed a "brief trip" that was not interruptive of his foreign employment with [redacted] Electrical. The Petitioner further claimed that the Beneficiary "helped to found" and was working to set up the foreign entity in January 2013, stating that the Beneficiary became owner of 1.334% of that entity's stock and that his stockholder status was the reason he did not list the foreign entity as his employer in the 2014 NIV application.[2]

In the denial decision, the Director concluded that the Petitioner's explanation was not sufficient to resolve the inconsistency concerning the Beneficiary's foreign employment. The Director reiterated the adverse information presented in the NOID and concluded that the Petitioner did not offer sufficient credible evidence to show that the Beneficiary met the foreign employment requirement. The Director ultimately concluded that the Beneficiary could not have been continuously employed by [redacted] Electrical for longer than 10 months during the relevant three-year period.

B. Analysis

Upon review, we agree with the Director's determination that the Petitioner did not offer sufficient evidence to show that the Beneficiary attained the necessary one year of continuous employment abroad prior to his January 2014 admission to the United States as an F-2 nonimmigrant. The above-cited policy memorandum states, in part, the following:

> Periods of time the beneficiary spent in the United States without working (*except for brief visits for business or pleasure in B-1 or B-2 status*), or while working for an unrelated employer, interrupt the one continuous year foreign employment requirement . . . .

Id. at 4. Accordingly, the policy memorandum does not support the Petitioner's contention that the Beneficiary's F-2 admission in January 2014, which resulted in his stay in the United States for approximately five months, was not interruptive of the Beneficiary's period of employment abroad. Rather, the policy memorandum supports the Director's calculation, which contemplates the nonimmigrant category in which the Beneficiary was admitted as well as the duration of the Beneficiary's period of employment abroad prior to that admission to conclude that the Beneficiary's period of continuous employment abroad leading up to that admission was for a period of no longer

[2] The terms of the stock transfer contract state that the Beneficiary's ownership was contingent upon the Beneficiary's payment of RMB200,000 prior to December 1, 2013 in exchange for the stock. Because the Petitioner did not offer evidence to show that the Beneficiary complied with these terms, it did not demonstrate that the Beneficiary was a stockholder of the foreign entity when the Beneficiary filed the 2014 NIV application. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

than ten months. Therefore, the Director correctly determined that the Beneficiary did not meet the continuous one-year foreign employment requirement.

Further, the NOID response contains a number of other documents, including a translated employment agreement, which lists the foreign entity and the Beneficiary as the parties to a two-year contract and indicates that the Beneficiary's employment commenced on January 1, 2013, despite the fact that the foreign entity was not established until March 2013. The Petitioner also provided translations for 22 months of bank slips, which name [redacted] one of the foreign entity's three shareholders, rather than the foreign entity itself, as "payer" of the Beneficiary's claimed monthly salary and indicate that the Beneficiary received the full monthly salary amount in January, February, and March 2013, prior to the date the foreign entity was formed, and continued to receive the same monthly salary through October 2014, even though he was in the United States on an F-2 nonimmigrant visa, first from January to June 2014 and again from September 2014 until December 16, 2015, when the first L-1A petition was filed on the Beneficiary's behalf. Not only are these pay slips inconsistent with the purported employment contract, which accounted for a two-year period of employment and included no provisions for the Beneficiary's extended absences, but there is also no explanation as to why the Beneficiary received a full monthly salary for the months prior to the foreign entity's formation and continued to receive the same full salary during months when he was in the United States and was not providing services for the foreign entity in China.[3]

As indicated above, the Petitioner offered evidence that detracted from the validity of its original claim concerning the Beneficiary's foreign employment and did not resolve the inconsistency between that claim and the information that the Beneficiary himself offered in a 2014 NIV application. Although the Petitioner provided purchase orders from May, August, and October 2013, and July 2014 identifying the foreign entity as the selling party and the Beneficiary as the point of contact in those transactions, such invoices, even if valid, do not establish that the Beneficiary was employed by the foreign entity for one continuous year during the relevant three-year period. Likewise, a photograph that is date stamped August 18, 2013, and depicts the Beneficiary alongside seven men in uniform outfits "with the foreign entity" also does not establish that the Beneficiary was employed by the Petitioner's foreign parent entity for the required length of time during the period in question.

Further, although the Petitioner provided translated statements from its parent entity and from [redacted] Signs Co., which the Beneficiary claimed as his employer in the 2014 NIV application, both statements merely reiterate the Petitioner's current claim that the Beneficiary worked simultaneously for both foreign entities; neither, however, satisfactorily overcomes the deficiencies described above. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000). However, the Board further stated: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.*; *see also*, *Matter of Y-B-*,

[3] Although the Petitioner also provided the Beneficiary's social security record indicating that the foreign employer made monetary contributions towards his medical and unemployment insurance from April 2013 through October 2014, the validity of this document is similarly in question in light of the Beneficiary's departures from China when he was accompanying his wife in the United States during her studies and was not physically in China. In any event, as we explained above, the Beneficiary's visits to the United States were interruptive of his claimed foreign employment with [redacted] Electrical.

21 I&N Dec. 1136 (BIA 1998) (noting that there is a greater need for corroborative evidence when the testimony lacks specificity, detail, or credibility).

With regard to the Beneficiary's former employment with the [redacted] Academy, the NOID response states that the Beneficiary's June 2014 NIV application contained a "typo error" regarding his dates of employment with the academy. Specifically, the Petitioner claimed that the Beneficiary's employment ended in August 2012, rather than August 2013, as was indicated in the NIV application, and that such employment therefore would not conflict with the Beneficiary's claimed employment with the Petitioner's foreign parent entity. The Petitioner further claimed that the Beneficiary returned to China during his period of employment with [redacted] Academy and continued to work for the academy remotely via Skype. Although the Petitioner provided a 2011 statement from the [redacted] Academy stating that the Beneficiary was hired "under contract" to work as a teacher and recruiter for a Chinese exchange program, as well as a 2011 statement from [redacted] Academy's legal counsel stating that the Beneficiary "fell out of status" in 2010 during his employment for the academy, neither statement corroborated the claim that the Beneficiary worked remotely for the academy after returning to China or established that the Beneficiary's 2014 NIV application contained inaccurate information about the dates of his former employment with the academy.

In addition, even if the Beneficiary's January 2014 admission to the United States had not been deemed as interruptive of his period of employment abroad, the Petitioner has not resolved the above-described inconsistencies regarding such employment. Not only did the Beneficiary file a 2014 NIV application claiming "current" employment with [redacted] Signs Co. rather than the Petitioner's claimed parent entity, but the same NIV application also indicates that the Beneficiary's prior employment with the [redacted] Academy was from August 2008 until August 2013, thus further detracting from the Petitioner's original claim that the Beneficiary commenced employment for its foreign parent entity in March 2013, and its more recent claim that the Beneficiary commenced employment with the foreign entity in January 2013, even before that entity was legally formed in March 2013. Although the Petitioner offered the Beneficiary's alleged wage evidence in an attempt to resolve these considerable discrepancies, that evidence created further inconsistencies because it indicated that (1) the Beneficiary was paid by one of the foreign entity's shareholders, rather than the entity itself and (2) that the Beneficiary started receiving a full monthly wage before the entity's formation and continued to receive the same full wage during months when he was not in China, but instead was in the United States on an F-2 visa, accompanying his wife. Although the Petitioner disputes the Director's findings on appeal, it relies primarily on the flawed evidence that it previously submitted and offers insufficient arguments on appeal that do not overcome the inconsistencies.

In any event, regardless of the unresolved inconsistencies, we agree with the Director's determination that the Petitioner did not offer sufficient credible evidence to show that the Beneficiary attained one continuous year of employment abroad with [redacted] Electrical, as claimed.

ORDER: The appeal is dismissed.