



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 19936854

Date: FEB. 04, 2022

Appeal of California Service Center Decision

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

The Petitioner intends to operate a gas station and convenience store and seeks to temporarily employ the Beneficiary as the general manager of its new office¹ under the L-1A nonimmigrant classification for intracompany transferees. 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 (1) it has a qualifying relationship with the Beneficiary's foreign employer, (2) it will employ the Beneficiary in the United States in a managerial or executive capacity within one year, and (3) the Beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. See Section 291 of the Act, 8 U.S.C. § 1361, *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

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 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.*

¹ 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.

The petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its intended operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

II. EMPLOYMENT ABROAD

The first issue we will address is whether the Petitioner established that the Beneficiary has the required one year of employment abroad in a managerial or executive capacity in the three years preceding the filing of the petition. 8 C.F.R. § 214.2(l)(3)(v)(B); *see also* 8 C.F.R. § 214.2(l)(3)(iii).

At the time of filing in May 2018, the Petitioner stated that its claimed Indian parent company had employed the Beneficiary in the position of “Accountant” since September 2012. It submitted a letter from the foreign entity describing the Beneficiary’s job duties, the foreign entity’s organizational chart, and the foreign entity’s February 2018 payroll report as evidence that it continued to pay the Beneficiary’s salary.

Although the Petitioner indicated that the Beneficiary has been continuously employed by the foreign entity since 2012, it stated on the Form I-129, Petition for a Nonimmigrant Worker, that the Beneficiary was residing in the United States in F-1 nonimmigrant status and was last admitted on October 29, 2014.²

In a request for evidence (RFE) issued in December 2018, the Director noted that the Beneficiary had been residing in the United States for over three years at the time of filing and advised the Petitioner that it had not explained or documented how the Beneficiary worked for the foreign entity while attending university and residing in the United States. The Petitioner responded that the Beneficiary “entered the U.S. to continue his education, however he maintained his position with the foreign entity as a means of supporting himself,” noting that he has continued to produce the foreign entity’s financial reports and supervise his subordinate staff while working remotely.

The Director acknowledged the Petitioner’s response and observed that the Petitioner provided a job description for the “accountant” position and showed its placement on the foreign entity’s organizational chart. However, the Director emphasized that the Petitioner did not explain or document how the Beneficiary continued to perform his claimed managerial duties and supervise his claimed subordinates on a full-time, continuous basis while residing and attending school in the United States. Therefore, the Director determined that the Petitioner had not met its burden to establish that the Beneficiary had the requisite one year of employment abroad in a managerial or executive capacity in the three years preceding the filing of the petition.

On appeal, the Petitioner maintains that the record reflects that the Beneficiary supervised the foreign entity’s accounting staff, reported directly to its executive partner, had the authority to make personnel

² USCIS records reflect that the Beneficiary was initially admitted to the United States in B-2 status in 2014, then briefly departed and was re-admitted in B-2 status in April 2015. He was granted a change of status to F-1 in January 2016, and was enrolled at a university in Georgia when this petition was filed.

decisions, exercised wide latitude in discretionary decision making, and “was thus employed in a managerial capacity abroad.” The Petitioner re-submits the foreign entity’s 2018 organizational chart, the foreign entity’s description of the “Accountant” position, and the Beneficiary’s résumé.

Upon review, the Petitioner did not establish that the Beneficiary has the required one year of employment abroad in a managerial or executive capacity in the three years preceding the filing of the petition.

The Petitioner does not dispute that the Beneficiary has continuously resided in the United States since October 2014, initially in B-2 status and, since January 2016, in F-1 status. Nevertheless, the Petitioner appears to argue that the Beneficiary can nevertheless establish that he has the requisite one continuous year of full-time employment abroad within three years of filing this petition in May 2018.

Based on the statute and regulations governing the L-1 classification and the one year of foreign employment requirement, USCIS has clarified that an L-1 beneficiary’s one year of qualifying employment with a foreign entity must occur while that beneficiary is physically outside the United States. 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)* 3 (Nov. 15, 2018), <https://www.uscis.gov/laws-and-policy/policy-memoranda>. A petitioner cannot use any time that the beneficiary spent in the United States to meet the one-year foreign employment requirement, even if the qualifying foreign entity paid the beneficiary and continued to employ the beneficiary while he or she was in the United States. *Id.* USCIS, noting some ambiguity in the statute and regulations, also clarified that the proper reference point for determining the one-year foreign employment requirement is the date the petitioner files the initial L-1 petition on the beneficiary’s behalf. *Id.*

Therefore, even if the Director determined that the Beneficiary continued to be employed as the foreign entity’s full-time accountant while residing and attending university in the United States, the Petitioner could not establish that he had at least one year of qualifying employment abroad in the three years preceding the filing of the petition. As noted, the Beneficiary had been residing in the United States for more than three years at the time this petition was filed.

Further, because the Beneficiary has not been admitted to the United States for the purpose of rendering his services to the Petitioner or another qualifying entity, the statute and regulations do not allow USCIS to instead look at the three-year period preceding his admission to determine if he completed the requisite one year of employment abroad during that time. *See* 8 C.F.R. 214.2(l)(1)(ii)(A) (“Periods spent in the United States in lawful status for a branch of the same employer or affiliate or subsidiary . . . shall to be interruptive of the one year of continuous employment abroad, but such periods shall not be counted towards fulfillment of that requirement.”)

If an L-1 beneficiary has been admitted to the United States for the purpose of providing services to a qualifying entity in an employment-based nonimmigrant status, USCIS will look at the three-year period preceding that nonimmigrant admission to determine whether they had the requisite year of full-time employment abroad during that period. However, tolling of the one continuous year is not available for those admitted to the United States for other purposes, such as those admitted as F-1 nonimmigrants to attend U.S. educational institutions. USCIS Policy Memorandum PM-602-0167,

supra, at 4 n.8. Accordingly, the Petitioner must establish that his one year of qualifying employment abroad occurred during the three years preceding the filing of this petition in 2018.

Here, the Beneficiary was last employed by the foreign entity abroad in 2014 and therefore the Petitioner cannot establish, as required, that he has one year of employment abroad in a managerial or executive capacity in the three years preceding the filing of the petition. 8 C.F.R. § 214.2(l)(3)(v)(B). Accordingly, the appeal will be dismissed.

III. RESERVED ISSUES

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its appellate arguments regarding the Director's separate determinations that it did not establish (1) that it has a qualifying relationship with the Beneficiary's foreign employer, and (2) that the Petitioner would employ the Beneficiary in a managerial capacity within one year of approval of its new office petition. *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).

Although not addressed by the Director, we observe that the record also contains inconsistent information regarding the Petitioner's intended location which raises questions as to whether it has secured sufficient physical premises to house the new office. *See* 8 C.F.R. § 214.2(l)(3)(v)(A). The Petitioner indicated on the Form I-129 that the Beneficiary's intended worksite is at [REDACTED] Blvd. in [REDACTED] Georgia, and that it intends to operate a gas station and convenience store at this location. In its business plan, the Petitioner indicates that it had already signed a purchase contract for a business at this location. However, the Petitioner did not provide supporting evidence documenting that it has purchased an existing business, or that it had signed a lease for premises located at this address. Instead, it submitted a three-year lease agreement for premises located at [REDACTED] Court, [REDACTED] in [REDACTED] Georgia. Submitted photographs of the exterior of the building and an interior photograph appear to show that the leased premises is warehouse space, rather than premises that could be used to operate the intended gas station and convenience store business. As the Beneficiary's U.S. job offer with the new office is predicated on information provided in the business plan and the Petitioner's intent to operate a retail business at the address indicated on the Form I-129, the Petitioner will need to clarify its location and the nature of its intended business if it pursues future proceedings.

III. CONCLUSION

For the reasons discussed, the Petitioner has not established that the Beneficiary had at least one continuous year of employment in a managerial or executive capacity with a qualifying organization abroad during the three years preceding the filing of the petition. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.