U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8397216

Date: MAY 22, 2020

Appeal of California Service Center Decision

Form I-129, Petition for L-1B Specialized Knowledge Worker

The Petitioner, a company providing investment services, seeks to temporarily employ the Beneficiary as its "Vice President, Investments" in the United States under the L-1B 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 Director of the California Service Center denied the petition, concluding the Petitioner did not establish that: 1) the Beneficiary had been employed abroad full-time for one continuous year in the three years preceding the date the petition was filed; 2) the Beneficiary's former foreign employment involved specialized knowledge; 3) the Beneficiary was qualified to perform the services in the United States; and 4) the Beneficiary's U.S. position would involve specialized knowledge.

On appeal, the Petitioner asserts the Beneficiary remained employed by the foreign employer while in the United States on an F-1 nonimmigrant visa thereby fulfilling his required continuous one year of foreign employment in the three years preceding the date the petition was filed. Further, the Petitioner contends the Beneficiary's foreign position involved, and his position in the United States would involve, specialized knowledge. The Petitioner asserts that the Beneficiary holds greatly developed knowledge of company's investment procedures and processes as compared to his colleagues.

Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1B nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. 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 specialized knowledge 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).

II. ONE YEAR OF EMPLOYMENT ABROAD

The first issue addressed by the Director is whether the Petitioner established that the Beneficiary was employed fulltime for at least one continuous year in the three years preceding the filing of the petition. See 8 C.F.R. § 214.2(l)(3)(iii).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) defines "intracompany transferee" 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.

The Petitioner stated it is a wholly owned subsidiary of the Beneficiary's foreign employer, a "strategic investment holding arm of the Government of Malaysia." The Petitioner stated the Beneficiary's foreign employer focused on holding and managing the assets of Malaysia and making strategic investments. In a support letter provided with the petition, filed on June 27, 2019, the Petitioner stated that the Beneficiary began his career with the foreign employer abroad in 2011 and that he was later promoted to vice president, investments in April 2015. The Petitioner indicated the Beneficiary worked in this position abroad from April 2015 until July 2017 when the foreign employer "sponsored the Beneficiary to study in the United States" pursuant to an F-1 nonimmigrant student visa. The Petitioner explained that the Beneficiary earned a Master's in Business Administration (MBA) in July 2018 and stated that he "has now been working with [the Petitioner] in the United States since 2018."

The Director later stated in a request for evidence (RFE) that United States Citizenship and Immigration Services (USCIS) records reflected that the Beneficiary had arrived in the United States as an F-1 student in May 2017, indicating he was employed abroad for less than one year in the three years preceding the date the petition was filed in June 2019. In response, the Petitioner did not directly address this noted discrepancy, but only reiterated its previous statements as to the Beneficiary's foreign employment. For instance, it again stated that the Beneficiary was sponsored to enter into a U.S. MBA program in July 2017. In denying the petition, the Director pointed to USCIS records and emphasized that they showed the Beneficiary had entered the United States on an F-1 visa in May 2017 and concluded this demonstrated that his employment abroad was for less than one continuous year in the three years preceding the date the petition was filed.

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 [a beneficiary's] application for admission into the United States . . . ." Section 101(a)(15)(L) of the Act. The statute, however, is silent with regard to

those beneficiaries who have already been admitted to the United States in a different nonimmigrant classification. The regulation at 8 C.F.R. § 214.2(l)(3) clearly requires the petition be accompanied by evidence that a beneficiary was employed abroad for one continuous year in the three-year period "preceding the filing of the petition." A policy memorandum clarified the agency's policy indicating that USCIS will use the date of filing of the initial L-1 petition as the reference point for determining the one-year foreign employment requirement. 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), https://www.uscis.gov/legal-resources/policy-memoranda ("L-1 1-in-3 Policy Memo"). As such, the Petitioner must demonstrate that the Beneficiary was employed abroad fulltime for one continuous year in the three years prior to the date the petition was filed, or from June 27, 2016, through June 27, 2019. In addition, the regulations are explicit that "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."

On appeal, the Petitioner reiterates that the Beneficiary entered into the United States to complete an MBA program as an F-1 nonimmigrant and states he "remained on the payroll of [the foreign employer] throughout this period of time." The Petitioner states this allowed the Beneficiary to gain his asserted advanced knowledge, that it was the equivalent of training with the foreign employer and asserts that his employment with the foreign employer did not terminate. The Petitioner contends that the Beneficiary should not be disqualified from "changing status to [that of a] L-1B [specialized knowledge nonimmigrant]" from an F-1 nonimmigrant student.

Upon review of the evidence in the record, we agree with the Director that the Beneficiary did not complete one continuous year of full-time foreign employment from June 27, 2016, through June 27, 2019 (the date the petition was filed). As noted by the Director, USCIS records reflect that the Beneficiary entered the United States on F-1 status well before June 27, 2017. Further, the Petitioner provided the Beneficiary's F-1 visa including an entry stamp dated May 27, 2017. The Petitioner also submitted the Beneficiary's F-1 visa application reflecting that the Beneficiary's MBA program began on June 12, 2017 and that his "earliest admission date" would be May 13, 2017. As, as discussed, by the Director, the evidence supports a conclusion that the Beneficiary entered into the United States to begin an MBA program prior to completing his one year of continuous foreign employment abroad.

Despite the Director discussing the Beneficiary's entries into the United States on F-1 status prior to June 2017 in the RFE and in the denial decision, the Petitioner did not directly address on appeal the evidence indicating he did not complete one continuous year of foreign employment during the qualifying three-year period. Indeed, the Petitioner appears to assert that the Beneficiary's continued employment with the foreign employer while in the United States should count towards the required one year. However, the regulations are explicit that the Beneficiary's time in the United States does not count towards his required foreign employment. 8 C.F.R. § 214.2(l)(1)(ii)(A).

The fact that the foreign entity continued to pay the Beneficiary while he was in the United States does not establish his continuous employment with the foreign entity during the qualifying three-year period. 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)* at 4. Any foreign compensation by the foreign employer is irrelevant for the purpose of establishing the Beneficiary's continuous employment abroad, given that he was not physically present there. Further, it is also

notable that the Petitioner states the Beneficiary completed his MBA program in July 2018 and began working for it in the United States in August 2018. Therefore, there is no indication that the Beneficiary was physically employed abroad after entering the United States in May 2017.

For the foregoing reasons, the appeal will be dismissed as the Petitioner did not establish that the Beneficiary completed one year of full-time continuous employment with a qualifying entity abroad during the three-year period preceding the filing of the petition.

III. SPECIALIZED KNOWLEDGE

As we have discussed, the Director also denied the petition concluding that the Petitioner did not establish that: 1) the Beneficiary's former foreign employment involved specialized knowledge, 2) the Beneficiary is qualified to perform the services in the United States, and 3) the Beneficiary's U.S. position would involve specialized knowledge. Because of the dispositive effect of the above finding of ineligibility, we will only briefly address whether the Beneficiary holds specialized knowledge. As a threshold matter, if the Beneficiary does not possess specialized knowledge, then his position abroad and in the United States would not involve specialized knowledge as necessary to qualify him. We decline to analyze whether the Beneficiary would be qualified for his proposed position in the United States.

The Petitioner indicates that the foreign employer is "entrusted by the Government of Malaysia and undertaking new investments where there are strategic opportunities" and states that it performs this function in the United States marketplace. The Petitioner explained the position requires that the Beneficiary hold advanced knowledge of the foreign employer's "policies, processes, and procedures for investment and financial management," as well as "the creation of these processes, its investiture, divestment, advisory activities, and U.S. and Malaysian law." The Petitioner asserts on appeal that the Beneficiary's knowledge is "greatly developed and more complex in comparison to other workers throughout the company's operations in the U.S. or at any other offices worldwide."

Determinations concerning "advanced knowledge" require review of a beneficiary's knowledge of the petitioning organization's processes and procedures. A petitioner may meet its burden through evidence that a given beneficiary has knowledge of or expertise in the organization's processes and procedures that is greatly developed or further along in progress, complexity, and understanding in comparison to other workers in the employer's operations. Such advanced knowledge must be supported by evidence setting that knowledge apart from the elementary or basic knowledge possessed by others. Also, as with special knowledge, the petitioner ordinarily must demonstrate that a beneficiary's knowledge is not commonly held throughout the particular industry and cannot be easily imparted from one person to another.

The Petitioner reiterates on the record many times, as well as on appeal, that the Beneficiary possesses advanced knowledge of the company's "policies, processes, and procedures." However, we cannot make a factual determination regarding a given beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of its policies, processes, or procedures. At no point does the Petitioner explain in basic terms each of its policies, processes, or procedures. As such, the nature of the Beneficiary's knowledge is not entirely clear, making it difficult to discern how his knowledge is set apart or greatly advanced in comparison to his colleagues. Further, it is also

noteworthy that there is little to no supporting documentation on the record reflecting the Beneficiary acting in his asserted capacity to demonstrate his greatly developed level of knowledge.

Further, the Petitioner did not sufficiently articulate how the Beneficiary gained this advanced knowledge as compared to his colleagues or how this knowledge was set apart from them. Determining whether knowledge is "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others. The Petitioner bears the burden of establishing such a favorable comparison.

The Petitioner did not provide any specific comparisons of the Beneficiary against his colleagues, such as comparing their years of experience, levels of education, projects they worked on, or their levels of knowledge. The Petitioner only declares the Beneficiary as one of the most knowledgeable, or the most knowledgeable, in the company. However, the Petitioner and its foreign parent are tasked with managing a large of group companies and assets making up most of the economy of Malaysia. In fact, a submitted 2018 foreign employer annual report reflects that it has a board of directors and approximately 20 senior managers, and a provided foreign organizational chart indicates that the Beneficiary reported to three investment directors assigned to specific Malaysian companies. Further, the Petitioner provided documentation indicating that the Beneficiary completed several foreign employer trainings widely provided to professionals within the company's greater organizational structure, including one titled "Aspiring Leaders Program for Vice President & Assistant Vice President." Given the scale of the foreign employer and the size of the assets it manages, it is reasonable to conclude that it has many financial professionals overseeing different Malaysian investments and companies and that they have generated expertise and knowledge of its "policies, processes, and procedures."

However, the Petitioner has not submitted any specific comparisons of the Beneficiary against his colleagues to substantiate that his knowledge is greatly advanced in comparison. In fact, the Petitioner provided the cover pages of two policy documents and asserts the Beneficiary has advanced knowledge of them; yet, these documents appear to be widely distributed within the organization, suggesting his claimed knowledge is widely held within the company. The Petitioner notably did not specifically articulate how long it took the Beneficiary to gain his knowledge or indicate how long it would take another one of his colleagues, or someone similarly placed in the industry, to obtain his level of knowledge. Therefore, it is reasonable to conclude, without more sufficient explanation and comparisons, that the Beneficiary's similarly experienced colleagues are also providing similar investment management services for the government of Malaysia. The Petitioner has not effectively set the Beneficiary's knowledge apart from his colleagues with detailed and probative comparisons.

For the foregoing reasons, the Petitioner did not establish that the Beneficiary possesses advanced knowledge as claimed.

ORDER: The appeal is dismissed.