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FILE:

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Office: VERMONT SERVICE CENTER

Date:

MAY 10 2007

IN RE:

Petitioner:
Beneficiary:

[REDACTED]

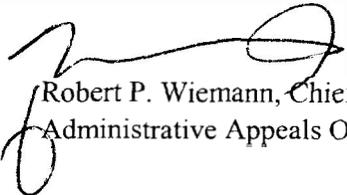
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the instant immigrant visa petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a branch office of [REDACTED], a foreign subsidiary of [REDACTED]. It is a provider of software solutions and business consulting services. The petitioner seeks to employ the beneficiary as a senior account manager.

The director denied the petition, concluding that the petitioner had failed to establish that, within the three years prior to his entry to the United States as a nonimmigrant, the beneficiary had at least one year of employment with a qualifying entity abroad. The director noted that the beneficiary commenced employment with the foreign entity on July 17, 2000, and was admitted to the United States to work for the petitioner as a nonimmigrant on May 19, 2001. The director concluded that as the beneficiary was employed by the foreign entity for only 307 days prior to his entry as a nonimmigrant worker, he is not eligible for the benefit sought. The director rejected the petitioner's argument that the beneficiary's claimed 69 days of employment outside the United States during 2003 and 2005 could be used to establish a cumulative full year of employment with the foreign entity for the purposes of classification as a multinational manager or executive.

On appeal, counsel asserts that the director's interpretation of the statute and regulations "contravenes the intent of the one-year requirement" and is inconsistent with the "global staffing model" utilized by the petitioner and other large multinational companies. Counsel submits a brief in support of the appeal.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. – An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

The issue in the present matter is whether the beneficiary must be employed for at least one uninterrupted year as a manager or executive in the foreign entity in order for the overseas employment to satisfy section 203(b)(1)(C) of the Act.

The regulation at 8 C.F.R. § 204.5(j)(3)(i) states in pertinent part:

Required evidence. A petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates:

- (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petitioner the alien 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 an affiliate or subsidiary of such a firm or corporation or other legal entity;
or
- (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year on a managerial or executive capacity.

(Emphasis added.)

The immigrant petition was filed on September 16, 2005. In a letter dated September 7, 2005, the petitioner stated that the beneficiary was employed by the foreign entity from July 2000 until May 2001 in the positions of program manager and site manager.¹ The petitioner stated that the beneficiary was admitted to the United States in L-1 status to work for the petitioner's U.S. operations in May 2001 in the position of senior program and business area manager assigned to work on a major client account.² The petitioner indicated that the beneficiary has been continuously employed in the United States in a managerial capacity and, since September 2004, has served as a senior account manager for a different U.S. client.

On February 22, 2006, the director issued a request for additional evidence. Specifically, the director advised the petitioner as follows:

¹ The issue of whether the beneficiary's employment with the foreign entity was in a primarily managerial or executive capacity, and whether his proposed employment in the United States would be in a managerial or executive capacity, is not in question. As determined by the director, the record demonstrates that the beneficiary has been and would be employed by the petitioning organization in a qualifying managerial capacity as defined at section 101(a)(44)(A) of the Act.

² Counsel for the petitioner subsequently acknowledged that this statement was made in error, and clarified that the beneficiary was initially admitted to the United States in H-1B status on May 19, 2001, not in L-1 status as initially stated. The evidence of record shows that the beneficiary was granted a change of status from H-1B to L-1A in 2003 and that he was maintaining L-1A nonimmigrant status at the time the immigrant petition was filed.

Submit additional evidence to establish that the beneficiary has been employed abroad with a qualifying entity in a(n) executive/managerial capacity for one year of full-time employment within the three years prior to May 19, 2001, the beneficiary's date of entry as a nonimmigrant in the United States and prior to September 16, 2005, the date of filing the petition.

The director noted that based on the petitioner's representations, it did not appear that the beneficiary had been employed abroad with a qualifying entity for one year within the three years prior to his entry to the United States as a nonimmigrant.

In a response dated April 16, 2006, counsel for the petitioner asserted that the beneficiary was employed with the foreign entity for more than one year, based on his work on projects outside the United States subsequent to commencing his employment with the U.S. operations as a nonimmigrant. Counsel asserts that the beneficiary was employed with the foreign entity for 307 days prior to transferring to the United States in H-1B status on May 19, 2001, and subsequently worked outside the United States for a total of 69 days, thus giving the beneficiary an aggregate total 376 days of employment with the foreign entity.

The petitioner submitted a letter from the foreign entity, dated April 14, 2006, which indicated that the beneficiary has worked "both on site and offshore on each of the projects or accounts he has managed" since joining the petitioner's organization. The foreign entity described the chronology of his positions as follows:

- Program Manager for the [REDACTED]
July 17, 2000 to December 2000. Location in India.
- Senior Program Manager and Business Area Manager on [the petitioner's] projects for American Express
January 1, 2001 to May 19, 2001 offshore in India
May 19, 2001 to November 17, 2003 on site in Phoenix, Arizona in H-1B status
November 17, 2003 to December 6, 2003 offshore in India
December 6, 2003 to September 1, 2004, on site in Phoenix, Arizona in L-1A status
- Senior Account Manager for [the petitioner's] Aerospace and Defense Projects for [REDACTED]
September 1, 2004 to June 13, 2005 on site in Phoenix, Arizona in L-1A status
June 13, 2005 to July 31, 2005 offshore in India
July 31, 2005 to the present on site in Phoenix, Arizona in L-1A status

In support of its response, the petitioner submitted: a copy of a page in the beneficiary's passport showing a departure stamp from India dated May 19, 2001; a copy of a page in the beneficiary's passport containing a U.S. arrival stamp dated May 19, 2001; a copy of a Form I-94, Departure Record, indicating the petitioner's admission to the United States in L-1 status on December 6, 2003; a copy of a page in the beneficiary's passport showing an Indian arrival stamp dated June 13, 2005; and a copy of the beneficiary's most recent Form I-94 confirming his admission to the United States on July 31, 2005.

Counsel concluded:

These documents demonstrate that [the beneficiary] was employed with the petitioner outside the United States for more than one year. 8 CFR 204.5(j)(3)(i)(C) makes it clear that for multinational executives/managers in the United States, their qualifying employment abroad need not be within the immediately preceding three years; periods prior to their initial entry may be counted even if they were not within three years of the filing date of the I-140 petition.

The director denied the petition on July 10, 2006, concluding that the petitioner had failed to establish that the beneficiary had at least one year of employment with the foreign entity within the three years prior to his entry as a nonimmigrant, or within the three years preceding the filing of the instant petition. The director acknowledged the petitioner's assertion that the beneficiary was employed outside the United States for a total of 69 days, but concluded that these periods outside the United States "cannot be captured for use in establishing the beneficiary's fulfillment of one year of full-time employment abroad as the beneficiary had already entered the United States as a nonimmigrant."

On appeal, counsel for the petitioner asserts that the director's interpretation of the statute and regulations "contravenes the intent of the one-year requirement and is inconsistent with the global staffing model of a company such as [the petitioner]." Counsel reiterates that the beneficiary was employed by the petitioner outside the United States from July 17, 2000 through May 19, 2001, from November 17, 2003 through December 6, 2003, and from June 13, 2005 through July 31, 2005, for a total of 376 days.

Counsel asserts that the beneficiary "falls between the cracks" of two subdivisions of 8 C.F.R. § 204.5(j)(3)(i), emphasizing that the beneficiary has been employed by the petitioner in a managerial capacity for six years, and, in that period has been employed outside the United States for more than one year. Counsel contends that the petitioner was denied because his qualifying one year of employment was neither all within the three years preceding the filing of the petition, as required by 8 C.F.R. § 204.5(j)(3)(i)(A), nor all within the three years preceding the beneficiary's entry to the United States as a nonimmigrant, as required by 8 C.F.R. § 204.5(j)(3)(i)(B).

Counsel concedes that the director's position conforms to "the literal language of the regulations," but asserts that such position is contrary to regulations governing the L-1 nonimmigrant intracompany transferee classification. Counsel asserts that pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(A), "the continuity of employment is not broken by visits to the United States while employed by the same international employer."

Counsel asserts that the director's interpretation "makes no sense because the beneficiary's employment with the international organization has been continuous and [the director's] position penalizes those whose services are probably of the most value to the petitioning company by virtue of their long experience working with the company." Counsel further contends that because of the petitioner's global staffing model, its managerial employees are required to manage projects which are executed both onsite and offshore, which creates a "particular continuity of their positions and duties which would argue for allowing counting back beyond the 3-year period if any intervening U.S. employment was with the petitioning employer."

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary has the requisite one year of employment abroad.

The statute and regulations pertaining to an immigrant petition for a multinational manager or executive state that the beneficiary must have been employed by the foreign entity “for at least one year” in the three years immediately preceding the filing of the Form I-140, or in the three years immediately preceding the beneficiary's entry to the United States as a nonimmigrant. *See* Section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153, and 8 C.F.R. §§ 204.5(j)(3)(i)(A) and (B). However, neither the statute nor the regulations specifically discuss whether the one-year requirement must be uninterrupted employment with the foreign entity.³

The AAO interprets the phrase “for at least one year” to require a minimum of one uninterrupted year of qualifying foreign employment. The plain language of the statute indicates that Congress envisioned no less than one year of overseas employment as the minimum qualifying period. The language of the statute does not encompass a situation where a beneficiary might acquire a total of one year of qualifying employment abroad by aggregating short periods of employment with a foreign entity. The legislative history for the enacting statute, the Immigration Act of 1990, is silent as to whether the one-year period should be continuous or uninterrupted. *See* H.R. REP. 101-723, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6710, 6740, 1990 WL 200418 (September 19, 1990).

While the nonimmigrant regulations do not bind the agency in the review of an immigrant visa petition, the director may reasonably review the overseas experience of an immigrant visa petition beneficiary in a manner consistent with the nonimmigrant regulations. Counsel claims the regulations governing the nonimmigrant intracompany transferee classification, specifically, 8 C.F.R. § 214.2(l)(1)(ii)(A), support the petitioner's position that the beneficiary's employment periods with the foreign entity over a five-year period can be aggregated for the purposes of establishing his one year of employment with the foreign entity. Counsel's assertion is not persuasive.

The statute governing the nonimmigrant intracompany transferee classification specifically requires the petitioner to establish that the beneficiary has been employed “continuously” for one year in a qualifying overseas position. Section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101. However, in addressing the requirement that a nonimmigrant intracompany transferee be “employed abroad continuously for one year by a firm or corporation or other legal entity thereof,” the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) provides that some events will not be deemed interruptive. Specifically, the regulation states:

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 towards fulfillment of that requirement.

Counsel has not advanced any support for the proposition that the regulatory definition of intracompany transferee was intended to create an exception to the statutory requirement that the beneficiary be employed continuously for one year with a qualifying entity abroad within the three years preceding his application for

³ The precursor statutory scheme unambiguously required one year of continuous employment abroad. Prior to the Immigration Act of 1990, under now obsolete Department of Labor regulations, certain executives and managers were “pre-certified” under Schedule A Group IV and allowed to apply directly to the Immigration and Naturalization Service for sixth preference immigrant visa status. *See* 20 C.F.R. § 656.10 (1987). This classification specifically required the petitioner to establish that the alien had been “continuously employed” as a manager or executive outside the United States for the immediate prior year. *Id.* at § 656.10(d).

admission. *See* section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). The AAO cannot find that the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) contemplates a situation whereby a beneficiary could acquire one year of continuous qualifying employment abroad by aggregating short periods of employment with a foreign entity while concurrently employed by a United States entity. Rather, the regulatory definition of “intracompany transferee” only allows USCIS to expand the “one year of continuous employment abroad” requirement established by statute beyond the three years immediately preceding the filing of the petition. The provision accommodates situations in which a beneficiary had at least one continuous year of qualifying experience with a related foreign entity, but worked or received training with a qualifying U.S. entity in another status for two or more years before seeking to obtain L-1 status. Beneficiaries in this situation would otherwise be disqualified from obtaining L-1 status even if they had been continuously employed abroad with a qualifying entity for years immediately prior to their entry to the United States. The beneficiary must still have completed one full year of employment with the foreign entity prior to his or her transfer to the United States as a nonimmigrant in order to qualify as an intracompany transferee.

With respect to immigrant visa petitions filed pursuant to section 203(b)(1)(C) of the Act, the regulations include a similar accommodation, by allowing USCIS to look beyond the three-year period immediately preceding the filing of the petition when determining whether a beneficiary completed the requisite one year of employment with a qualifying foreign entity, in those instances where the beneficiary is already employed by a qualifying organization in the United States. *See* 8 C.F.R. § 204.5(j)(3)(i)(B).

This limited interpretation of 8 C.F.R. § 214.2(l)(1)(ii)(A) is supported by the USCIS precedent decision, *Matter of Continental Grain Co.*, 14 I&N Dec. 140 (DD 1972). Although this decision pre-dates the current definition of intracompany transferee, the decision supports the proposition that the beneficiary of an L-1 petition must gain his or her continuous year of employment abroad, but that any *subsequent* periods of stay with a related United States company will not be interruptive. In *Matter of Continental Grain*, the beneficiary had worked for a foreign entity continuously for a one-year period, spent 28 months in the United States receiving training in the United States, and had then returned to the foreign entity for an additional seven months immediately prior to submission of the L-1 petition.

The decision emphasizes that the beneficiary was employed abroad by the petitioner’s subsidiary in a qualifying capacity for more than the required “one year.” The issue was whether the period of time the beneficiary spent in the United States prohibited a finding that he was employed by the foreign entity within the one-year period immediately preceding the filing of the petition, as was required under section 101(a)(15)(L) of the Act (1970). The director concluded: “The beneficiary’s period of training within the United States . . . should not be regarded as interruptive of the concept that he ‘has been employed continuously for one year by . . . the same employer or a subsidiary thereof’ within the meaning of section 101(a)(15)(L).” It is reasonable to conclude that 8 C.F.R. § 214.2(l)(1)(ii)(A) merely incorporated the director’s finding in *Matter of Continental Grain*, rather than creating a new exception to the requirement that the beneficiary complete one year of continuous employment abroad. Counsel’s assertion that the director’s decision contravenes the intent of the one-year requirement and is inconsistent with the regulations governing nonimmigrant intracompany transferee classification is not persuasive.

As noted by the director, and as conceded by the petitioner, the beneficiary in this matter was not employed by the foreign entity on a continuous or uninterrupted basis for one full year, either prior to his entry to the United States as an H-1B nonimmigrant, or at any point prior to the filing of the instant petition and he is thus not eligible for classification as a multinational manager pursuant to section 203(b)(1)(C) of the Act.

In addition, the petitioner's claims that the beneficiary was employed by the petitioner outside the United States for a total of more than one year fail on an evidentiary basis. While the petitioner has documented that the beneficiary traveled to India on two occasions since his initial entry to the United States in May 2001, the petitioner has not adequately supported its claim that these trips to India should be considered "employment" with the petitioner's foreign operations. The petitioner has not submitted any supporting evidence to establish that the purpose of these trips was related to the beneficiary's employment, such as travel itineraries, evidence that the petitioner paid for the beneficiary's airfare and accommodations, or a description of the beneficiary's activities during the claimed offshore employment. Although counsel emphasizes that the petitioner's managerial employees are required to participate in the supervision of both onsite and offshore activities, the fact that the beneficiary made only two relatively brief trips to India over a span of four years belies the claimed international nature of his position. The AAO cannot determine based on the minimal evidence presented whether the beneficiary's trips to India were for personal or professional purposes. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Regardless, as discussed above, the petitioner's claimed periods of employment with the foreign entity cannot be aggregated for the purposes of establishing one year of qualifying employment abroad, and these issues need not be discussed further.

Based on the above discussion, the petitioner has not satisfied the eligibility requirements for the beneficiary's classification as a multinational manager or executive. For this reason, the appeal will be dismissed.

The AAO observes that the beneficiary was initially granted a change of nonimmigrant status from H-1B to L-1A on August 22, 2003 (SRC 03 226 50680), at which time his most recent entry to the United States was on May 19, 2001. Based on the evidence submitted with this petition, the beneficiary did not have one continuous year of qualifying employment with the foreign entity prior to his admission to the United States as an H-1B nonimmigrant on May 19, 2001, and the petitioner readily concedes this fact. The regulation at 8 C.F.R. § 214.2(1)(3)(iii) requires the petitioner to submit evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition. In the present matter, either the petitioner did not comply with this requirement, misrepresented that they had complied, or the director committed gross error in approving the petition without evidence of the beneficiary's employment abroad for the required time period. Regardless, the approval of the initial L-1A petition and two subsequent extensions of the beneficiary's L-1A status may be subject to revocation based on the evidence submitted with this petition. *See* 8 C.F.R. § 214.2(1)(9)(iii). The director is instructed to review all of the beneficiary's prior L-1A approvals for possible revocation.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.