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U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: NEBRASKA SERVICE CENTER Date: **DEC 30 2008**
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IN RE: Petitioner: [REDACTED]
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:



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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the appeal will be sustained.

The petitioner is a multinational corporation operating in the United States as a telecommunications company. It seeks to employ the beneficiary as its service delivery manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

In denying the petition, the director found that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity for one year during the relevant three-year time period. More specifically, the director determined that the beneficiary was not employed abroad from July 2003 until July 2004, the one-year time period he deemed essential for the purpose of meeting a relevant statutory requirement.

On appeal, counsel argues that the one-year time period upon which the director based the adverse decision was erroneous. Counsel asserts that the beneficiary initially entered the United States with an F-1 student visa and that the date of that entry should be considered as the basis for determining the specific dates of the relevant three-year statutory period during which the beneficiary's employment abroad must be established.

Accordingly, in this proceeding, the AAO will determine which three-year time period is statutorily relevant and subsequently review the dates of the beneficiary's employment abroad to determine whether she was employed by the foreign entity for at least one year within that three-year period.

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.

In addition, 8 C.F.R. § 204.5(j)(3)(i)(B) states the following:

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 in a managerial or executive capacity[.]

In the instant matter, the petitioner claims that the beneficiary was employed by its foreign affiliate abroad from August 2002 until December 2003 and states that shortly thereafter, the beneficiary took a leave of absence in order to come to the United States in the F-1 nonimmigrant visa category. The petitioner has provided documentation showing that the beneficiary entered the United States using her F-1 visa on December 29, 2003. Counsel argues that the three years prior to beneficiary's December 2003 nonimmigrant entry must be the point of reference for the purpose of determining the relevant three-year time period during which the beneficiary's minimum one year of foreign employment must have occurred.

On the other hand, the director focused on the beneficiary's latest, July 22, 2006 entry into the United States under the L-1A nonimmigrant visa category, finding that this L-1A entry is the point of reference for determining the relevant three-year time period during which the beneficiary's one year of foreign employment should have occurred. Based on this reasoning, the director issued a notice of intent to deny dated July 11, 2007, concluding that the beneficiary's leave of absence from her foreign employment beginning in December 2003 precluded the petitioner from establishing that the beneficiary was employed abroad from July 2003 until July 2004, the first year of the three-year time period counting back from July 22, 2006.

The clear language of the statute indicates that the relevant three year period is that "preceding the time of the alien's application for classification and admission into the United States under this subparagraph." § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C). The statute, however, is silent with regard to aliens who have already been admitted to the United States in a nonimmigrant classification. In promulgating the regulations on section 203(b)(1)(C) of the Act, the legacy Immigration and Naturalization Service (INS) concluded that it was not the intent of Congress to exclude L-1A multinational managers or executives who had already been transferred to the United States from this employment-based immigrant classification. Specifically, INS stated the following with regard to the interpretation of the Congressional intent behind the relevant statutory provisions:

The Service does not feel that Congress intended that nonimmigrant managers or executives who have already been transferred to the United States should be excluded from this classification. Therefore, the regulation provides that an alien who has been a manager or executive for one year overseas, during the three years preceding admission as a nonimmigrant manager or executive for a qualifying entity, would qualify.

56 Fed. Reg. 30703, 30705 (July 5, 1991).

In other words, for those aliens who are currently in the United States in L-1A status, the relevant time period mentioned in the statute should be the three-year period preceding the time of the alien's application and admission as (or change of status to) an L-1A multinational managerial or executive classification.

In light of the above and contrary to the assertions of counsel, the beneficiary's December 2003 F-1 entry into the United States, which was not for the purpose of being employed as a manager or executive within the petitioning entity, cannot be the basis for determining the relevant three-year time period during which the beneficiary's employment abroad would be considered.¹

That being said, a review of the record shows that the beneficiary's status was changed to that of an L-1A nonimmigrant and that such status was valid from December 5, 2005 to December 4, 2007. Therefore, the relevant three-year time period during which the beneficiary's one year of qualifying foreign employment should have taken place is from December 5, 2002 until December 4, 2005. Since the beneficiary's employment with the foreign entity temporarily ceased on December 19, 2003, the petitioner must establish that the beneficiary was employed abroad for one year between December 5, 2002 and December 19, 2003. The record shows that the beneficiary was, in fact, employed by the foreign entity for one year during that time period.

Therefore, while the director's decision properly indicates that only the beneficiary's L-1A status is relevant for the purpose of determining the three-year time period during which the one year of qualifying employment abroad must have taken place, the director overlooked the beneficiary's initial December 5, 2005 change of status to L-1A classification. Under an extensive interpretation, the AAO cannot conclude that legacy INS in promulgating 8 C.F.R. § 245.5(j)(3)(i)(B) intended to exclude aliens that change their status to that of nonimmigrant managers or executives, as opposed to being admitted in that status, from this immigrant classification. As such, the director's grammatical interpretation precluded the establishment of the correct three-year time period. Specifically, the facts presented in this matter indicate that the basis for the director's adverse conclusion, i.e., that the beneficiary was not employed by a qualifying foreign entity from July 2003 until July 2004, is incorrect. On that basis, the AAO hereby withdraws the director's decision. The record shows no other reason why this petition should not be approved.

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. The petitioner in the instant case has sustained that burden.

ORDER: The appeal is sustained.

¹ Even under the L-1 regulations, the beneficiary's period of stay in the United States as an F-1 student would be considered "interruptive" of the beneficiary's one year of continuous employment abroad. See 8 C.F.R. § 214.2(l)(1)(ii)(A).