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

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

MATTER OF V-B-USA, INC.

DATE: OCT. 1, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a New York corporation engaging in the import and distribution of designer bedding, seeks to classify the Beneficiary as an L-1A nonimmigrant intracompany transferee. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner, established in August 2013, claims to be a subsidiary of [REDACTED] located in [REDACTED]. It seeks to employ the Beneficiary as the Imports and Marketing Manager of its new office in the United States.

The Director denied the petition, concluding that the Petitioner did not establish that the Beneficiary had been employed by a qualifying foreign entity for at least one year within the three years preceding the filing of the petition.

The Petitioner subsequently filed an appeal. The Director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, the Petitioner asserts that the Beneficiary was employed by the foreign entity in a managerial capacity for one year. The Petitioner submits a brief and additional evidence in support of the appeal.

I. THE LAW

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. 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, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) 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.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

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Matter of V-B-USA, Inc.

II. THE ISSUE ON APPEAL

The sole issue addressed by the Director is whether the Petitioner established that the Beneficiary was employed on a full-time basis by a qualifying foreign entity for one continuous year within the three-year period preceding the filing of the petition, pursuant to 8 C.F.R. § 214.2(I)(3)(iii).

A. Facts

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 9, 2014. On the Form I-129, the Petitioner stated that the Beneficiary's "date of last arrival" to the United States was May 17, 2014, and her current nonimmigrant status is "B-1," valid until November 16, 2014. On the L Classification Supplement to Form I-129, the Petitioner stated that the Beneficiary was employed by the foreign entity from July 2, 2013 to the present. Where asked to explain any interruptions in the Beneficiary's employment, the Petitioner simply listed the name of the foreign entity. Finally, the Petitioner stated that the Beneficiary has "no prior H or L classification." In its initial letter of support, the Petitioner again stated that the Beneficiary has worked as the Export and Marketing Manager of the foreign entity since July 8, 2013.¹

The Petitioner submitted a copy of the Beneficiary's degree certificate demonstrating that she earned a Bachelor of Science in Business Administration from [REDACTED] in the United States on May 12, 2012.

The Petitioner also submitted a "Certification of Employment and Income" from the foreign entity, dated August 15, 2014, certifying that the Beneficiary was employed by the foreign entity as the Import/Export General Manager since July 8, 2013.

The Director issued a request for evidence (RFE) on October 20, 2014, advising the Petitioner that "USCIS records show that the Beneficiary has been continuously present in the United States, except for a few brief absences, since January 2008, first in F-1 student status and currently in B-1 visitor for business status." The Director noted that it was unclear how the Beneficiary will be able to demonstrate at least one continuous year of full-time employment abroad with a qualifying organization given her presence in the United States since 2008. The Director instructed the Petitioner to submit evidence that the Beneficiary was employed full time by a qualifying foreign entity for one continuous year within the three-year period preceding the filing of the petition.

In response to the RFE, the Petitioner submitted a letter, dated December 26, 2014, addressing the Beneficiary's one year of employment abroad as follows:

¹ We note that throughout the record, the Petitioner contends that the Beneficiary's employment with the foreign entity commenced on July 8, 2013. Therefore, it appears that the Petitioner's claim that her employment commenced on July 2, 2013, as set forth on the L Classification Supplement, was a typographical error.

The beneficiary has been working as an Export & Marketing Manager with our parent organization, [the foreign entity], China since July 8, 2013. The beneficiary traveled to United States of America on business trip in order to establish contacts and setup business operations as a part of our export strategy. While the beneficiary was in the United States, she has been completely supervising her team through utilizing advance technologies via web, phone, email, mail, etc. She left the United States on November 15, 2014 and has been continuously in China and continuously performing her job duties.

....

While the beneficiary is traveling overseas as part of her job duties, she was continuously employed by our organization, which clearly confirms that the beneficiary has at least one year continuous full time employment with our organization prior to submission the petition on her behalf.

The Petitioner submitted its payroll documentation from July 2013 to November 2014, indicating that it paid the Beneficiary wages during that time. The payroll documentation lists the Beneficiary's title as Export Manager with a base salary of ¥ 8,000.00.

The Director denied the petition on January 21, 2015, concluding that the Petitioner did not establish that the Beneficiary has at least one continuous year of full-time employment abroad with a qualifying organization. In denying the petition, the Director noted that, in response to the RFE, the Petitioner asserted that the Beneficiary has one year of employment with the foreign entity because the foreign entity has been paying her and, during her time in the United States, she continued to supervise her team at the foreign entity remotely. The Director found that the regulations require that the Beneficiary perform her job duties for the qualifying foreign entity full-time for at least one continuous year while physically abroad and the fact that the Beneficiary has performed her duties while in the United States does not meet the requirements.

On appeal, the Petitioner contends that the Beneficiary's travel to the United States in the course of her duties "does not interrupt the continuation of employment abroad with a qualifying organization within the three years preceding the filing of the petition." The Petitioner further states the following:

The petitioner submits that the beneficiary has been continuously employed by their parent organization since July 2013 and has completed required one continuous year of employment in the past three years prior to the admission into L-1 status. The petitioner submits that the traveling to the overseas markets is center and essential of the job duties of an Export and Marketing Manager. Due to part of her job duties, the beneficiary has been traveling to the United States to promote the parent company's business in the United States. The beneficiary submits that all the

times she . . . has been continuously working with parent company in China and traveled to the United States as a part of her job duties.

The Petitioner submits a letter from the Beneficiary, dated February 10, 2015, explaining that she departed the United States on July 1, 2013 and commenced employment at the foreign entity on July 8, 2013, attending one month of extensive training. The Beneficiary then entered the United States on August 23, 2013, until October 2, 2013, again on November 29, 2013, until January 20, 2014, again on February 26, 2014 until April 23, 2014, and again on May 17, 2014, until November 11, 2014. The Beneficiary's letter goes on to state:

Since July 8, 2013, I have been continuously working with our parent organization in China in managerial capacity. All of my business trips to the United States are part of my job responsibilities. . . . Most importantly, I have been continuously directing my team during my time in China and USA. Traveling is the most important function of any Export Manager's responsibilities. . . . During my business trips to the USA . . . I have been continuously directing my team in China and communicating with Sr. Management in China regularly by Emails, Skype, Instant Messengers, taking tasks and complete tasks issued by China Headquarters. I submit that I have been continuously employed by the parent Company in China and my travel to USA is a part of my job responsibility.

The Petitioner also submits a letter from the foreign entity, dated January 25, 2015, further certifying that the Beneficiary has been employed by the foreign entity since July 2013 and reiterating her duties abroad.

B. Analysis

Upon review, and for the reasons stated herein, the Petitioner has not established that the Beneficiary has one year of continuous full-time employment with a qualifying organization abroad.

The regulation at 8 C.F.R. § 214.2(1)(I)(ii)(A) states in pertinent part the following:

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.*

(Emphasis added.)

The Petitioner filed the Form I-129 on October 9, 2014; therefore, the Petitioner must show that the Beneficiary was employed full-time by the qualifying foreign entity for one continuous year between October 9, 2011 and October 9, 2014. The Petitioner states that the Beneficiary commenced her

employment with the qualifying foreign entity on July 8, 2013. Here, the Petitioner and Beneficiary concede that the Beneficiary spent a total of 161 days in China and 290 days in the United States between the date she commenced her employment with the qualifying foreign entity and the date of filing the instant petition.

The Petitioner contends that the Beneficiary's time in the United States was in the fulfillment of her duties for her position at the qualifying foreign entity and that she continued to receive a salary from the qualifying foreign entity and continued to manage her subordinates abroad during that time. That fact establishes that the Beneficiary's time in the United States is not interruptive of her continuous employment with the qualifying foreign entity. However, the regulation is clear in that the Beneficiary may spend time in the United States in order to perform services for the qualifying foreign entity but such time shall not be counted towards the fulfillment of the one year requirement. As such, we cannot determine that the Beneficiary has met the requirement of one year of continuous full-time employment abroad.

Based on the evidence in the record, the Petitioner has not established that the Beneficiary has been employed full-time by the qualifying foreign entity for one continuous year within the three-year period preceding the filing of the petition. Accordingly, the appeal will be dismissed.

III. CONCLUSION

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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of V-B-USA, Inc.*, ID# 13957 (AAO Oct. 1, 2015)