



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

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

MATTER OF V- CORP.

DATE: JULY 18, 2016

CERTIFICATION OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a Delaware corporation engaging software design and development services, seeks to temporarily employ the Beneficiary as an Associate Architect under the L-1A 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 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 an executive or managerial capacity.

The Director, Vermont Service Center, originally denied the petition, concluding that the Petitioner did not establish that the Beneficiary will be primarily employed in a managerial or executive capacity in the United States. Although not a stated ground for denial, the Director also stated that the Petitioner would need to establish that the Beneficiary has been employed abroad in a managerial or executive capacity, or in a specialized knowledge capacity, for one year within the three years preceding the filing of the petition if it chose to appeal the decision.

The Petitioner filed an appeal. Our office withdrew the Director's original decision and remanded the petition to the Director for an additional determination on one issue: whether 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. The Director again denied the petition and certified it to us for review. The Director concluded that the Petitioner is ineligible for the benefit sought as it has not 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.

The matter is now before us on certification. Upon *de novo* review, we will deny the petition.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have employed the Beneficiary in a 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. 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

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employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity. *Id.*

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, 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.

II. FOREIGN EMPLOYMENT FOR ONE CONTINUOUS YEAR

The Director denied the petition based on a finding that the Petitioner did not establish 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, pursuant to 8 C.F.R. § 214.2(l)(3)(iii).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) states:

Intracompany transferee means 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

(b)(6)

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abroad but such periods shall not be counted toward fulfillment of that requirement.

A. Evidence of Record

The Petitioner filed the Form I-129 on March 7, 2014. On the L Classification Supplement to Form I-129, the Petitioner stated that the Beneficiary was employed by the qualifying foreign entity from April 26, 2004 to February 17, 2012, and again from September 9, 2013 to the present. The Petitioner indicated that the Beneficiary changed employers on February 17, 2012 and later returned to the foreign entity on September 9, 2013.

In its letter of support, dated March 5, 2014, the Petitioner stated that the Beneficiary first joined the foreign entity in April 2004 as a software engineer. The Petitioner stated that the Beneficiary was ultimately employed by the foreign entity in several managerial positions: as an "Associate Technical Lead" from April 2006 to January 2008; as a "Senior Consultant – Technology" from January 2008 to September 2013; and as an "Associate Architect – Technology" from September 2013 to the present. However, the Petitioner did not discuss the Beneficiary's absence from the foreign entity from February 2012 to September 2013, and appeared to include that timeframe for his position as "Senior Consultant – Technology."

The Petitioner submitted the Beneficiary's resume listing the following positions at the foreign entity for the prescribed period:

- [REDACTED] Service Inquiry Manager
Technical Project Manager (2013 Oct to Date)
- [REDACTED] Cloud Connectors
Architect (2013 Sep to 2013 Oct)
- [REDACTED]
Architect / Tech Lead (2011 Dec to 2012 Jan)
- [REDACTED]
Architect / Tech Lead (2011 Oct to 2011 Dec)
- [REDACTED] AVN
Technical Project Manager (2011 Jan to 2011 Oct)

The Beneficiary's resume further indicated that he was employed by a different company, [REDACTED] from February 2012 to September 2013. The project is listed as "Production Tracking Automation" and the Beneficiary's position was "Architect / Technical Lead." The resume provides detailed information pertaining to the Beneficiary's role and duties during that period of employment.

The Director originally denied the petition on May 27, 2014, concluding that the Petitioner did not establish that the Beneficiary will be employed in a managerial or executive capacity in the United States, and stated that, on appeal, the Petitioner would need to establish that the Beneficiary had been employed abroad in a managerial or executive capacity, or in a specialized knowledge capacity,

for one year in the three years immediately preceding the filing of the petition. The Petitioner filed an appeal and on March 2, 2015, our office remanded the matter to the Director, concluding that the Petitioner had not established 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 remanding the petition, we found that, given the Beneficiary's break in employment at the foreign entity, employment of 11 months and 10 days prior to the break and 5 months and 26 days after the break did not amount to "one continuous year of full-time employment at a qualifying foreign entity within the three year period preceding the filing of the petition."

On remand, the Director issued a second request for evidence (RFE),¹ instructing the Petitioner to submit evidence to overcome the deficiencies in the record.

In response to the second RFE, the Petitioner submitted copies of the Beneficiary's pay stubs for his employment at the foreign entity for the following dates:

- January 2015 to December 2015
- January 2014 to December 2014
- September 2013 to December 2013
- January 2012
- January 2011 to December 2011 (The pay stub for September 2011 was not included.)
- January 2010 to December 2010
- January 2009 to December 2009
- January 2008 to December 2008

The Petitioner also submitted several documents from the foreign entity relating to the Beneficiary's employment abroad, as follows:

- A Letter of Appointment, dated September 9, 2013, offering the Beneficiary employment at the foreign entity as an Associate Architect – Technology, effective on the same date.
- A Compensation Review document for the Beneficiary's employment at the foreign entity for the years 2005, 2006, 2008, 2009, and 2010.
- A Promotion Letter, dated December 18, 2007, promoting the Beneficiary to the position of Senior Consultant – Technology at the foreign entity, effective January 1, 2008.
- A Re-designation letter for the Beneficiary's position at the foreign entity effective August 1, 2007.

¹ Prior to the decision issued on May 27, 2014, the Director issued an RFE, but the requests contained therein did not pertain to the Beneficiary's foreign employment.

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- A Confirmation of Employment letter, dated January 25, 2005, confirming the Beneficiary's employment at the foreign entity as Software Engineer since April 26, 2004.
- A Letter of Appointment, dated April 26, 2004, offering the Beneficiary employment at the foreign entity as a Software Engineer, effective on the same date.
- An Offer of Employment letter, dated April 7, 2004, offering the Beneficiary employment at the foreign entity as a Software Engineer, with a start date of April 26, 2004.

The Director denied the petition and certified it to us for review on March 24, 2016, concluding that the Petitioner did not establish 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 denying the petition, the Director noted that the foreign entity's compensation reviews and other letters are dated prior to March 7, 2011, and the most recent offer letter is dated September 9, 2013. The Director found that the Petitioner did not submit any evidence to establish the Beneficiary was employed by a qualifying organization between the dates of February 18, 2012, and September 8, 2013.

B. Analysis

Upon review of the petition and the evidence of record, we conclude that the Petitioner has not established 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.

The Petitioner filed the Form I-129 on March 7, 2014; therefore, the Petitioner must show that the Beneficiary was employed full-time by the foreign entity for one continuous year between March 7, 2011, and March 7, 2014.

The Petitioner states that the Beneficiary commenced his employment with the foreign entity on April 26, 2004, and has submitted evidence to establish that he was employed from March 7, 2011, to February 1, 2012, amounting to 10 months and 25 days of full-time employment. The Petitioner and Beneficiary specifically state that the Beneficiary was not employed by a qualifying foreign entity during the period between February 2012 and September 2013, which is over one and one-half years.

The Petitioner also submitted evidence to establish that the Beneficiary was employed by the foreign entity from September 9, 2013, to March 7, 2014, amounting to six months and four days of full-time employment.

In the instant matter, the Beneficiary does not meet the "one continuous year of full-time employment abroad" requirement at 8 C.F.R. § 214.2(l)(3)(iii). Given the Beneficiary's break in employment at the foreign entity of over one and one-half years, the Beneficiary's employment prior

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to the break may not be combined with his employment after the break as it would not be “continuous.” As such, we find that the Beneficiary’s employment of 10 months and 25 days prior to the break and six months and four days after the break do not amount to “one *continuous* year of full-time employment at a qualifying foreign entity within the three year period preceding the filing of the petition.” 8 C.F.R. § 214.2(l)(3)(iii) (emphasis added). The Petitioner, therefore, has not established 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.

III. CONCLUSION

In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The initial decision of the Director, Vermont Service Center, dated March 24, 2016, is affirmed, and the petition is denied.

Cite as *Matter of V- Corp.*, ID# 17918 (AAO July 18, 2016)