

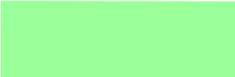
(b)(6)

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



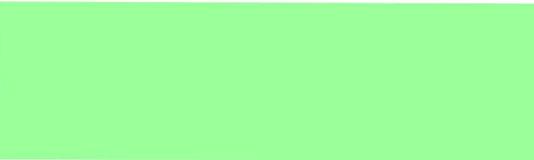
U.S. Citizenship
and Immigration
Services



DATE: MAR 04 2014 OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a multinational corporation that seeks to employ the beneficiary in the United States as its principal consultant. 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 support of the Form I-140, the petitioner submitted a statement dated June 12, 2012, which contained relevant information pertaining to the petitioner's eligibility. The petitioner stated that the beneficiary has intermittently worked both abroad and in the United States since he commenced his employment with the multinational organization. The petitioner also provided supporting evidence that documented its corporate structure and expanded on the type of business the petitioner conducts in the United States and abroad.

The director reviewed the petitioner's submissions and determined that the petition did not warrant approval. The director therefore issued a request for evidence (RFE) dated November 30, 2012 informing the petitioner of various evidentiary deficiencies. The petitioner was asked to provide additional information pertaining to the beneficiary's foreign and U.S. employment.

The petitioner's response included a statement dated February 7, 2013 in which the petitioner addressed the beneficiary's employment both abroad and in the United States. The discussion of the beneficiary's employment abroad included the dates of his intermittent employment, which commenced in May of 2004. Specifically, the petitioner stated that the beneficiary worked for the petitioner's Indian subsidiary from May 3, 2004 to December 2, 2005, followed by employment for the petitioner in the United States in L-1 status from December 3, 2005 until July 13, 2008. The beneficiary subsequently returned to India to continue his employment abroad from July 14, 2008 to May 8, 2009. The beneficiary has worked for the petitioner in L-1A status and resided in the United States since May 2009.

After considering the beneficiary's dates of employment, the director determined that the beneficiary did not have the requisite one-year period of employment abroad prior to entering the United States to be employed by the petitioning entity. On the basis of the information provided, the director concluded that the petitioner was statutorily ineligible for the immigration benefit sought herein and therefore denied the petition.

On appeal, counsel submits a brief in which he disputes the director's decision, contending that the director failed to issue an RFE prior to denying the petition, and thus violated the provisions discussed at 8 C.F.R. § 103.2(b)(16)(i) and (ii). Counsel also contends that the beneficiary's period of employment abroad did not have to be continuous in order to meet statutory requirements.

After reviewing the evidence presented and considering counsel's supporting brief, the AAO finds that counsel's assertions are not persuasive in addressing the basis for denial. A full discussion of the relevant factors is provided below.

I. The Law

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.

(Emphasis added.)

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

Additionally, the regulation at 8 C.F.R. § 204.5(j)(3)(i) states, in part, the following:

- (A) If the alien is outside the United States, in the three years preceding the filing of the petition 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 in a managerial or executive capacity[.]

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." Sec. 203(b)(1)(C) of the Act. 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, 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 manager or executive to work for the "same employer." 8 C.F.R. § 204.5(j)(3)(i)(B). Aliens currently in the United States who have worked for an unrelated employer should be treated the same as aliens who are outside the United States for purposes of eligibility. *See* 60 Fed .Reg. 29771, 29776 (June 6, 1995) (Proposed Rule).

II. Analysis

In the present matter, the beneficiary was originally employed by Infosys India from May 3, 2004 until July 8, 2005, prior to entering the United States as an L-1B employee with specialized knowledge on July 9, 2005. The beneficiary returned to India for period of October 16, 2005 until December 2, 2005, when he re-entered the United States in L-1B status based on a blanket petition. USCIS granted an extension of the L-1B petition from March 31, 2006 until March 2, 2008. On June 14, 2008, USCIS denied the beneficiary's second L-1B extension. The beneficiary then returned to overseas employment with Infosys India from July 14, 2008 until May 8, 2009, a period of nine months and 25 days, prior to returning to the United States as an L-1A manager.

Thus, given that the beneficiary was employed in the United States by the U.S. petitioner at the time the Form I-140 was filed, the relevant three-year time period during which the beneficiary's employment abroad would be considered is the period that directly preceded the beneficiary's application and admission as an L-1A managerial or executive employee for the U.S. entity, i.e., the period of May 9, 2006 through May 8, 2009. However, the beneficiary's employment history and his specific dates of foreign employment, as specified in the petitioner's February 6, 2013 RFE

response statement, indicate that the only portion of the beneficiary's foreign employment that took place between May 2006 and May 2009 was from July 14, 2008 until May 8, 2009. This period of employment amounts to nine months and twenty five days, slightly more than two months short of the required one-year period.

Counsel correctly points out that the beneficiary's period of foreign employment does not have to be continuous, such that any employment abroad with the qualifying entity that may have taken place during the relevant three-year time period would be considered in determining whether the beneficiary meets the one-year requirement. However, the record in the present matter shows that the beneficiary's nine months and twenty five days of employment abroad was preceded by a lengthy period of U.S. employment that commenced in December 2005 and did not end until July 2008. In a letter dated February 6, 2013, Mr. [REDACTED] Engagement Manager for [REDACTED] confirmed:

From December 2005 until July 14, 2008, [the beneficiary] was assigned to work in the United States for our client, [REDACTED]. He returned to Bangalore, India on July 14, 2008 to direct and manage the projects for [REDACTED] from Offshore.

Thus, contrary to counsel's assertions, which indicate that the director placed undue emphasis on the term "continuous" in determining how the beneficiary's employment abroad was to be calculated, the record shows that the beneficiary's time period of employment abroad simply does not meet the statutory or regulatory criteria.

Counsel further asserts that the director incorrectly interpreted the phrase "entry as a nonimmigrant" at 8 C.F.R. § 204.5(j)(3)(B) to mean the "last entry" as a nonimmigrant. The petitioner states that the beneficiary initially worked for the overseas company from May 4, 2004 until December 2, 2005, when the beneficiary entered the United States as a nonimmigrant L-1B specialized knowledge employee. This period of time constitutes more than one year, but the petitioner has not established by a preponderance of the evidence that the beneficiary was employed in a primarily managerial or executive capacity during this time.¹

While the petitioner's response to the director's RFE states the beneficiary was employed as a "Consultant (Project Manager)," the initial support letter, dated June 20, 2012, stated that the beneficiary served as "Consultant (*filling the role of Project Manager*)" from May 2004 until December 2005 with [REDACTED]" (Emphasis added.) The confusion is compounded by the beneficiary's Form G-325A Biographic Information, which reflects that the beneficiary served as a "Consultant" from December 2005 to May 2006, rising to "Senior Consultant" in July 2008, and

¹ The L-1 nonimmigrant classification allows for one year of overseas employment in a "specialized knowledge" capacity, as opposed to managerial or executive capacity. In contrast, the present immigrant visa classification strictly requires that the beneficiary be "employed by the entity abroad for at least one year in a *managerial or executive capacity*." Compare 8 C.F.R. §§ 204.5(j)(3)(ii)(B) and 214.2(l)(3)(iv).

“Principal Consultant” in April 2012. The G-325A does not use the term “manager” or “project manager” in the beneficiary’s title at any time; instead, the beneficiary is consistently referred to as a “consultant.”

While the beneficiary's job title is not determinative, his initial entry as a specialized knowledge employee and the conflicting and evolving use of job titles in this matter causes the AAO to question whether the beneficiary held a managerial position during the initial one year of employment abroad. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). If USCIS fails to believe that an asserted fact stated in the petition is true, USCIS may reject that assertion. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. INS*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Lastly, counsel’s discussion of the provisions within 8 C.F.R. § 103.2(b)(16)(i) and (ii), which address the petitioner’s right to review derogatory information that was previously unknown to the petitioner, is irrelevant to the matter at hand. The director's adverse finding is entirely based on information regarding the beneficiary’s dates of employment, information that was part of the record. When the petitioner is the party that provides the information that later serves as the basis for an adverse finding, the petitioner cannot then argue that it was unaware of the adverse information.

Accordingly, the instant petition cannot be approved given the petitioner’s inability to establish that the beneficiary meets the foreign employment eligibility requirement.

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). The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.