U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

March 19, 2018 **PM-602-0158**

Policy Memorandum

SUBJECT: *Matter of S-P-, Inc.*, Adopted Decision 2018-01 (AAO Mar. 19, 2018)

Purpose
This policy memorandum (PM) designates the attached decision of the Administrative Appeals Office (AAO) in *Matter of S-P-, Inc.* as an Adopted Decision. Accordingly, this adopted decision establishes policy guidance that applies to and shall be used to guide determinations by all U.S. Citizenship and Immigration Services (USCIS) employees. USCIS personnel are directed to follow the reasoning in this decision in similar cases.

Matter of S-P-, Inc. clarifies that a beneficiary who worked abroad for a qualifying multinational organization for at least one year, but left its employ for a period of more than two years *after* being admitted to the United States as a nonimmigrant, does not satisfy the one-in-three foreign employment requirement for immigrant classification as a multinational manager or executive. To cure the interruption in employment, such a beneficiary would need an additional year of qualifying employment abroad before he or she could once again qualify.

Use
This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information
Questions or suggestions regarding this PM should be addressed through appropriate directorate channels to the AAO.

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

U.S. Citizenship and Immigration Services

ADOPTED DECISION

MATTER OF S-P-, INC.

ADMINISTRATIVE APPEALS OFFICE
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
DEPARTMENT OF HOMELAND SECURITY

March 19, 2018[1]

A beneficiary who worked abroad for a qualifying multinational organization for at least one year, but left its employ for a period of more than two years *after* being admitted to the United States as a nonimmigrant, does not satisfy the one-in-three foreign employment requirement for immigrant classification as a multinational manager or executive.

FOR THE PETITIONER: Eliot Norman, Esquire, Richmond, Virginia

The Petitioner, a manufacturer of tissue paper products, seeks to permanently employ the Beneficiary as a technical director-product development and plant manager under the first preference EB-1 immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity. The employee must have worked for a qualifying entity abroad for one year in the three years preceding the filing of the petition or preceding his or her admission to work for the petitioner as a nonimmigrant. Today, we explore some finer points of this "one-in-three" rule.

The Director of the Nebraska Service Center denied the petition and affirmed that decision in a subsequent motion to reconsider, concluding that the record did not establish, as required, that the petitioning organization employed the Beneficiary abroad for at least one year during the three years preceding his September 2014 entry to work for the Petitioner as a nonimmigrant. In particular, the Director found that there had been an interruption of approximately four years between the Beneficiary's foreign employment with the Petitioner's affiliate and his U.S. employment with the

[1] On July 27, 2017, we issued this decision as a non-precedent decision. We have reopened this decision on our own motion under 8 C.F.R. § 103.5(a)(5)(i) for the purpose of making revisions in preparation for U.S. Citizenship and Immigration Services designating it as an Adopted Decision.

Petitioner. The Director declined to look to the three-year period preceding the Beneficiary's earlier entry to work for the Petitioner in 2008, because the Beneficiary had later worked for an unrelated U.S. employer for several years prior to returning to work for the Petitioner in 2014.

On appeal, the Petitioner asserts its eligibility for this classification on the basis that the Beneficiary worked for the Petitioner's overseas affiliate immediately before he initially entered the United States in 2008 to work for the Petitioner. The Petitioner maintains that the regulations do not preclude a post-entry interruption in employment as long as the Beneficiary is working for the Petitioner as a nonimmigrant at the time of filing the EB-1 petition.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

Multinational managers and executives who have been employed outside of the United States for at least one year may immigrate to the United States to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act. If the beneficiary is *outside* the United States at the time of filing, the petitioner must demonstrate that the beneficiary's one year of qualifying foreign employment occurred within the three years immediately preceding the *filing* of the petition. 8 C.F.R. § 204.5(j)(3)(i)(A). If the beneficiary is already working *in* the United States for the petitioner, or its affiliate or subsidiary, at the time of filing, the petitioner must demonstrate that the beneficiary's year of foreign employment occurred in the three years preceding his or her *entry as* a nonimmigrant. *See* 8 C.F.R. § 204.5(j)(3)(i)(B).

II. DISCUSSION

The Beneficiary in this case has been working for the Petitioner as an L-1A nonimmigrant and, therefore, the Petitioner must show that his foreign employment occurred in the three years preceding his entry to the United States. At issue is whether we should look at the three-year period preceding his *initial* entry to work for the Petitioner, or the three-year period preceding his entry to work for the Petitioner after an extended period of employment with a different U.S. employer. The Beneficiary worked in a qualifying capacity for the Petitioner's affiliate in Indonesia for more than one year, until January 2008, when he first entered the United States to work for the Petitioner. He ceased employment with the Petitioner in September 2010, and his next documented employment was with an unrelated U.S. employer from April 2011 to July 2014. Thereafter, the Beneficiary departed the United States, but he returned in September 2014 to work for the Petitioner. The Petitioner then filed the immigrant petition in November 2014.

The Director determined that the Petitioner did not establish that the Beneficiary had been employed abroad for at least one year during the three years preceding his entry to the United States to commence employment with the Petitioner in September 2014, because of the intervening years spent working for an unrelated company.

On appeal, the Petitioner points to 8 C.F.R. § 204.5(j)(3)(i)(B) and asserts that the relevant three-year period was prior to the Beneficiary's first nonimmigrant entry in 2008, and that a subsequent change of U.S. employers does not disqualify the Beneficiary from the immigrant classification that the Petitioner seeks on his behalf.

We disagree. Statutes and regulations must be read as a whole, and interpretations should be consistent with the purpose of the Act. Under the Petitioner's interpretation of 8 C.F.R. § 204.5(j)(3)(i)(B), any beneficiary who had worked as a manager or executive for a qualifying entity abroad for one year during the three years preceding entry would remain eligible *indefinitely* for immigrant multinational classification, as long as he or she was initially admitted to work for the multinational organization and eventually returned to its employ prior to filing the immigrant petition. We decline to construe the statute and regulations as establishing a more lenient standard for a beneficiary already in the United States than for one seeking admission from abroad. A single nonimmigrant entry to work for the Petitioner does not permanently qualify a beneficiary for EB-1 classification, regardless of the passage of time and changes of employment that occur after that entry.

According to the statute, the relevant period during which a beneficiary must have had one year of managerial or executive employment abroad is the three years "preceding the time of the alien's application for classification and admission into the United States under this subparagraph." Section 203(b)(1)(C) of the Act. The statute, however, is silent with regard to those key personnel who have already been admitted to the United States in a nonimmigrant classification. In promulgating the implementing regulations, the former Immigration and Naturalization Service concluded that it was not the intent of Congress to disqualify "nonimmigrant managers or executives who have already been transferred to the United States" to work within the same corporate organization. *See* 56 Fed. Reg. 30,703, 30,705 (July 5, 1991). Thus, the regulation at 8 C.F.R. § 204.5(j)(3)(i)(B) allows USCIS to look beyond the three-year period immediately preceding the filing of the I-140 petition, when the beneficiary is already working for a qualifying U.S. entity. Without such a provision, a beneficiary employed in the United States by a qualifying organization in a nonimmigrant status for more than two years would not be eligible for immigrant classification as a multinational manager or executive.

That said, both the statute and the regulations focus on the continuity of the beneficiary's employment with the same multinational organization. This is not inconsistent with the purpose of the intracompany transferee visa classification, which is to facilitate the international transfer of multinational businesses' key personnel.[2] The statute and regulations clearly sever eligibility for this multinational visa classification for a beneficiary who is *outside* the United States if there was an interruption in employment with the petitioner's multinational organization for more than two years during the three years prior to filing the immigrant visa petition. Such a beneficiary, regardless of earlier employment, cannot establish one year of qualifying employment in the three years prior to the

[2] "[T]he need of multinational business to transfer key personnel around the world as nonimmigrants is paralleled in this category to allow a basis upon which these individuals may immigrate." H.R. REP. NO. 101-723 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418.

filing of the petition. That beneficiary would need additional qualifying employment abroad, adding up to at least one year during the three years prior to filing, before a U.S. petitioner could file an EB-1 petition on his or her behalf.

We construe the statute and regulations to apply the same rule, whether the interruption occurred during the three years prior to the beneficiary's admission as a nonimmigrant or after his or her entry to the United States. A beneficiary who worked as a manager or executive for a qualifying multinational organization for at least one year, but who then left the organization for a period of more than two years, is ineligible for this immigrant visa classification. To cure the interruption in employment, such a beneficiary would need an additional year of qualifying employment abroad before he or she could once again qualify.

We agree with the Petitioner that a period of employment with a different U.S. employer would not automatically disqualify a beneficiary. However, a break in qualifying employment *longer than two years* will interrupt a beneficiary's continuity of employment with the petitioner's multinational organization. Such breaks may include, but are not limited to, intervening employment with a non-qualifying U.S. employer or periods of stay in a nonimmigrant status without work authorization.

In this case, the Beneficiary was admitted to the United States to work for the Petitioner, left its employ for nearly four years to work for an unrelated U.S. employer, and then returned to work for the Petitioner. Although he resumed employment with the Petitioner after that interruption, he can no longer establish eligibility based on the three-year period of employment that immediately preceded his 2008 admission to the United States.[3] As a result, the appropriate reference point is the date on which the Beneficiary entered the United States to resume working for the Petitioner, which is in September 2014.[4]

III. CONCLUSION

As the Beneficiary was not employed for at least one year by a qualifying entity abroad between September 2011 and September 2014, the Petitioner cannot establish his eligibility as a multinational manager or executive.

ORDER: The appeal is dismissed.

Cite as *Matter of S-P-, Inc.*, Adopted Decision 2018-01 (AAO Mar. 19, 2018)

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[3] The instant appeal concerns the *immigrant* petition, but it appears USCIS may have erred in approving the preceding *nonimmigrant* L-1A petition for a period of validity from July 2014 to July 2015. If so, the Beneficiary could not have had the requisite employment abroad *with a qualifying organization* within the three years preceding the filing of the L-1A petition because he was working in the United States for an unrelated employer during that period. *See* 8 C.F.R. § 214.2(l)(9)(i).

[4] The Beneficiary's U.S. employment with the Petitioner began shortly afterward in October 2014.