U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8188490

Date: APR. 29, 2020

Appeal of Texas Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner is an e-commerce operation that seeks to temporarily employ the Beneficiary as its "Managing Director" under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the Texas Service Center revoked the approval of the petition concluding that the Petitioner did not establish, as required, that the Beneficiary would be employed in the United States in a managerial or executive capacity. The Director also found that the Petitioner did not provide sufficient evidence showing that it had secured sufficient physical premises to house its "new office." The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will remand the matter for further consideration.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," 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 employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

Under U.S. Citizenship and Immigration Services regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, a director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).

II. BASIS FOR REMAND

In the L Classification Supplement to the petition, the Petitioner responded "No," when asked if the Beneficiary was coming to the United States to open a new office.[1] Notwithstanding this information, the Director issued a notice of intent to revoke (NOIR) where he incorrectly cited new office regulations, which do not apply to the instant Petitioner, and relied on those regulations to assess the Petitioner's eligibility and formulate two out of three grounds for the intended revocation. 8 C.F.R. § 214.2(l)(9)(iii)(B).

Aside from finding that the Petitioner did not provide sufficient evidence to show that the Beneficiary was employed abroad in a managerial, executive, or specialized knowledge capacity, a requirement that broadly applies to all L-1A petitions, the Director issued the NOIR based on two grounds that apply exclusively to new office petitioners and do not apply to this Petitioner, as it does not seek new office classification. Namely, the NOIR determined that the Petitioner did not demonstrate that: (1) it had secured sufficient physical premises to house its "new office" operation; and (2) it would support the Beneficiary in a managerial or executive position within one year of this petition's approval. In contrast to the NOIR, the revocation decision addresses the issue of the Beneficiary's proposed employment without referencing the new office requirements that were previously applied in error. Nevertheless, a NOIR that incorrectly relied on new office regulations to make an adverse finding about the Beneficiary's proposed employment does not constitute proper notice of the intended grounds for revocation, as required. *See id.*

The decision to revoke the approval of the petition is further undermined by several additional deficiencies. First, as stated above, the revocation is partly based on the Director's application of the "new office" requirement for sufficient physical premises, which should not have been applied to the Petitioner. As indicated earlier, the physical premises requirement pertains only to a "new office," a term that does not apply when, as in this instance, a petitioner indicates that it had been operational for at least one year at the time of filing. *See* 8 C.F.R. § 214.2(l)(1)(ii)(F). Second, the Director incorrectly relied on the job duties that were listed to describe the Beneficiary's *foreign employment* as the basis for his adverse finding regarding the Beneficiary's proposed position in the *United States*. This leads us to question whether the adverse finding was partially based on irrelevant evidence that pertains to the Beneficiary's foreign, rather than his proposed, U.S. employment.[2] Finally, the Director's hybrid reference to "the first three elements of the definition of executive capacity and the fourth element of managerial capacity" is confusing and detracts from an understanding of which statutory definition – managerial or executive capacity – the Director relied upon in reaching the adverse conclusion.[3]

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[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F).

[2] The Director did not formally cite the Beneficiary's foreign employment as a basis for the revocation; however, the fact that the Director listed the Beneficiary's foreign job duties and referred to the foreign entity as the source of "some narrative to describe the tasks involved in these broadly stated duties" indicates that, at the very least, there is a lack of clarity as to the Director's intent to incorporate the Beneficiary's employment abroad as a third basis for the revocation, as was initially done in the NOIR.

[3] An L-1A petition may be approved only if all four elements of either managerial or executive capacity, or both capacities, is satisfied.

As a result of the deficiencies in the NOIR and subsequent revocation, the Director did not provide the Petitioner with a meaningful opportunity to challenge the grounds for the revocation. For these reasons, we will remand the matter for entry of a new decision. The Director may request any additional evidence deemed warranted and allow the Petitioner to submit such evidence within a reasonable period of time.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.