U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9710273

Date: AUG. 31, 2020

Appeal of California Service Center Decision

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

The Petitioner, a manufacturer of liner materials for disposable hygiene products, seeks to temporarily employ the Beneficiary as its chief operations officer (COO) under the L-1A nonimmigrant classification for intracompany transferees. 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 a managerial or executive capacity.

The Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity. On appeal, the Petitioner contends that Director erroneously denied the petition and submits additional evidence in support of its claim that it will employ the Beneficiary in an executive capacity.

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

At this time, we are unable to address the merits of this case because the record is incomplete. The record reflects that the Director issued a request for evidence (RFE) on August 15, 2019. While the Director acknowledged that the Petitioner submitted a timely response to the RFE on November 7, 2019, most of that response is not incorporated into the record of proceeding.[1] We cannot determine whether the Director considered the full RFE response, nor can we base our own decision in this case on an incomplete record.

The Director bears the responsibility of ensuring that the record is complete and contains all evidence that has been submitted by a petitioner or considered by USCIS in reaching its decision. See 8 C.F.R. § 103.2(b)(1); cf. Matter of Gibson, 16 I&N Dec. 58, 59 (BIA 1976). Accordingly, we will withdraw

[1] The record includes the Petitioner's cover letter in response to the RFE and an index listing the attached exhibits, which are referred to as Exhibit A, Exhibit B, and numbered Exhibits 1-27. Of the exhibits listed in the index, only Exhibit A is in the record before us.

the Director's decision and remand this matter for the inclusion of the missing record materials and further consideration.

Upon remand, the Petitioner should have the opportunity to supplement the record. In addition, we note that the Petitioner has submitted new evidence on appeal which is relevant to the Beneficiary's eligibility as of the date of filing. Specifically, the new evidence supports the Petitioner's claim that it employed over 100 workers when it filed the petition and corroborates a previously submitted organizational chart reflecting the subordinate staff who will report to the Beneficiary's senior position in the company hierarchy. The Director is the more appropriate party to consider the impact of the new evidence on the Petitioner's eligibility, as we cannot adjudicate the appeal based on the incomplete record.

The Director should issue a new decision based on a review of the complete record, including the evidence submitted on appeal. In doing so, the Director should ensure that the Petitioner's complete RFE response is in the record. Further, the Director should consider whether the Petitioner has established eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1).

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis, which, if adverse, shall be certified to us for review.