U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29508115

Date: JAN. 09, 2024

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a data center and web hosting services provider, seeks to temporarily employ the Beneficiary as its chief executive officer (CEO) under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and National 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 the record did not establish that the Petitioner's foreign affiliate has employed the Beneficiary in a managerial or executive capacity. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

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 their services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id*. The petitioner must also establish that the beneficiary's prior education, training, and employment qualify them to perform the intended services in the United States. 8 C.F.R. § 214.2(1)(3).

II. ANALYSIS

The sole issue before us on appeal is whether the Petitioner established that the Beneficiary has been employed abroad in a managerial or executive capacity. The Petitioner states that its foreign affiliate has employed the Beneficiary in an executive capacity as its CEO since September 2012.

To establish that the Beneficiary's employment abroad is in an executive capacity, the Petitioner must show that he has performed the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(B)(i)-(iv) of the Act. If the Petitioner establishes that the position meets all elements set forth in the statutory definition, it must also show that the Beneficiary has primarily engaged in executive duties, as opposed to performing ordinary operational activities alongside the foreign entity's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's duties are primarily executive, U.S. Citizenship and Immigration Services (USCIS) will consider the petitioner's description of the job duties, the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

On appeal, the Petitioner contends that the Director's decision to deny the petition did not reflect consideration of these relevant factors. It asserts that the Director's determination was instead based solely on outdated information obtained from outside the record of proceedings rather than on the information and supporting documentation submitted at the time of filing and in response to the Director's request for evidence (RFE). Finally, the Petitioner asserts that the Director erred by failing to provide it with an opportunity to rebut derogatory information of which it was unaware prior to the issuance of the decision, as required by 8 C.F.R. § 103.2(b)(16)(i).

The Petitioner's assertions are persuasive. The record reflects that the Director did not sufficiently address the Petitioner's evidence and explain the reasons for denial of the petition. Further, the decision improperly relies on information from outside the record of proceeding of which the Petitioner was unaware. Accordingly, we will withdraw the Director's decision and remand the matter for further consideration and entry of a new decision.

The record indicates that the Petitioner provided information and supporting evidence regarding its foreign affiliate's history, staffing, organizational structure, business activities, and financial status at the time of filing, as well as a description of the Beneficiary's job duties as its foreign affiliate's CEO. The Director subsequently issued an RFE, to which the Petitioner submitted a response that included an expanded description of the Beneficiary's job duties and additional evidence intended to demonstrate the functions performed by his immediate subordinates abroad and his oversight of and interactions with those employees. The Petitioner has also submitted position descriptions for the Beneficiary's subordinates and evidence of wages the foreign entity paid to its employees in 2023.

In the decision denying the petition, the Director's analysis consisted of the following paragraph:

> In the RFE response, you . . . provided several statements where the beneficiary interacted with people whom he worked with abroad. These people included [redacted]

[redacted]. You also noted that in Exhibit 6 that there were "conversations between [the beneficiary] and US company general manager [redacted] where they discuss sales, technical issues and various corporate matters". According to the websites of both [the foreign entity] and [the Petitioner], however, [redacted] is still with that entity in a position of "Senior Networking" as well as with the petitioning organization in the same position. Likewise, the [foreign entity] website mentions [redacted], the General Manager, and [redacted] the Onside Manager but there is no mention of them at all in correspondence in either the original petition [or] in the RFE response. For people to be in those positions in the company, it is unclear why any correspondence or mention of them would have been left out entirely. Taking these into consideration, USCIS is unable, by preponderance of evidence, to determine that the beneficiary worked in an executive position at the entity abroad within the meaning of INA sections 101(a)(44)(A) and (B).

The Director's RFE did not mention the information obtained from the U.S. and foreign entity's websites and the decision does not identify the specific websites visited by USCIS.[1] The decision also cites no other reason for denial of the petition. Specifically, the Director's decision does not include an analysis of the Beneficiary's stated job duties or any other relevant evidence submitted in support of the petition, including wages paid to the foreign entity's employees, the duty descriptions of the Beneficiary's subordinates and supporting evidence related to their duties, evidence of the nature of the business, and evidence such as copies of performance reviews, which was intended to further support the Petitioner's claim that the foreign position involves oversight of managerial staff and performance of other higher-level duties consistent with the definition of executive capacity at section 101(a)(44)(B) of the Act.

An officer must fully explain the specific reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(1)(i). Absent a specific explanation for denial and adequate notice of why the submitted evidence was insufficient to establish eligibility, a petitioner does not have a fair opportunity to contest a denial through the motion or appellate process. *See Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, the Director's decision did not include a discussion of the evidence of record and therefore did not explain why that evidence was insufficient to meet the Petitioner's burden to demonstrate that the Beneficiary has been employed abroad in an executive capacity.

Further, as emphasized by the Petitioner on appeal, the regulation at 8 C.F.R. § 103.2(b)(16)(i) provides that if the decision will be unfavorable to the petitioner and is based on derogatory information considered by USCIS of which the petitioner is unaware, the petitioner shall be advised of this fact and offered an opportunity to rebut the information before the decision is rendered. Any explanation or rebuttal, or information presented by or on behalf of the petitioner shall be included in the record of proceeding. Here, the Director did not advise the Petitioner of the information obtained from company websites prior in the RFE and therefore did not have the opportunity to review the Petitioner's rebuttal before rendering a final decision.

[1] On appeal, the Petitioner asserts that it appears that USCIS located outdated "placeholder" websites for both the U.S. and foreign entities, rather than current and active websites which were identified in the Petitioner's initial letter of support.

Based on the deficiencies addressed above, the Director's decision is withdrawn and the matter will be remanded to the Director for further review and entry of a new decision that complies with 8 C.F.R. §§ 103.2(b)(16)(i) and 103.3(a)(1)(i). Specifically, if the new decision will be based on derogatory information which has not yet been disclosed to the Petitioner, the Director must first issue a new RFE or notice of intent to deny in accordance with 8 C.F.R. § 103.2(b)(16)(i) and allow the Petitioner a reasonable opportunity to respond before issuing the decision. The Director may also raise any additional issues relevant to the eligibility requirements for the requested classification.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.