U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 14709480

Date: JAN. 19, 2021

Appeal of California Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as its vice president of optics engineering 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 Director of the California Service Center initially approved the petition on October 23, 2019. On June 1, 2020, the Director issued a notice of intent to revoke (NOIR) approval because the record included falsified documents regarding the Beneficiary's foreign education and that all documents in the record were questionable as to authenticity.

On August 5, 2020, the Director issued the revocation decision, concluding that the Beneficiary is no longer eligible under section 101(a)(15)(L) of the Act and that the approval of the petition involved gross error. On appeal, the Petitioner contends that the Director issued the revocation decision before its NOIR response was due and that the Beneficiary is gathering documents to prove his educational background was not falsified.

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*. The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

Under U.S. Citizenship and Immigration Services (USCIS) 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. ANALYSIS

As noted above, the Director of the California Service Center initially approved the petition on October 23, 2019 and on June 1, 2020, issued a notice of intent to revoke (NOIR) approval because according to an investigation the record included falsified documents regarding the Beneficiary's foreign education and thus all documents in the record were questionable as to authenticity.

On May 1, 2020, USCIS issued a notice in response to the coronavirus (COVID-19) pandemic that extended the flexibilities regarding petitioners' responses to requests for evidence and NOIRS, among other things. USCIS noted that the flexibility applies to notices, such as the NOIR, if the issuance date listed on the notice is between March 1 and July 1, 2020, inclusive. And that USCIS will consider responses to such notices received within 60 calendar days after the response due date set in the notice, before taking action.

The NOIR in this matter is dated June 1, 2020, and states that the response due date is July 6, 2020. As the NOIR is dated June 1, 2020, the flexibility in the response due date applies. On August 5, 2020, the Director issued the revocation decision, concluding that the Beneficiary is no longer eligible under section 101(a)(15)(L) of the Act and that the approval of the petition involved gross error. The Director further concluded that the Petitioner had not provided a response to the NOIR and that the Petitioner had not established that the Beneficiary is qualified to perform the intended services in the United States.

The Petitioner subsequently filed a timely appeal. The Petitioner marked Box 1(b) in Part 3 of the Form I-290B, Notice of Appeal or Motion, indicating that a brief and/or additional evidence would be submitted within 30 days. The appeal record also includes the Petitioner's letter, dated August 18, 2020, indicating it had received the NOIR on June 6, 2020, but had not yet responded to the NOIR, because of the flexibility notice, believing it had until September 4, to do so. The Petitioner claims it was surprised and shocked at the allegation the Beneficiary's educational documents were falsified, which the Beneficiary had denied. The Petitioner noted the Beneficiary indicated he was gathering documents to demonstrate his educational documents had not been falsified.

The Petitioner properly points out that the Director should not have entered a decision in this matter until September 4, 2020, 60 days after the due date listed in the NOIR, as set out in the policy guidance. It is for this reason this matter is remanded to the Director for entry of a new decision. Additionally, we reiterate that 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 as well as the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).

As a result of the Director's failure to allow the Petitioner the allotted time to respond to the NOIR prior to the revocation, we will remand the matter for the issuance of a new NOIR and entry of a new decision.

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.