U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-S-I-(USA) INC. DATE: JULY 23, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an international trade business, seeks to temporarily employ the Beneficiary as its president 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 revoked the approval of the petition, determining that the Petitioner did not establish, as required, that the Beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition; and that she was employed abroad in the capacity stated on the petition.

On appeal, the Petitioner submits additional evidence and asserts that it sufficiently rebutted the issue raised in the Director's notice of intent to revoke (NOIR). The Petitioner emphasizes that the Director's revocation decision contains additional reasons for revocation that were not raised in the NOIR and which it did not have the opportunity to rebut.

Upon *de novo* review of the record, we will withdraw the Director's decision and remand the matter for entry of a new decision.

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 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(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. BASIS FOR REMAND

Upon review, we find that the Director's NOIR did not contain a sufficiently detailed statement of the grounds for revocation. Further, the Director's decision introduced additional grounds for revocation that were not included in the NOIR, and these were based, in part, on derogatory information from outside the record of proceeding. As such, the Petitioner was not given adequate notice of those grounds and did not have sufficient opportunity to address the Director's concerns.

The Director originally approved the petition for a three-year period commencing on July 1, 2016. The Petitioner indicated on the petition and in the supporting documents that the Beneficiary had been employed by its Chinese parent company, [redacted] Company since January 2014, and that she had previously worked for the [redacted] Bank.

In June 2018, the Director issued the NOIR. The NOIR included the statutory definitions of managerial capacity, executive capacity, and specialized knowledge; noted that the Petitioner did not claim that the Beneficiary was employed abroad in a specialized knowledge capacity; and stated only the following as the intended basis for revocation:

> The beneficiary was interviewed at the United States Consulate-Shanghai and claimed that she worked for [redacted] Bank and was not in fact employed at the claimed employer [redacted] Company. Thus, contradicting the information provided to USCIS for the current petition. . . . For the foregoing reasons you have not established that the beneficiary has been employed abroad in a position that was managerial, executive, or involved specialized knowledge.

The Petitioner submitted a timely rebuttal to the NOIR. The Director addressed the Petitioner's rebuttal evidence, but also cited the following reasons for revocation:

- In July 2014, the Beneficiary submitted a Form DS-160, Nonimmigrant Visa Application, signed under penalty of perjury, indicating that her current employer was [redacted] Bank, not [redacted] Company as claimed on the petition.
- The Beneficiary submitted visa applications in April 2011, April 2012, and April 2013, in which she identified [redacted] Bank as her current employer.
- Department of Homeland Security (DHS) records reflect that the Beneficiary spent the majority of her claimed period of qualifying employment abroad in the United States on a B2 nonimmigrant tourist visa, with her longest trip outside the United States lasting approximately three months.[1]

[1] We note that the Petitioner claims that the Beneficiary worked for its parent company from January 1, 2014, until the

On the basis of the foregoing, the Director determined that the Beneficiary was not employed abroad in the capacity stated on the petition and that she did not have the requisite one continuous year of qualifying employment abroad in the three-year period preceding the filing of the petition. The Director revoked the approval pursuant to 8 C.F.R. § 214.2(l)(9)(iii)(A)(*4*) after concluding that the statement of facts in the petition was not true and correct.

The Director is obligated to provide notice of any derogatory information that is discovered outside of the record of proceedings, and must make that derogatory information part of the record along with any rebuttal provided by the Petitioner. 8 C.F.R. § 103.2(b)(16)(i). The Director's failure to do so in this case constitutes error. The Petitioner was not given adequate notice that the Director intended to rely on the Beneficiary's prior visa applications and travel history. As a result, the NOIR in this matter did not provide a detailed statement of the grounds that ultimately led to the revocation of the petition's approval, and the Petitioner was not given the opportunity to rebut those grounds. *See* 8 C.F.R. § 214.2(l)(9)(iii)(B). Accordingly, the Director's decision is withdrawn.

The record as presently constituted does not establish that the Beneficiary was eligible for the benefit sought at the time of filing. However, as the Director's decision went beyond the scope of the issues raised in the NOIR, the Petitioner must be given an opportunity to submit additional evidence in support of the petition and in rebuttal to the revocation. Accordingly, the matter is remanded for issuance of a new NOIR and entry of a new decision.

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

Cite as *Matter of S-S-I-(USA) Inc.*, ID# 3158420 (AAO July 23, 2019)

filing of the petition on May 31, 2016, a period of 882 days. During this period, the Beneficiary was physically present in the United States for more than 600 days. Periods spent in the United States as a visitor do not count towards a beneficiary's one year of continuous employment abroad. *See* 8 C.F.R. § 214.2(l)(1)(ii)(A).