U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31479352

Date: JULY 23, 2024

Appeal of Texas Service Center Decision

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

The petition form states that the petitioning party[1] is a restaurant that claims to qualify as a new office[2] and seeks to employ the Beneficiary temporarily as vice president 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 denied the petition, concluding that the record did not establish that the Beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity. The matter is now before us on appeal pursuant to 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

[1] Part 1 Item 2 of the petition form lists two entities – [redacted] – as joint filers of this petition. The petition form, however, specifies that "a company or an organization," i.e., a single entity, be identified at Item 2. We will further address this anomaly in the discussion below.

[2] 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). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position. The petition form, however, lists 2015 as the year the proposed employer was established, thus indicating that it did not qualify for the new office designation in October 2023, when this petition was filed. *See* 8 C.F.R. § 103.2(b)(1) (requiring that eligibility requirements be met as of the date a petition is filed).

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.*

II. BASIS FOR REMAND

The Director's decision did not offer a complete analysis of the basis for dismissing the petition or explain the deficiencies in the evidence. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also 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).

First, although the Director acknowledged that a letter of support was submitted as supporting evidence, the Director did not discuss the content of that letter. Despite stating that the petition was being denied "[f]or the foregoing reasons," the Director did not specify the underlying reasons for denial and offered no analysis of the deficiencies in the record. Because the Director did not discuss the evidence in the record, the Director did not adequately explain the basis for concluding that the Beneficiary's positions abroad and in the United States do not qualify as employment in a managerial or executive capacity.

Based on the foregoing, it is not clear that the record was reviewed in its entirety and analyzed sufficiently. Notwithstanding the lack of a proper analysis, however, the record lacks sufficient evidence to establish that the eligibility requirements have been met.

First, we find that the record does not support the Director's favorable determination on the issue of a qualifying relationship.

To establish a "qualifying relationship," the record must show that the Beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or that the entities are related as a "parent and subsidiary" or as "affiliates." *See* section 101(a)(15)(L) of the Act; *see also* 8 C.F.R. § 214.2(l)(1)(ii) (providing definitions of the terms "parent," "branch," "subsidiary," and "affiliate"). Thus, the underlying fundamental requirement for demonstrating the existence of a qualifying relationship is to clearly and unambiguously identify the entities that are parties to that relationship.

Here, the petition form does not clearly and unambiguously identify who the employing U.S. entity would be under an approved petition. When asked to provide the name of the company or organization, i.e., the Petitioner, in Part 1, Item 2 of the petition form, the information provided includes two names – [redacted] – as the filing party. Likewise, the petition form lists these two names in the L Classification Supplement to Form I-129 when ask to provide the name of the Petitioner, and the same two names are listed in the heading of a September 2023 letter which was submitted in support of this petition. According to information gathered during a search of the Kansas Secretary of State database, [redacted] was established in [redacted] 2006 and [redacted] was established in [redacted] 2008. Additionally, the Kansas Secretary of State database records list information separately for each company based on two distinct separate entity identification numbers, thus further indicating that the listed names belong to two separate entities. *See* https://www.sos.ks.gov/eforms/BusinessEntity/Search.aspx.

Despite the Petitioner repeatedly referring jointly to [redacted] as filer of this petition, the September 2023 letter contains inconsistent information that further frustrates efforts to determine the identity of the Beneficiary's intended U.S. employer and the Petitioner in this matter. In one instance, the letter states that the Beneficiary seeks "to be admitted temporarily to the United States to be employed by [redacted] thus seemingly indicating that [redacted] is the proposed U.S. employer. The same letter, however, states the following: "The L1-A is the classification is [sic] APPROPRIATE for [the Beneficiary] – and intra-company transferee from [redacted] – because he is coming to the United States to work in a managerial and executive capacity." The letter states that [redacted] is "a newly formed entity" that is "a wholly owned affiliate/subsidiary of [redacted] the Beneficiary's foreign employer.

The petition form contains more conflicting information which adds to the confusion concerning the intended employer's identity. Namely, when prompted to provide the year the petitioning entity was established in Part 5, Item 13 of the petition form, the year specified was 2015, which does not apply to any of the previously mentioned entities. And when asked if the filing entity is a new office, the "yes" box was checked. As previously stated, the Kansas Secretary of State database shows that [redacted] and [redacted] were established in 2006 and 2008, respectively, and thus neither was established in 2015 or fits the definition of a new office pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(F). The same database shows that [redacted] was formed in [redacted] 2023 and would therefore qualify as new office. However, since the petition form does not list [redacted] anywhere as the proposed employer, any reference to [redacted] as the intended U.S. employer creates further inconsistency and undermines the claim that a qualifying relationship exists between [redacted] the Beneficiary's foreign employer, and the intended U.S. employer. And although the petition form includes a federal employment identification number, the record does not include any tax documents and thus we are precluded from being able to determine the entity to which that number was assigned.

Given the multiple unresolved anomalies and discrepancies listed above, we are unable to ascertain which is the petitioning entity that filed the petition and seeks to employ the Beneficiary. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (requiring a petitioner to resolve inconsistencies or ambiguities in the record through the submission of independent, objective evidence pointing to where the truth lies). It reasonably follows that without this basic, fundamental information, we cannot go on to assess the ownership and control of the Beneficiary's U.S. employer, nor can we determine that the ownership and control of the Beneficiary's U.S. and foreign employers is sufficient to constitute a qualifying relationship. *See generally* 2 USCIS Policy Manual, L.5, https://www.uscis.gov/policy-manual; *see also Matter of Church Scientology Int'l,* 19 I&N Dec. 593 (Comm. 1988).

Likewise, the lack of clarity as to the intended U.S. employer precludes a meaningful analysis of the relevant factors USCIS normally considers when determining whether a beneficiary's proposed U.S. employment would be in a managerial or executive capacity. Not only would we review the proposed job duties, but we would also consider the organizational hierarchy within which those duties are to be performed along with the duties of a beneficiary's subordinates, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioning business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in the business. *See* 2 USCIS Policy Manual, L.6(C) and (D), https://www.uscis.gov/policy-manual; *see also* 8 C.F.R. § 214.2(l)(3)(ii).

In light of the deficiencies described above, most notably, the improper listing of two entities as the "company or organization" filing this petition and conflicting information as to the identity of the intended U.S. employer, the record does not support the Director's favorable determination on the issue of a qualifying relationship between the Beneficiary's foreign and proposed employers. The record also does not appear to demonstrate that the Beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity, as claimed. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (stating that unresolved material inconsistencies may lead to reevaluation of the reliability and sufficiency of other evidence in the record).

In sum, the record as presently constituted does not establish that the Beneficiary merits the immigration benefit sought. However, the Director's decision did not offer a complete analysis of the denial grounds listed above, nor did it adequately explain the deficiencies in the evidence. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also 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). Therefore, we will remand the matter for further consideration and entry of a new decision. The Director should request any additional evidence warranted and allow the Petitioner to submit such evidence within a reasonable period.

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