U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 3265687

Date: JUL. 31, 2024

Appeal of California Service Center Decision

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

The Petitioner, a company engaged in construction and education services, seeks to extend the temporary employment of the Beneficiary as its chief executive officer under the L-1A nonimmigrant classification for intracompany transferees. *See* 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 approved the petition by issuing an approval notice, but later issued a denial notice. In denying the petition, the Director stated that U.S. Citizenship and Immigration Services (USCIS) "records revealed the beneficiary violated 6C1– Fraud/Misrepresentation Found," indicating that because of this inadmissibility the Beneficiary was ineligible for an extension of stay. The matter is now before us on appeal under 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.

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). 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.*

As discussed above, USCIS records reflect that the Director issued an approval notice specific to the underlying petition on January 24, 2024, but following this notice, issued a denial notice on January 30, 2024. Since the petition was approved, the Director erred in not following the applicable regulations specific to the revocation of an approved petition. Under the 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, the Director must issue a notice of intent to revoke (NOIR) 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). Although the Director issued a notice of intent to deny (NOID) in April 2022 discussing certain discrepancies on the record, the Director issued an approval notice and must then adhere to the applicable revocation regulations to revoke this approval. As such, on remand, the Director will properly issue a NOIR, discuss under what basis it intends to revoke the petition, and provide a detailed explanation of the potential grounds for revocation.

In addition, it is improper to indicate that the Beneficiary was inadmissible for fraud and willful misrepresentation without discussing the nature of this finding or who made such a finding. Further, if no such finding has been made previously, it is also improper to declare without analysis that a Petitioner has committed fraud and willful misrepresentation. For a beneficiary or petitioner to be found inadmissible for willful misrepresentation, the Director must find all of the following elements:

- The person procured, or sought to procure, a benefit under U.S. immigration laws;
- The person made a false representation;
- The false representation was willfully made;
- The false representation was material; and
- The false representation was made to a U.S. government official, generally an immigration or consular officer.

If all of the above elements are present, then the person is inadmissible for willful misrepresentation. *See Matter of Y-G-,* 20 I&N Dec. 794, 796 (BIA 1994), *see also Matter of Tijam,* 22 I&N Dec. 408, 424 (BIA 1998), *see also Matter of G- G-*, 7 I&N Dec. 161 (BIA 1956), *see generally* 8 *USCIS Policy Manual* J.2(B), https://www.uscis.gov/policymanual.

In addition, a finding of fraud against a petitioner or beneficiary requires the following elements:

- The petitioner or beneficiary procured, or sought to procure, a benefit under U.S. immigration laws;
- The petitioner or beneficiary made a false representation;
- The false representation was willfully made;
- The false representation was material;
- The false representation was made to a U.S. government official, generally an immigration or consular officer;
- The false representation was made with the intent to deceive a U.S. government official authorized to act upon the request (generally an immigration or consular officer); and
- The U.S. government official believed and acted upon the false representation by granting the benefit.

See generally 8 *USCIS Policy Manual* J.2(C), https://www.uscis.gov/policymanual.

Here, the Director's decision did not sufficiently discuss the nature of the findings of fraud and willful misrepresentation against the Beneficiary and were not supported by sufficient analysis of the critical

factors listed above. In the event the Director makes a determination of fraud or willful misrepresentation in this proceeding, it must be in accordance with applicable law.

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