U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-I-, LLC

DATE: JUNE 5, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a consulting company, seeks to continue the Beneficiary's temporary employment as its chief executive officer (CEO) 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 revoked the approval of the petition, determining that the Petitioner did not establish, as required, that: (1) it was doing business in the United States; and (2) it would employ the Beneficiary in a managerial or executive capacity under the extended petition.

On appeal, the Petitioner submits additional evidence and asserts that the Director's revocation decision raised issues not discussed in the notice of intent to revoke (NOIR), and did not take into account the totality of the evidence submitted.

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 his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

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

Upon review, we find that the Director's NOIR did not contain a sufficiently detailed statement of the grounds for revocation. 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 initially approved the petition and granted the Beneficiary a two-year extension of L-1A status from June 2014 until June 2016. The Director issued the NOIR on September 19, 2017, advising the Petitioner that the notice was being sent as a result of a USCIS administrative site visit conducted in August 2014. The Director noted that a USCIS officer "found the address to be a residence and the beneficiary was not present." The officer also found that the telephone number provided on the petition did not belong to the company.

Based on these two findings from the site visit, the Director questioned whether "the U.S. company has been operating and will continue to operate," and whether "the Beneficiary has been employed under the terms and conditions" stated in the petition. The Petitioner responded with an explanation for its use of a residential office, explained why the Beneficiary was not in the office at the time of the site visit, and provided evidence that it had obtained a new business telephone number right around the time of filing. The Petitioner also submitted recent bank statements from 2017. The Director's determination that the Petitioner was not doing business was based on these bank statements, which post-date the validity of the petition, rather than on the results of the site visit or an analysis of evidence of the Petitioner's business activities between 2014 and 2016.

In response to the Director's concern about whether the Beneficiary was employed under "the terms and conditions" stated in the petition, the Petitioner submitted evidence of payments made to the Beneficiary in 2015 and 2016, showing that he had been receiving his stated salary. As noted, the Director ultimately determined that the Beneficiary was not employed in a managerial or executive capacity, but did not sufficiently address this issue in the NOIR. The Petitioner did not have adequate notice of the Director's concerns regarding the Beneficiary employment capacity.

The record as presently constituted does not establish that the Petitioner and Beneficiary were eligible for the benefit sought at the time of filing. However, the Petitioner adequately addressed the specific deficiencies addressed in the NOIR. As the Director's decision went beyond the scope of the issues raised in the NOIR, the Petitioner should be given an opportunity to submit additional evidence to establish that it was doing business and able to employ the Beneficiary in a managerial or executive capacity as of the date of filing and throughout the validity of the petition.

Accordingly, the Director's revocation decision will be withdrawn and the matter remanded for issuance of a new NOIR and entry of a new decision.

ORDER: The matter is remanded for the entry of a new decision consistent with the foregoing analysis, which, if adverse, shall be certified to us for review.

Cite as *Matter of B-I-, LLC*, ID# 1237520 (AAO June 5, 2018)