U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12486462

DATE: MAR. 24, 2021

Appeal of California Service Center Decision

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

The Petitioner, a furniture designer and wholesaler, seeks to continue the Beneficiary's temporary employment as its chief executive officer (CEO) under the L-1A nonimmigrant classification for intracompany transferees.[1] *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, but later revoked the approval after serving a notice of intent to revoke (NOIR). In the revocation notice, the Director concluded that the Petitioner did not establish, as required, that it employs the Beneficiary in a managerial or executive capacity. The Petitioner subsequently filed an appeal accompanied by a brief and additional supporting evidence.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, the Director's decision to revoke the approval of the petition is withdrawn. The matter will be remanded to the Director for further consideration and action.

I. LEGAL FRAMEWORK

A. Revocation Authority

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

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period November 15, 2017 to November 14, 2018. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary 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 one year within the date of approval of the petition to support an executive or managerial position.

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).

B. L-1A Nonimmigrant Classification

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.*

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

II. ANALYSIS

The Director's statements in the NOIR noted deficiencies in the record at the time of filing were adequate to notify the Petitioner of the intention to revoke the approval of the petition in accordance with the provisions at 8 C.F.R. § 214.2(l)(9)(iii)(A). The Director cited to the ground for revocation at 8 C.F.R. § 214.2(l)(9)(iii)(A)(5) and based upon a review of the record the Petition approval involved gross error.

The current L-1A new office extension petition was filed on September 17, 2018. In the Director's revocation decision, it was noted that the Beneficiary was first admitted to the United States in L-1A status on March 23, 2018 and "while you are usually required to establish that all eligibility requirements have been met as of the date of filing the petition, in the case of this new office extension, USCIS will look at the state of development of the U.S. business as of March 22, 2019." The Director further stated that "this allows you the opportunity to demonstrate that the new office can support an executive after your organization was afforded one whole year to develop the U.S. business." In addition, when the decision discussed the organizational structure of the Petitioner at the time of filing, the Director discussed evidence submitted in response to the NOIR and noted that the "payroll records

you provided are dated October and November of 2019 and therefore do not establish your staffing levels as of March 22, 2019." Thus, the Director was reviewing the eligibility of the Petitioner through March 22, 2019 rather than from the time the instant petition was filed on September 17, 2018.

USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the Petitioner or Beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Given that the Director in this case incorrectly changed the dates of eligibility, we must remand the case for further review based on the current regulations.

Therefore, we will remand this case for the Director to review the Petitioner's evidence from the date the petition was filed on September 17, 2018. The Director may request any additional evidence considered pertinent to the new determination and any other issue. As such, we express no opinion regarding the ultimate resolution of this case on remand.

III. CONCLUSION

For the reasons discussed above, we will remand this case to the Director for further consideration.

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