U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-P-USA LLC

DATE: MAR. 28, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a printing business, seeks to continue the Beneficiary's temporary employment as its director of operations under the L-1A nonimmigrant classification for intracompany transferees.[1] 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 Vermont Service Center revoked the approval of the petition, determining that the Petitioner did not establish, as required, that 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 did not take into account the totality of the evidence submitted in response to the notice of intent to revoke (NOIR).

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.*

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period January 28, 2016, until January 17, 2017. 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.

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). This evidence must demonstrate that the beneficiary will be employed in a managerial or executive capacity, as defined at sections 101(a)(44)(A) and (B) of the Act, under the extended petition.

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. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director initially approved the petition and granted the Beneficiary a one-year extension of status from January 28, 2017, until January 27, 2018. The Director issued the NOIR in October 2017, advising the Petitioner that the notice was being sent as a result of a USCIS administrative site visit conducted in March 2017. The Director noted that, based on the observations of the immigration officer who conducted the visit, it appeared that the business premises was being used for storage of printing equipment rather than providing printing services, and that only two employees were present.

In the NOIR, the Director requested additional evidence to establish that the Petitioner and the foreign entity have a qualifying relationship, that the Petitioner continues to do business as described in the petition, and that the Beneficiary was and would be employed in a managerial or executive capacity. The Petitioner submitted a timely response to the notice.

The revocation of the petition's approval was based solely on a finding that the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity. The Director found that the Beneficiary's job description was vague, did not provide sufficient insight into her day-to-day duties, and did not establish that such duties would be primarily managerial or executive in nature. The Director further found that the Petitioner's statements regarding the Beneficiary's role "are not corroborated by the supporting evidence," and that "[t]he evidence, in its totality, establishes that the beneficiary is primarily performing routine day-to-day job duties associated with the printing services your organization provides."

While we agree with the determination that the job description submitted for the Beneficiary is lacking in detail, the decision does not reflect that the Director considered the evidence in its totality or adequately explain how that evidence led the Director to conclude that the Beneficiary primarily performs routine day-to-day duties. An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *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).

Beyond the required description of the job duties, the Director should have reviewed the company's organizational structure, the duties of the Beneficiary's subordinate employees, the presence of other employees to relieve her from performing operational duties, the nature of the business, and any other evidence submitted to support the Petitioner's claims. While the revocation decision states that the Director reviewed "the totality of the evidence," there is no discussion of the Petitioner's organizational chart, staffing levels, employee job descriptions and resumes, payroll records, or other evidence the Petitioner submitted to establish that it had sufficient staff to relieve the Beneficiary from involvement in its day-to-day operations.

Accordingly, we will withdraw the Director's decision and remand the matter for issuance of a new decision on this issue, which should take into account the totality of the evidence submitted in support of the Petitioner's claim that the Beneficiary will be employed in a managerial or executive capacity.

III. ADDITIONAL ISSUES

As the matter is being remanded, we note that the record reflects that there are other possible grounds for revocation which may warrant the issuance of a new notice of intent to revoke.

A. Qualifying Relationship

To establish a "qualifying relationship" under the Act and the regulations, the Petitioner 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 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").

The Petitioner claims to be a wholly-owned subsidiary of an Egyptian entity. In the NOIR, the Director observed that the Petitioner provided a 2016 IRS Form 1065, U.S. Return of Partnership Income, which indicated at Schedule K-1 that the Beneficiary owns 99% of the company. The Director asked the Petitioner to provide additional evidence to establish the claimed relationship. The Petitioner submitted additional evidence, and the Director did not address this issue in the revocation decision. However, the record as presently constituted contains unresolved inconsistencies regarding the Petitioner's ownership.

At the time of filing, the Petitioner submitted a copy of its New Jersey Certificate of Formation dated February 2016 which lists the Beneficiary and her spouse as "Members/Managers." It also submitted an accountant-prepared balance sheet for 2016 which listed the Beneficiary as the sole equity holder in the company. Finally, it submitted an operating agreement dated November 12, 2015, which refers to the company's Certificate of Formation filed in February 2016, and which was signed by the CEO/Vice President of the Egyptian entity. This document indicates that the foreign company is the Petitioner's sole owner and that it paid $55,000 in exchange for its membership interest in November 2015. However, this document was lacking in credibility since it referred to a future date in the past

tense, pre-dated the Petitioner's formation as a New Jersey limited liability company, and conflicted with other evidence indicating that the Beneficiary was the Petitioner's majority or sole owner.

As discussed in the NOIR, the Petitioner later provided a copy of its 2016 tax return (Form 1065), which listed the Beneficiary as the majority owner and her spouse as a minority (1%) owner of the company. In response to the NOIR, the Petitioner submitted:

- An Operating Agreement dated November 12, 2015, nearly identical in content to that provided previously, except all references to the state of organization refer to Ohio, rather than New Jersey, and the document lists a company address in Ohio.[2] This version of the agreement was signed by the Beneficiary as CEO of the foreign entity.
- Certificate of Amendment filed with the New Jersey Division of Revenue on November 15, 2017, which removes the Beneficiary's name as a member of the LLC, and adds the name of the foreign entity as a member.
- Copy of a 2016 IRS Form 1120, U.S. Corporation Income Tax Return, which identifies the foreign entity as the Petitioner's sole owner.

The Petitioner did not adequately explain why it has both a Form 1065 and a Form 1120 for the same tax year or explain why the two documents contain different ownership information. The certificate of amendment to the company's certificate of formation post-dates the filing of the petition by seven months, and the Petitioner did not explain why the Beneficiary was listed as a member previously if the foreign entity has owned the petitioning company since its formation. Further, as noted, the submitted operating agreement for the New Jersey entity is lacking credibility because it pre-dates the existence of the company by three months. Finally, the Petitioner's accountant-prepared financial statements reflect that the Beneficiary is the sole equity owner in the company.

The Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record as presently constituted is lacking consistent, primary evidence of the Petitioner's ownership. The Director should review the Petitioner's evidence and, if necessary, issue a new NOIR to allow the Petitioner an opportunity to address this issue.

B. Beneficiary's Employment Abroad

The Petitioner must establish that the Beneficiary had at least one year of full-time continuous employment abroad in a managerial or executive capacity in the three years preceding the filing of her initial L-1A petition in December 2015. *See* 8 C.F.R. § 214.2(l)(3)(iii)-(iv).

The Petitioner states that she was employed by its claimed foreign parent company from June 2011 until January 2016. However, U.S. Department of State records reflect that when the Beneficiary applied for a B1/B2 visa at the U.S. Consulate in [redacted] in 2015, she stated on her nonimmigrant visa application that she was a housewife, was not employed at the time of the visa application, and was not previously employed.

[2] The Petitioner has explained that a company with the same name was initially established in Ohio in 2015 and that the petitioning New Jersey entity was established in 2016, after it was determined to be a better location for the business.

As the matter will be remanded, the Director should review this issue, and, if necessary, allow the Petitioner an opportunity to respond to this potentially derogatory information by issuing a new NOIR.

IV. CONCLUSION

The Director's decision will be withdrawn for the foregoing reasons, and the matter will be remanded. The Director should review the totality of the evidence and the issues addressed above, and, if warranted, issue a new NOIR prior to entering 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 M-P-USA LLC*, ID# 2594526 (AAO Mar. 28, 2019)