U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-(USA) CORP.

DATE: MAY 10, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a clothing importer and distributor, seeks to continue the Beneficiary's temporary employment as its president 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 the Beneficiary was employed abroad in a managerial or executive capacity prior to her transfer to the United States; and (2) that the Beneficiary would be employed in the United States in a managerial or executive capacity. The Director denied the Petitioner's subsequent motion to reopen and the Petitioner has appealed that decision.

On appeal, the Petitioner asserts that the Director's latest decision "showed that [U.S. Citizenship and Immigration Services (USCIS)] was splitting hair[s] to try to find fault in this case," and requests a "more thorough evaluation of the case."

Upon *de novo* review of the record, we will withdraw the Director's decision to deny the Petitioner's motion 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 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

The Director revoked the approval of the petition after determining that, based on statements the Beneficiary made to a USCIS officer during an administrative site visit, she was not employed abroad, and would not be employed in the United States, in a managerial or executive capacity.

The Petitioner's motion to reopen included a brief, a detailed letter from the Beneficiary's foreign employer, and a number of documentary exhibits intended to demonstrate the nature of the Beneficiary's duties and her level of authority within both the foreign entity and the Petitioner. The new evidence also included the Beneficiary's transcript from [redacted] in China, where she majored in international business. This evidence was submitted in response to the Director's finding that the Petitioner had not submitted evidence that the Beneficiary was qualified for her position with the foreign entity.

Upon review, we find that the Director's decision did not sufficiently address the new evidence submitted in support of the motion to reopen. Further, the decision improperly introduced information obtained from outside the record of proceeding which the Director deemed to be derogatory to the Petitioner's claim of eligibility.

The Director's decision referred to a statement in the Petitioner's brief that "there might have been some miscommunication during the [USCIS officer's] visit." The Director concluded that "there is no indication that [the Beneficiary] misunderstood" the questions asked of her, emphasizing that the newly submitted transcript showed that she completed at least 20 courses in English. The Director also observed that "on a visa application the beneficiary prepared in June of 2012, she states that her course of study was English." The Director acknowledged that the Petitioner submitted other evidence in support of the motion to reopen, but concluded without further analysis that the evidence did not present "new facts that sufficiently clarify the discrepancies noted in the . . . revocation notice."

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). Here, the Director's decision did not address the vast majority of the new evidence submitted in support of the motion to reopen or explain why the Petitioner's evidence was insufficient to overcome the issues raised in the revocation decision.

Further, the Director is obligated to provide notice of any derogatory information that is discovered outside of the record of proceedings, and to make that derogatory information part of the record along with any rebuttal provided by the Petitioner. 8 C.F.R. § 103.2(b)(16)(i). The Director did not

provide notice of the information obtained from the Beneficiary's 2012 nonimmigrant visa application prior to including this information in the motion decision.

Accordingly, the Director's decision denying the motion to reopen will be withdrawn and remanded for entry of a new decision. If the new decision will be based on derogatory information obtained from outside the record, and not mentioned in the previously issued notice of intent to revoke, the Director must provide the Petitioner with proper notice prior to issuing the decision.

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

Cite as *Matter of G-(USA) Corp.*, ID# 1233371 (AAO May 10, 2018)