U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31091121

Date: MAY 14, 2024

Appeal of California Service Center Decision

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

The Petitioner, a provider of after-school education and training services for children, seeks to employ the Beneficiary 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 denied the petition, concluding the record did not establish that the Beneficiary had at least one year of full-time continuous employment abroad in the three years preceding the filing of the petition. The Director further determined that the Petitioner did not demonstrate the Beneficiary was employed abroad, and would be employed in the United States, in an executive capacity. The matter is now before us on appeal pursuant to 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.

I. LAW

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 their 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 them to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3)(iv).

II. ANALYSIS

As noted, the Director denied the petition on multiple grounds, concluding that the Petitioner did not demonstrate that (1) the Beneficiary had the required one-year of continuous employment with its foreign parent company in the three years preceding the filing of the petition; and (2) the Beneficiary was employed abroad, and would be employed in the United States, in an executive capacity as defined at section 101(a)(44)(B) of the Act; 8 U.S.C. § 1101(a)(44)(B).

On appeal, the Petitioner asserts that the Director overlooked relevant evidence, failed to provide a coherent explanation of the reasons for denial of the petition, reached erroneous conclusions of fact and law, and did not apply the preponderance of the evidence standard in adjudicating the petition.

While we cannot sustain the appeal based on the record as presently constituted, we will withdraw the Director's decision and remand the matter for further consideration and entry of a new decision, in accordance with the discussion below.

A. One Year of Employment Abroad

To demonstrate eligibility for L-1 classification, the Petitioner must provide evidence that the Beneficiary has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition. 8 C.F.R. § 214.2(l)(3)(iii). Brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous period abroad but such periods shall not be counted toward fulfillment of that requirement. *See* 8 C.F.R. § 214.2(l)(1)(ii)(A).

The Petitioner has consistently stated that its foreign parent company employed the Beneficiary as its "chairman" from July 15, 2020, until November 8, 2022, with no interruptions in employment. The Beneficiary was admitted to the United States as a B-2 nonimmigrant visitor on November 9, 2022. The Petitioner filed this petition on May 8, 2023, and requested that the Beneficiary be granted a change of status from B-2 to L-1A.

In the decision denying the petition, the Director acknowledged that the Petitioner provided copies of its parent company's monthly payroll reports, which reflect that the Beneficiary received salary payments for the period October 2021 through January 2023. However, the Director emphasized that the time the Beneficiary spent in the United States since November 2022 (181 days at the time of filing) "cannot be counted towards the beneficiary's one (1) year of continuous employment abroad." The Director concluded that the Petitioner did not demonstrate that the Beneficiary meets the one-year foreign employment requirement, apparently finding her six-month stay in the United States to be interruptive.

Here, to establish that the Beneficiary meets the L-1A classification's one-year foreign employment requirement, the Petitioner must show that she was employed abroad for at least one continuous year in the three years preceding the filing of the petition, between May 2020 and May 2023. The Director acknowledged that the Petitioner submitted documentation intended to establish her employment with its parent company from October 2021 through October 2022 (a period of 13 months) which falls within this three-year period. Further, the record reflects that the Beneficiary was physically present

outside the United States during this entire period. The Beneficiary's six-month stay in the United States between November 2022 and May 2023 occurred after this period and is not interruptive under 8 C.F.R. § 214.2(l)(1)(ii)(A). Accordingly, we will withdraw the Director's determination.

The Director's determination on remand should be based on whether the Petitioner provided sufficient evidence to corroborate that its foreign parent company employed the Beneficiary for at least one continuous year between May 2020 and her admission to the United States on November 9, 2022.

In a request for evidence (RFE), the Director had questioned the probative value of the foreign parent company's payroll records based on perceived anomalies in the amounts the company deducted from its employees' pay for "personal social security holding" and "personal provident fund withholding." Specifically, the Director observed that the parent company deducted the same amount for the Beneficiary as it did not her claimed direct subordinates, despite differences in their base salaries. The Director acknowledged the Petitioner's submission of additional evidence and explanations addressing this issue in response to the RFE but did not reach a determination on whether such evidence was sufficient to overcome the concerns raised therein.

On remand, the Director should review the evidence documenting the Beneficiary's foreign employment for sufficiency under the preponderance of the evidence standard.[1] The Director may request additional independent, objective evidence of the Beneficiary's employment abroad, such as copies of her personal tax documents, bank records, tax filings made by the company, or any other relevant evidence, prior to issuing a new decision.

B. Employment in an Executive Capacity

The Petitioner claims that the Beneficiary was employed abroad, and would be employed in the United States, in an executive capacity as defined at section 101(a)(44)(B) of the Act. It does not claim that she was or would be employed in a managerial capacity.

To establish that the Beneficiary's employment in an executive capacity, the Petitioner must show that she performs the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(B)(i)-(iv) of the Act. If the Petitioner establishes that her former and proposed positions meet all elements set forth in the statutory definition, it must also show that the positions require her performance of primarily executive duties, as opposed to performing ordinary operational activities alongside other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's duties are primarily executive, U.S. Citizenship and Immigration Services (USCIS) will consider the petitioner's description of the job duties, the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the

[1] In this regard, we observe that the Petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that the Beneficiary's period of employment with the foreign entity ended on November 8, 2022, and submitted a letter from the foreign entity also confirming her employment ended on this date. However, the Petitioner initially submitted foreign payroll documents for the period January 2022 through January 2023 as evidence of the Beneficiary's one year of employment abroad and did not explain why she continued to receive her full salary in the months after she left the company. Without an explanation, this discrepancy raises further questions regarding the probative value of the foreign entity's internally prepared payroll statements.

business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

On appeal, the Petitioner contends that the Director's decision did not reflect consideration of all these relevant factors.

The record reflects that the Petitioner submitted multi-page descriptions of the Beneficiary's previous and proposed positions in response to the RFE, organizational charts and staff lists for both companies accompanied by payroll documentation, job descriptions for the Beneficiary's subordinates, evidence documenting the nature of both entities' business activities, and internal documents intended to corroborate the nature of the duties the Beneficiary performed with the foreign entity. While the Director acknowledged the submission of this evidence, the decision rested on a determination that the Petitioner did not demonstrate that either company has the organizational complexity to support an executive position. This conclusion was based, in large part, on the Director's findings that the Petitioner did not provide sufficiently detailed job descriptions for the Beneficiary's direct subordinates to demonstrate they are managerial employees. The Director did not discuss the probative value of the expanded job descriptions provided for the Beneficiary in response to the RFE, the nature of the business, or the organizational structure and overall staffing of the companies.

We agree with the Petitioner that the Director did not sufficiently address the Petitioner's claims and evidence in evaluating whether the Beneficiary was, and would be, employed in an executive capacity. An officer must fully explain the specific reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(1)(i). Absent a specific explanation for denial and adequate notice of why the submitted evidence was insufficient to establish eligibility, a petitioner does not have a fair opportunity to contest a denial through the motion or appellate process. *Cf. 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).

If staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, USCIS must take into account the reasonable needs of an organization in light of its overall purpose and stage of development. *See* section 101(a)(44)(C) of the Act. Here, the Director determined that neither the foreign entity (which employees over 40 workers), or the U.S. entity (which employees approximately 15 workers) has the organizational complexity to warrant having an executive position but did not provide a sufficient explanation for reaching this conclusion or address other relevant evidence relating to the Beneficiary's claimed executive capacity.

While we agree with the Petitioner that the Director's decision was deficient in this regard, we note an issue that warrants further review on remand. As noted, the Petitioner has offered the Beneficiary the position of CEO. One of her claimed proposed subordinates (S-L-) is the sole owner of the foreign parent company, and therefore indirectly owns the Petitioner. The Petitioner states that it employs S-L- as the manager of its [redacted] California office, and pays him an annual salary of $48,000. However, there are multiple documents in the record, including lease agreements and a fictitious name statement, signed by S-L- in his capacity as the Petitioner's CEO, the same position that is now offered to the Beneficiary. The Petitioner's 2022 federal income tax return shows that it paid S-L- $75,000 and reported his earnings as "compensation to officers."

Despite the evidence in the record showing S-L-'s role as CEO, the Petitioner does not indicate that its current staff includes a CEO, nor does it explain its need to transfer a second employee from its parent company to fill the same position.[2] The Petitioner shall be provided an opportunity to address this issue on remand prior to the issuance of a final decision.

III. CONCLUSION

For the reasons addressed above, the Director's decision is withdrawn, and the matter will be remanded for further review and entry of a new decision that complies with 8 C.F.R. § 103.3(a)(1)(i). If the new decision will be based on derogatory information which has not yet been disclosed to the Petitioner, the Director must first issue a new RFE or notice of intent to deny in accordance with 8 C.F.R. § 103.2(b)(16)(i) and allow the Petitioner a reasonable opportunity to respond before issuing the decision. The Director may also raise any additional issues relevant to the eligibility requirements for the requested classification.

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

[2] USCIS records reflect that S-L- was the beneficiary of an approved Form I-140, Immigrant Petition for Alien Workers, in which the Petitioner offered him the permanent position of CEO under section 203(b)(1)(C) of the Act, the first preference employment-based classification for multinational managers and executives.