U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10692706

Date: OCT. 15, 2020

Appeal of California Service Center Decision

Form I-129, Petition for L-1B Specialized Knowledge Worker

The Petitioner is an investment management company that seeks to temporarily employ the Beneficiary as a "Senior Economist & Financial Accountant" under the L-1B nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary possesses specialized knowledge and that she was employed abroad and would be employed in the United States in a specialized knowledge capacity. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. See Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will remand the matter to the Director for further consideration and entry of a new decision.

At this time, we are unable to address the merits of this case because the record is incomplete. The record reflects that the Director issued a request for evidence (RFE) on October 10, 2019. While the Director acknowledged that the Petitioner submitted a timely response to the RFE, the Petitioner's original response has not been incorporated into the record of proceeding.[1] We cannot determine whether the Director considered the full RFE response, nor can we base our own decision in this case on an incomplete record.

The Director bears the responsibility of ensuring that the record is complete and contains all evidence that has been submitted by a petitioner or considered by USCIS in reaching its decision. See 8 C.F.R. § 103.2(b)(1); cf. Matter of Gibson, 16 I&N Dec. 58, 59 (BIA 1976). Accordingly, we will withdraw the Director's decision and remand this matter for the inclusion of the missing record materials and further consideration.

[1] The Petitioner indicates that it is resubmitting a copy of its RFE response with the appeal. However, the copy appears to be incomplete. For example, counsel's brief quotes portions of a letter from [redacted] but the referenced letter is not in the record. Although the record includes two letters from [redacted] the language quoted in the brief is not derived from either of them.

Upon remand, the Petitioner should have the opportunity to supplement the record. In addition, we note that the Petitioner has submitted new evidence on appeal which may be relevant to the Beneficiary's eligibility as of the date of filing. The Director is the more appropriate party to consider the impact of the new evidence on the Petitioner's eligibility, as we cannot adjudicate the appeal based on the incomplete record.

The Director should issue a new decision based on a review of the complete record, including the evidence submitted on appeal. In doing so, the Director should ensure that the Petitioner's complete RFE response is in the record. Further, the Director should consider whether the Petitioner has established eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1).

ORDER: The decision of the Director is withdrawn. 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.