U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11933364

Date: OCT. 23, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a global financial services organization, seeks to continue to employ the Beneficiary temporarily as its "Director of Valuations – North America" under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the Texas Service Center denied the petition concluding that the Petitioner did not establish, as required, that a qualifying relationship exists between it and the Beneficiary's foreign employer. The Director also entered a separate finding of fraud.

The matter is now before us on appeal. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we conclude that the decision lacks an analysis of the factors that determine whether a qualifying relationship exists between the Petitioner and the Beneficiary's foreign employer, thereby denying the Petitioner a meaningful opportunity to challenge the Director's finding of ineligibility. We also conclude that the Director did not provide an analysis to support the finding of fraud. Therefore, we will withdraw the Director's decision and remand the matter for further proceedings.

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.*

II. ANALYSIS

As noted earlier, we conclude that the Director's decision did not adequately explain the deficiencies in the evidence. *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). Despite concluding that the Petitioner did not provide sufficient evidence demonstrating the existence of a qualifying relationship[1] at the time of filing, the Director did not analyze the submitted evidence or discuss how such evidence was deficient. Rather, the Director highlighted two U.S. Citizenship and Immigration Services (USCIS) site visits – one in New York and another in California – and repeatedly mentioned those site visits within the context of the Petitioner's two prior L-1A filings,[2] which are outside this record. The Director also determined that the Petitioner is not a valid corporation and was authorized to conduct business at the time this petition was filed. However, despite relying on adverse information found in the California Secretary of State's website to reach this determination, the Director did not include this information in the previously issued notice of intent to deny and therefore did not comply with the regulatory provision that mandates prior notice of derogatory information that is outside the record, stating that the Petitioner "shall be advised" of such information and must be "offered an opportunity to rebut the information." 8 C.F.R. § 103.2(b)(16)(i).

Next, although the Director issued a finding of fraud, he conflated that finding with the separate finding of material misrepresentation, stating that the Petitioner has not provided evidence that overcomes the "fraud/misrepresentation" that was "confirmed" in the above referenced L-1A petitions, which are not in the record that is currently before us. By making the reference to "fraud/misrepresentation," the Director incorrectly indicated that a finding of fraud is interchangeable with a finding of misrepresentation.[3] Further, although the Director ultimately made a finding of fraud, he did not support that finding with an analysis of the elements of fraud within the context of the facts presented in the matter at hand.

In light of the deficiencies described above, we hereby withdraw the Director's decision and remand the matter for further consideration.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

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[1] To establish a "qualifying relationship" under the Act and the regulations, a 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 generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

[2] The Director referred to the Petitioner's previously filed L-1A petition with receipt number [redacted] and an amended petition with receipt number [redacted] indicating that the USCIS site visits were prompted by information that was provided in these petitions.

[3] To find a willful and material misrepresentation in visa petition proceedings, an immigration officer must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Kai Hing Hui*, 15 I&N Dec. at 288. A finding of fraud requires a determination that the alien made a false representation of a material fact with knowledge of its falsity and with the intent to deceive an immigration officer. Furthermore, the false representation must have been believed and acted upon by the officer. *See Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956).