U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-A-I- CORP.

DATE: SEPT. 16, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR NONIMMIGRANT WORKER

The Petitioner, a provider of equipment and services to the hospitality industry, seeks to continue employing the Beneficiary as an executive director under the L-1A nonimmigrant classification. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). This classification allows an international business to transfer a qualifying foreign employee to the United States to temporarily work in a managerial or executive capacity.

After initially granting an extension of the Beneficiary's L-1A status, the Director of the California Service Center revoked the petition's approval. The Director concluded that she erred in extending the petition. Specifically, the Director found that the Petitioner did not establish that it will employ the Beneficiary as a manager or executive.

On appeal, the Petitioner asserts that the Director misconstrued facts and disregarded evidence that the company will employ the Beneficiary in an executive capacity. It also contends that the Director should have deferred to her prior determination that the Beneficiary qualifies for L-1A status.

Upon *de novo* review, we will withdraw the Director's decision and remand for entry of a new decision consistent with the following analysis.

I. LEGAL FRAMEWORK

To obtain L-1A status, a petitioner must establish that, within the three years before a beneficiary's admission into the United States, the petitioner or its parent, subsidiary, or affiliate employed the foreign national abroad in a managerial, executive, or specialized knowledge capacity for at least one continuous year. Section 101(a)(15)(L) of the Act. A petitioner must also demonstrate that a beneficiary will temporarily serve it or a qualifying organization in a managerial or executive capacity. *Id.*

U.S. Citizenship and Immigration Services (USCIS), however, may revoke a petition's approval "at any time, even after expiration of the petition." 8 C.F.R. § 214.2(l)(9)(i). Unless a petitioner withdraws an individual petition or neglects to request indefinite validity of a blanket petition, USCIS must send the petitioner a notice of intent to revoke (NOIR). 8 C.F.R. §§ 214.2(l)(9)(ii), (iii)(A). USCIS must issue an NOIR under six specific circumstances, including when an approval

involved "gross error." 8 C.F.R. § 214.2(l)(9)(iii)(A). An NOIR must "contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal." 8 C.F.R. § 214.2(l)(9)(iii)(B). USCIS must "consider all relevant evidence presented in deciding whether to revoke the petition." *Id.*

II. EMPLOYMENT IN AN EXECUTIVE CAPACITY

Upon review, we find that the Director's NOIR did not contain a sufficiently detailed statement of the grounds for revocation. As such, the Petitioner was not given adequate notice of those grounds and did not have sufficient opportunity to address the Director's concerns.

The term "executive capacity" means an assignment where an employee primarily directs the management of an organization or a major component or function of it; establishes the goals and policies of the organization or its component or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives of the organization, its board of directors, or its stockholders. Section 101(a)(44)(B) of the Act. A petitioner must show that a beneficiary will perform the high-level duties described in the statutory definition. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). A petitioner must also prove that a beneficiary will primarily perform executive duties, as opposed to ordinary, operational tasks. *Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533.

When determining the executive nature of a position, USCIS examines a petitioner's description of the job's duties. A petitioner must provide "a detailed description of the services to be performed." 8 C.F.R. § 214.2(l)(3)(ii). USCIS also considers: a petitioner's organizational structure; whether other employees exist to relieve a beneficiary from performing operational duties; the nature of the business; and other factors indicating a beneficiary's actual duties and business role.

Here, the Director's NOIR notified the Petitioner that in April 2018, about four months after the grant of the petition's extension, a USCIS officer visited the company's worksite under the Administrative Site Visit and Verification Program.[1] The NOIR describes the site visit, stating information obtained and the officer's observations. The notice, however, did not state how the information or observations undermined the claimed, executive nature of the offered position. Contrary to 8 C.F.R. § 214.2(l)(9)(iii)(B), the NOIR therefore lacked "a detailed statement of the grounds for the revocation."

In addition, the revocation decision went beyond the issues raised in the NOIR and primarily faulted the Petitioner's NOIR response for lacking "sufficient documentation about all the personnel whom the beneficiary will manage" and adequate descriptions of their job duties. But the NOIR did not request additional documentation or information about the Beneficiary's subordinates. As such, the

[1] This program involves unannounced visits to worksites by USCIS officers to verify that petitioners and beneficiaries are following applicable immigration laws and regulations. *See* USCIS, "Administrative Site Visit and Verification Program," https://www.uscis.gov/about-us/directorates-and-program-offices/fraud-detection-and-national-security/administrative-site-visit-and-verification-program (last visited July 31, 2019).

Petitioner was not given adequate notice of those grounds and did not have sufficient opportunity to address the Director's concerns.

The NOIR neither sufficiently notified the Petitioner of the revocation grounds, nor allowed it to adequately respond to the notice. We will therefore withdraw the Director's decision and remand the matter. On remand, the Director should issue a new NOIR. The new notice must: include a detailed statement of the revocation grounds; supporting the grounds with analysis of the evidence of record; specify any types of additional proof required; and state the period allowed for the Petitioner's rebuttal. Upon receipt of a timely response, the Director should review the entire record and enter a new decision.

III. CONCLUSION

Contrary to 8 C.F.R. § 214.2(l)(9)(iii)(B), the NOIR lacked "a detailed statement of the grounds for the revocation." For the same reason, the Petitioner did not receive an adequate opportunity to respond to the notice.

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

Cite as *Matter of S-A-I- Corp.*, ID# 5462569 (AAO Sept. 16, 2019)