U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19854159

Date: MAR. 22, 2022

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, a global professional services firm, seeks to permanently employ the Beneficiary as its "Senior Manager" under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish, as required, that the Beneficiary's proposed employment would be in a managerial capacity. The Petitioner later filed a motion to reopen and a motion to reconsider which was granted by the Director; however, the Director determined that the previous denial would remain undisturbed. 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.

I. LEGAL FRAMEWORK

An immigrant visa is available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

The Form I-140, Immigrant Petition for Alien Worker, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3).

II. BASIS FOR REMAND

Upon review, we conclude that the Director did not sufficiently consider the evidence submitted by the Petitioner on motion or provide adequate analysis as to how this evidence was insufficient to demonstrate the Beneficiary's managerial capacity in the United States. For instance, the Director listed the evidence submitted by the Petitioner specific to the Beneficiary's asserted employment in a managerial capacity, but did not provide analysis of this evidence despite reopening the matter.

Preliminarily, we note that the Director's decision contains numerous conflicting statements and discrepancies. For example, while the Director concluded that the underlying decision denying the petition would remain undisturbed, the Director also stated "Your Notice of Appeal or Motion (Form I-290B) has been approved," and "the petitioner has established that the decision was incorrect based on the evidence when Form I-140 was initially denied." Further, although the Director stated that the underlying decision denying the petition was erroneous, the Director provided no further analysis or discussion with regard to this statement and contradictorily concluded that the Petitioner did not establish eligibility for the required benefit.

In addition, while the Director denied the underlying petition based on a determination that the Beneficiary's proposed U.S. employment would not be primarily managerial, the Director's decision on motion incorrectly stated that the underlying petition was denied "because the petitioner's [*sic*] did not provide sufficient evidence to show that the beneficiary's offered position is in a managerial capacity *and the beneficiary was employed in a managerial capacity abroad*." (Emphasis added). On appeal, the Petitioner points out that this second basis for denial was not previously raised, and argues that the underlying decision denying the petition implicitly found that the Beneficiary's foreign position was in a qualifying capacity.

In the motion decision, the Director acknowledged the Petitioner's submission of a new statement of duties, educational credentials for subordinate employees, and an organizational chart. After briefly quoting a section of the statement of duties, the Director concluded that "the evidence submitted does not establish that the beneficiary manages a component of the organization as stipulated in the petitioner's statement. Rather the statement shows that the beneficiary manages an organization's client project." No further analysis or discussion of the submitted evidence was provided.

On appeal, the Petitioner takes issue with the Director's "cursory" conclusion, and argues that the Director "improvidently denied the recently filed motion on the basis of its faulty and unreasonable interpretation of the documentation in the record." The Petitioner asserts that it provided sufficient details regarding the Beneficiary's U.S. position, specifically pointing out numerous documents and their contents that were not reviewed or considered by the Director on motion, and argues that the Director's determination was based on "unsupported conclusions."

Upon review, we agree with the Petitioner's assertion that the Director's motion decision contains insufficient reasoning and analysis to support its conclusion. The record reflects that the Petitioner provided a 22-page brief in support of its combined motion to reopen and motion to reconsider, along with new and previously submitted documentary evidence describing the Beneficiary's current U.S. position and previous role abroad. Despite granting both motions, the Director did not reference the detailed job descriptions provided in these documents or identify any specific deficiencies with respect

to the duties described. Instead, the Director broadly referred to the Petitioner's statement of duties on motion in support of his adverse conclusion that the U.S. position is not in a managerial capacity. Although the Petitioner provided a job duty breakdown pertaining to the Beneficiary's proposed U.S. employment, as well as additional details pertaining to his subordinate employees, the Director declined to analyze this documentation and make a determination upon the merits of the evidence. The Director's decision does not include a full analysis of the evidence the Petitioner submitted in support of its claim that the Beneficiary would be employed in the United States in a managerial capacity as defined at section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). 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).

The Director's motion decision contains inaccurate findings and did not adequately analyze the facts and apply the law. In light of the errors described herein, we find that the Director did not adequately explain the reasons for not disturbing the denial of the petition. *Id.* Therefore, we will withdraw the Director's motion decision and remand the matter for entry of a new decision. The Director should request any additional evidence deemed warranted and allow the Petitioner to submit such evidence within a reasonable period of time. The Director may also notify the Petitioner of additional, potential grounds of denial if supported by the record.

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