U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20274568

Date: MAR. 28, 2022

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner is engaged in international trade and seeks to permanently employ the Beneficiary as its President 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.

After initially approving the petition, the Director of the Texas Service Center revoked the petition's approval. The Director concluded that the Petitioner did not establish that (1) it had the requisite qualifying relationship with the Beneficiary's foreign employer, (2) the Beneficiary was employed abroad in a qualifying executive capacity for one year in the three years preceding his entry into the United States as a nonimmigrant, and (3) the Beneficiary's proposed U.S. employment would be in an executive capacity. The Petitioner subsequently filed a motion to reopen and motion to reconsider, which the Director denied concluding that the underlying adverse decision 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).

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that the decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

II. BASIS FOR REMAND

The instant petition filed on behalf of the Beneficiary was approved by the Director of the Texas Service Center on February 15, 2017. The Director later revoked the approval of this petition on July 31, 2020, following the issuance of a notice of intent to revoke (NOIR). The Director concluded that the petition had been approved in error and that the Beneficiary was not eligible for the benefit sought.

The Petitioner, through counsel, subsequently filed a motion to reopen and motion to reconsider, asserting that the Director "disregarded a multitude of pertinent evidence" and "did not provide adequate explanation for the adverse decision." The Petitioner submitted new evidence in support of the claimed qualifying relationship with the foreign employer, specifically a revised translation of an Enterprise Overseas Investment Certificate and evidence demonstrating that it filed amended tax returns to properly reflect the company's ownership. The Petitioner also provided arguments challenging the Director's determination that the Beneficiary had not been employed abroad, and would not be employed in the United States, in a primarily executive capacity. The Director dismissed the combined motion, concluding that the Petitioner had not provided new evidence or precedent decisions to consider and that it did not establish that the decision was incorrect based on the evidence in the record at the time of revocation.

Upon review, we agree with the Petitioner's assertion that the Director did not consider the submission of new evidence by the Petitioner on motion. In a letter accompanying the motion, counsel for the Petitioner generally noted that the Petitioner had not received a copy of the revocation notice, despite submitting a change of address request to U.S. Citizenship and Immigration Services (USCIS) in July of 2019.[1] Regardless, the Petitioner, through counsel, filed a timely and lengthy motion addressing the reasons why it believed the revocation of the petition's approval was unwarranted, which was not addressed by the Director. Instead, the Director's decision focused exclusively on the Petitioner's change of address request and the documentation submitted in support of that request, as opposed to the new documentary evidence and arguments contained in the nine-page brief accompanying the combined motion. The Director determined that the Petitioner provided no evidence to support its claim that a change of address request had been submitted to USCIS, and vaguely cited language

[1] In a letter submitted in support of the motion, counsel stated as follows:

> Please note that the Petitioner has not received your Notice of Revocation of the I-140 approval. Please send a copy of the Revocation Notice to the Petitioner. On August 1, 2019, its address changed[]. We submitted this address change to you on July 22, 2019; a copy of this address change is enclosed in this letter.

pertaining to required evidence for motions to reopen an application or petition denied due to abandonment, which has no application here.

With the appeal, the Petitioner submits a brief and resubmits the evidence previously submitted on motion, along with a "position evaluation report" in support of the Beneficiary's claimed executive position in the United States and abroad. The Petitioner argues on appeal that the Director erred in dismissing the combined motion because the decision did not address its submission of new evidence, and asserts that on motion, it "explained the discrepancies listed in the Revocation Notice, submitted new evidence, disputed the fact that the [service center] deviated from common sense and legal principles, as well as highlighted the errors made on the part of the [service center]." The Petitioner further contends that its arguments and evidence submitted on motion established eligibility for the benefit sought.

Here, the Director's decision did not adequately explain the deficiencies in the evidence submitted on motion. *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). Instead, the Director's decision focused on an issue not relevant to the basis for the revocation of the petition's approval.

The Director's motion decision 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 revocation of the petition's approval. *Id.* Therefore, we will withdraw the Director's motion decision and remand the matter for entry of a new decision.

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