U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24845451

Date: FEB. 14, 2023

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, an insurance agency, seeks to permanently employ the Beneficiary as its general manager under the first preference immigrant classification for multinational managers or executives. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary had been employed abroad, or would be employed in the United States, in an executive capacity.[1] The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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.

A petition seeking to classify a beneficiary as a multinational manager or executive 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)-(D).

[1] The Director initially denied the petition on October 2, 2019, concluding that the record did not establish the existence of a bona fide employer-employee relationship between the Beneficiary and the Petitioner or between the Beneficiary and the Petitioner's foreign affiliate, due to his significant ownership interest in both entities. The Petitioner appealed that decision to this office. We withdrew the Director's decision and remanded the matter to the Director for further consideration and entry of a new decision.

As noted, the Director denied the petition concluding that the record did not establish that the Beneficiary had been employed abroad, or would be employed in the United States, in an executive capacity, as defined at section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B).

On appeal, the Petitioner asserts that the Director issued the unfavorable decision without considering its response to a request for evidence (RFE) issued in November 2021. In addition, the Petitioner contends that the Director erroneously disregarded its consistent 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, rather than in an executive capacity.

The record supports the Petitioner's claims. The Director's final decision contains no reference to the RFE issued in November 2021 or the additional evidence and explanations the Petitioner submitted in response to that RFE. As such, the decision reflects that the Director denied the petition without consideration of this material evidence. An officer must explain the specific reasons for denying a visa petition. 8 C.F.R. § 103.3(a)(1)(i). As the Director did not review all the submitted evidence, the decision does not adequately explain the specific reasons for denial, the Petitioner was not provided with a fair opportunity to contest the decision, and we cannot conduct a meaningful appellate review. *See, e.g.*, *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).

Further, we agree with the Petitioner's assertion that the Director erred by disregarding its consistent claim that the Beneficiary would be employed in the United States in a managerial capacity based on the nature of his day-to-day duties. The Director dismissed the Petitioner's claim as "misplaced" and instead applied the definition of executive capacity at section 101(a)(44)(B) of the Act in analyzing the Beneficiary's proposed U.S. employment. The Director emphasized that the Beneficiary, who serves as the Petitioner's general manager, is also chairman of the company's board of directors, a position he holds as a member of the petitioning limited liability company. However, an individual need not be deemed an executive under the statutory definition at section 101(a)(44)(B) of the Act simply because they have an executive title or because they "direct" the organization as an owner or officer of the company. The Petitioner specifically articulated why it sought to classify the Beneficiary as a multinational manager and the Director erroneously discounted its claims.

As the Director's decision does not reflect that it was based on a review of the totality of the Petitioner's claims and evidence, we will withdraw the decision and remand the matter to the Director for further review and entry of a new decision. On remand, the Director is instructed to review all evidence submitted to date, including evidence submitted in response to the Director's RFEs issued in 2019 and 2021, and the Petitioner's claims on appeal, including its claim that it will employ the Beneficiary in a managerial capacity.

The Petitioner has the burden to establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). In addition to establishing that it met all eligibility requirements at the time of filing in December 2017, the Petitioner must demonstrate that it continues to have the ability to employ the Beneficiary in a managerial capacity, that the foreign and U.S. entities maintain a qualifying

relationship, and that both entities continue to do business as defined in the regulations. *See generally* 8 C.F.R. § 204.5(j)(3). Additionally, the Petitioner must establish its continuing ability to pay the Beneficiary's proffered wage from the date of filing in 2017. *See* 8 C.F.R. § 204.5(g)(2). While the Petitioner has submitted updated evidence in response to previous RFEs which the Director has not yet considered, the record lacks, for example, recent evidence of the Petitioner's staffing levels and organizational structure. As such, the Director may find it necessary to issue a new RFE and should allow the Petitioner a reasonable opportunity to respond prior to issuing a new decision.

For the reasons discussed, the Director's decision is withdrawn. We will remand the matter for further consideration and for the Director to adjudicate in the first instance any additional issues that impact eligibility for the immigrant classification sought.

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