



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 20292686

Date: APR. 12, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a company engaged in the sale and service of automobiles, seeks to continue the Beneficiary's temporary employment as its president under the L-1A nonimmigrant classification for intracompany transferees. *See* 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 the Petitioner did not establish, as required, that: 1) the Beneficiary's foreign employer was doing business; 2) the Petitioner was doing business; 3) the Beneficiary was employed in a managerial or executive capacity abroad; and 4) the Beneficiary would be employed in a managerial or executive capacity in the United States.

In addition, the Director stated within the analysis for each ground for denial that "fraud/misrepresentation is confirmed." The Director further concluded within each section of the analysis that the Petitioner "misrepresented information about its foreign parent company and about the Beneficiary's work history and submitted fraudulent documents to support those claims." On appeal, the Petitioner asserts that the Director erred in denying the petition and contends that it did not commit fraud or willfully misrepresent material facts. 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 withdraw the Director's decision and remand the matter for further consideration and entry of a new decision.

**I. DEFERENCE TO PRIOR NONIMMIGRANT VISA APPROVALS**

While the appeal was pending, U.S. Citizenship and Immigration Services (USCIS) updated the *USCIS Policy Manual's* guidance regarding deference to prior approvals. 2 *USCIS Policy Manual* A.4(B)(1), <https://www.uscis.gov/policymanual>; *see also* USCIS Policy Alert, PA-2021-05, *Deference to Prior Determinations of Eligibility in Requests for Extensions of Petition Validity* (Apr. 27, 2021), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210427-Deference.pdf>. This petition is an extension request in the same nonimmigrant classification, previously approved by USCIS, and filed by the same parties and for the same position. Therefore, it is directly impacted by this USCIS guidance.

In the denial decision, the Director discussed prior L-1A nonimmigrant visa approvals granted on behalf of the Beneficiary and listed those situations where USCIS does not defer to prior approvals, specifically where: 1) there was a material error with respect to the prior approval(s), 2) there was a material change in circumstances or eligibility requirements, and 3) there was material information that adversely impacts the petitioner's or the beneficiary's eligibility. However, although the Director noted discrepancies specific to the Beneficiary's asserted foreign employer and employment, they did not clearly articulate on which grounds they declined to give deference to the prior nonimmigrant visa approvals.

As such, we find it appropriate to remand the matter to the Director to consider the extension request anew, and if they deny the extension request, to discuss specifically why deference to the prior approvals is not being provided.

## II. FRAUD AND WILLFUL MISREPRESENTATION

As discussed, the Director stated within the decision with respect to each ground for denial that "fraud/misrepresentation is confirmed" and also concluded that the Petitioner "misrepresented information about its foreign parent company and about the Beneficiary's work history and submitted fraudulent documents to support those claims." For the following reasons, we will withdraw the Director's decision on this issue and remand the matter for further consideration.

First, the Director did not clearly articulate a definitive conclusion that the Petitioner and/or the Beneficiary had committed fraud, and/or whether each or both had willfully misrepresented material facts. As such, in any new decision, the Director should clearly articulate whether a finding of fraud and/or willful misrepresentation is being made, and, if so, whether each finding is being made against the Petitioner, the Beneficiary, or against both parties.

Next, the decision insufficiently analyzed the elements of fraud and willful misrepresentation of material fact. A finding of fraud against a petitioner or beneficiary requires the following elements:

- The petitioner or beneficiary procured, or sought to procure, a benefit under U.S. immigration laws;
- The petitioner or beneficiary made a false representation;
- The false representation was willfully made;
- The false representation was material;
- The false representation was made to a U.S. government official, generally an immigration or consular officer;
- The false representation was made with the intent to deceive a U.S. government official authorized to act upon the request (generally an immigration or consular officer); and
- The U.S. government official believed and acted upon the false representation by granting the benefit.

*See 8 USCIS Policy Manual J.2(C)*, <https://www.uscis.gov/policymanual>.

A finding of willful misrepresentation of material fact against a petitioner or beneficiary requires the following elements:

- The petitioner or beneficiary procured, or sought to procure, a benefit under U.S. immigration laws;
- The petitioner or beneficiary made a false representation;
- The false representation was willfully made;
- The false representation was material; and
- The false representation was made to a U.S. government official.

*See 8 USCIS Policy Manual, supra, at J.2(B).*

Here, the Director did not sufficiently analyze the elements of fraud and willful misrepresentation. The Director stated only that “fraud/misrepresentation is confirmed,” concluded that the Petitioner misrepresented information, and that it had submitted “fraudulent documents.”

In addressing fraud and willful misrepresentation, the Director pointed to three discrepancies in the record related to the Beneficiary’s asserted foreign employer and employment abroad. The Director stated that “public records” indicated that the foreign employer was established on December 1, 2005, not on November 20, 2012, as asserted by the Petitioner. The Director also stated that “public records” reflected a different address for the foreign employer in China than that set forth in the record. However, the Director did not sufficiently disclose the “public records” or provide the Petitioner sufficient opportunity to rebut the derogatory information and present information on its own behalf. *See 8 C.F.R. § 103.2(b)(16)(i).*

In addition, the Director indicated that during the time of the Beneficiary’s claimed foreign employment from November 2012 to May 2017, he listed different foreign employers when applying for other nonimmigrant visas. However, the Director did not identify the prior nonimmigrant visas the Beneficiary filed, nor where he claimed conflicting foreign employment. The Director also did not specifically identify and analyze this asserted conflicting foreign employment in the denial decision. A petitioner must be afforded an opportunity to review all derogatory information considered by the Director before a decision is rendered. *See, e.g., id.; Matter of Cuello*, 20 I&N Dec. 94, 96-98 (BIA 1989).

Further, in response to the notice of intent to deny (NOID), the Petitioner submitted additional assertions and documentary evidence to rebut the discrepancies noted by the Director. However, the Director does not appear to have analyzed the Petitioner’s statements or reviewed the additional evidence provided prior to finding there was fraud and/or willful misrepresentation. An officer must fully explain the reasons for denying a visa petition 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).

Therefore, we will remand this matter to the Director to sufficiently analyze the elements of fraud and willful misrepresentation in this case, if deemed necessary. The Director should make any specific

findings of fraud and/or willful misrepresentation, if applicable, against the proper parties and sufficiently disclose the derogatory information on which they relied. The Director must also provide the Petitioner sufficient opportunity to rebut the derogatory information, present information on its own behalf, and properly consider the evidence submitted in response to the NOID and on appeal.

### III. GROUNDS FOR DENIAL

As discussed previously in this decision, the Director denied the petition on four separate grounds, concluding that: 1) the Beneficiary's foreign employer was not doing business; 2) the Petitioner was not doing business; 3) the Beneficiary was not employed in a managerial or executive capacity abroad; and 4) the Beneficiary would not be employed in a managerial or executive capacity in the United States. The Director did not properly analyze each ground of denial consistent with the applicable statutory and regulatory requirements.

For example, as noted, the Director only listed the three claimed discrepancies on the record, all relating to the Beneficiary's claimed foreign employer and employment abroad. However, it is not clear how the noted discrepancies are relevant to whether the Petitioner is doing business according to the regulations<sup>1</sup> or whether the Beneficiary would act in a managerial or executive capacity in the United States.<sup>2</sup> Further, although we acknowledge that the discrepancies emphasized by the Director could be relevant to whether the foreign employer was, and is, doing business, and whether the Beneficiary was employed in a managerial or executive capacity abroad, the decision includes no specific analysis as to each of these grounds.

As such, in any new decision, the Director should analyze each ground for denial separately, and clearly analyze and articulate why the Petitioner has not met its burden with respect to each ground for denial.

### IV. CONCLUSION

For the foregoing reasons, the Director's decision is withdrawn and the matter will be remanded for further consideration, which should include issuance of a new NOID if the new decision will include a finding of fraud and/or willful misrepresentation of a material fact. The Director may request any additional evidence considered pertinent to the new determination and any other issue.

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<sup>1</sup> "Doing business," is defined as the regular, systematic, and continuous provision of goods or services. 8 C.F.R. § 214.2(l)(14)(ii)(A) and 8 C.F.R. § 214.2(l)(1)(ii)(H).

<sup>2</sup> When examining the managerial or executive capacity of a given beneficiary, we will review the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in a managerial or executive capacity. See 8 C.F.R. § 214.2(l)(3)(ii). If the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. See *Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's duties will be primarily managerial or executive, we consider the Petitioner's description of the job duties, the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

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