U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27406327

Date: JUN. 27, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Multinational Managers or Executives)

The Petitioner, a business engaged in pre-owned auto sales, seeks to permanently employ the Beneficiary as its chief executive officer under the first preference immigrant classification for multinational managers or executives. *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 that the record did not establish that (1) the Petitioner's claimed foreign affiliate employed the Beneficiary abroad in a managerial or executive capacity for at least one year during the relevant three-year period; and (2) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer. The Director further concluded, based on information obtained from outside the record of proceeding, that the Petitioner willfully misrepresented material facts relating to the Beneficiary's employment abroad. 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.

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 is coming to work in the United States as a manager or executive 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)(i)(C)-(D). If a beneficiary is already in the United States working

for an entity that has a qualifying relationship with their foreign employer, the petitioner must establish that the beneficiary, in the three years preceding their entry as a nonimmigrant, was employed by the entity abroad for at least one year in a managerial or executive capacity. *See* 8 C.F.R. § 204.5(j)(3)(i)(B).

The Director denied the petition on multiple grounds after issuing a notice of intent to deny (NOID). The Director concluded that the Petitioner did not establish that (1) the Beneficiary had at least one year of qualifying employment abroad in a managerial or executive capacity and (2) the Petitioner has a qualifying relationship with the Beneficiary's claimed foreign employer. The Director also determined, based on the results of an overseas verification conducted by the U.S. Department of State, that the Petitioner had willfully misrepresented material facts with respect to the Beneficiary's foreign employment.

For the reasons provided below, we agree with the Director's conclusion that the record does not establish the Beneficiary's eligibility for the requested classification. However, the NOID did not provide proper notice of certain derogatory information that led the Director to enter a separate finding of willful misrepresentation.

If a decision will be adverse to a petitioner and is based on derogatory information considered by U.S. Citizenship and Immigration Services (USCIS) and of which the petitioner is unaware, the petitioner must be advised of this fact and offered an opportunity to rebut the information and present information on its behalf before a decision is rendered. 8 C.F.R. § 103.2(b)(16)(i). Here, the NOID stated: "The Department of State requested the overseas verification, and it did not confirm that the beneficiary was ever employed by the foreign company in Venezuela." The Director did not disclose any information regarding the type of verification conducted or the specific information it revealed. As as result, the NOID did not provide adequate notice of the derogatory information that formed the basis of the Director's finding of willful misrepresentation and did not provide a meaningful opportunity for the Petitioner to rebut it.

Accordingly, we will withdraw the Director's decision and remand the matter for further review, issuance of a new NOID, and entry of a new decision. We are remanding this matter to ensure that the Petitioner has an opportunity to rebut the derogatory information that resulted in the Director's finding of willful misrepresentation.

However, we emphasize that the record as presently constituted supports the Director's conclusion that the Beneficiary would not otherwise meet the foreign employment requirement for this classification as set forth in the statute and regulations.

At the time of filing this petition in May 2015, the Beneficiary was working for the Petitioner in E-2 nonimmigrant status and had maintained that status since her initial admission in E-2 status on August 31, 2007.[1] If a beneficiary entered the United States to work for a qualifying entity as a nonimmigrant in a work-authorized status, USCIS will reach back three years from the date of their admission to

[1] Her most recent admission to the United States occurred on July 30, 2008, and the record reflects that USCIS has since approved multiple requests to extend her E-2 status.

determine whether they had the requisite one year of employment abroad. *See* 8 C.F.R. § 204.5(j)(3)(i)(B), *see also Matter of S-P- Inc.*, Adopted Decision 2018-01 (AAO Mar. 19, 2018).

Here, because the Beneficiary was initially admitted as a nonimmigrant to work for the Petitioner on August 31, 2007, the Petitioner must establish that she worked abroad for its claimed foreign affiliate for at least one year between August 2004 and August 2007. The Petitioner has neither claimed nor provided evidence that the Beneficiary worked for the foreign entity during this period. Further, based on the evidence submitted, the Petitioner does not claim she was employed by the foreign entity or a qualifying U.S. entity at any time between December 2002 and August 2007. In *Matter of S-P-*, we clarified that a beneficiary who worked abroad for a qualifying multinational organization for at least one year but left the organization for a period of more than two years after being admitted to the United States as a nonimmigrant, does not satisfy the foreign employment requirement for immigrant classification as a multinational manager or executive.

Here, the Petitioner asserts that the Beneficiary's qualifying employment abroad occurred between 2000 and 2002, prior to her entry to the United States in B-2 status on December 19, 2002, a status she maintained until she was granted a change of nonimmigrant status from B-2 to L-2 in March 2004. However, the Beneficiary was not admitted to the United States to work for the Petitioner or another qualifying entity as a nonimmigrant in December 2002. She was admitted as a B-2 visitor and did begin working for the Petitioner as a nonimmigrant until August 2007. Therefore, the Petitioner's reliance on this earlier date of entry for purposes of demonstrating her eligibility under 8 C.F.R. § 204.5(j)(3)(i)(B) is misplaced. The evidence presented by the Petitioner to date does not establish that the Beneficiary can meet the foreign employment requirement for this classification, even if the Director were to determine that the Beneficiary's claimed employment abroad between 2000 and 2002 could be verified.

The Director's decision is withdrawn as they did not provide the Petitioner with adequate opportunity to rebut derogatory information from outside the record of proceeding prior to making a finding of willful misrepresentation, as required by 8 C.F.R. § 103.2(b)(16)(i). On remand, the Director should consider all evidence already submitted, including the evidence and claims submitted on appeal, issue a new NOID providing adequate notice of any derogatory information considered, and enter a new decision.

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