U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28946478

Date: NOV. 30, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an engineering and construction firm, seeks to permanently employ the Beneficiary as a principal engineer 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 a managerial or executive capacity.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity. 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 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).

The Director determined that the Petitioner did not establish that the Beneficiary has been employed abroad in a managerial capacity. The Petitioner does not claim that the Beneficiary had been employed abroad in an executive capacity.

"Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A).

The Beneficiary earned a bachelor's degree in civil engineering and a master's degree in transportation engineering, both in India. He began working for the Petitioner's overseas subsidiary in the United Arab Emirates in 2006, culminating in a position as a senior highway engineer in [redacted] from 2015 to 2017. In 2017, the Beneficiary entered the United States as an L-1B nonimmigrant with specialized knowledge to work for the Petitioner as a senior engineer. The approval of subsequent nonimmigrant petitions extended the Beneficiary's L-1B status; changed his status to that of an L-1A nonimmigrant manager or executive; and extended his L-1A status.

The Petitioner filed an earlier Form I-140 immigrant petition in February 2021, seeking to classify the Beneficiary as a member of the professions holding an advanced degree under section 203(b)(2) of the Act. That petition, with a priority date of June 18, 2020, included an approved labor certification, indicating that the Petitioner had offered to employ the Beneficiary as a senior engineer. The immigrant petition was approved on October 12, 2021. The Petitioner filed the present petition 15 days later.

In denying the present petition, the Director concluded that the Petitioner had not established that the Beneficiary had been employed abroad in a primarily managerial capacity. The Director stated that the Petitioner's filings from before mid-2021 did not describe the Beneficiary's duties as managerial, and that the Petitioner changed its description of the Beneficiary's duties in response to a request for evidence (RFE). On appeal, the Petitioner asserts that its descriptions of the Beneficiary's duties abroad have been consistent.

A key issue in the denial notice is a perceived discrepancy between the job description that accompanied the petition and the revised version submitted in response to the RFE. The Director stated: "There seems to be a large difference in the two duty descriptions concerning the amount of time the beneficiary interacted with subordinates," with the revised job description showing a higher percentage of supervisory duties than the earlier version. Because both job descriptions pertain to the same past employment abroad, there should not be significant discrepancies between them.

The record, however, offers some support for the Petitioner's assertion on appeal that, although the two job descriptions are organized differently, both describe similar supervisory responsibilities regarding subordinate engineers, who are members of the professions as defined by section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32). At least some of the variation in time percentages can be attributed to the different task groupings in the two job descriptions.

The Director's decision rests, in large part, on job descriptions in previous nonimmigrant petitions. Although the Petitioner, on appeal, does not dispute the Director's characterizations of that evidence, we are unable to assess it directly because the nonimmigrant petitions are not part of the record of proceeding now before us, and the record does not contain complete copies of those descriptions.

Furthermore, the appeal includes new evidence, such as a statement from an official of the overseas subordinate entity, that appears to be material to the outcome of the appeal. The Director is the appropriate party to give initial consideration to the impact of this new evidence.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). *Matter of Chawathe*, 25 I&N Dec. at 376. The perceived discrepancies between the job descriptions appear to fall within this tolerable range of doubt; they do not indicate a wholesale revision of the job description in order to create the false appearance of eligibility.

Because the Director's decision relies in part on evidence not contained in the record before us, and because the Petitioner has submitted new material evidence, we will withdraw the Director's decision and remand the matter for 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.