U.S. Citizenship and Immigration Services

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

In Re: 24981031

Date: SEPT. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a textile manufacturer, filed the immigrant petition seeking to permanently employ the Beneficiary as a sales manager 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 Director also found that the Petitioner had willfully misrepresented material facts relating to the Beneficiary's employment history. 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 dismiss the appeal. We will also withdraw the finding of willful misrepresentation.

## I. LAW

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).

## II. ANALYSIS

The Director determined that the Petitioner did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity. On appeal, the Petitioner states: "We do not contest that the beneficiary is not eligible [for classification] as a multinational manager or executive." The Petitioner's appeal is limited to disputing the Director's conclusion that the Petitioner had misrepresented the Beneficiary's employment abroad. As the Petitioner observes, the denial notice does not allege misrepresentation by the *Beneficiary*, and therefore no such issue is before us on appeal. The only issue before us is whether discrepancies in the Beneficiary's claimed employment history amount to the Petitioner's willful misrepresentation of a material fact as the Director found.

When the Petitioner filed the immigrant petition in May 2020, the Beneficiary was in the United States as an L-1A nonimmigrant intracompany transferee. For the Beneficiary to qualify for classification as a multinational manager or executive, the Petitioner needed to establish that the Beneficiary had been employed abroad in a qualifying managerial or executive capacity for at least one year during the three years preceding her 2016 admission as an L-1A nonimmigrant. *See* 8 C.F.R. § 204.5(j)(3)(i)(B).

As a result, the Beneficiary's employment history with the Petitioner's parent company abroad is material to the underlying immigrant petition. The Director concluded that the Petitioner knowingly provided false information about that history, and thereby willfully misrepresented material facts in this proceeding.

The Director cited section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182 (a)(6)(C)(i), which states that any noncitizen who seeks or has sought to procure, or has procured, a benefit under the Act is inadmissible. The Director added: "this finding of willful misrepresentation of a material fact shall be considered in any future proceeding where admissibility is an issue."

As the Petitioner observes on appeal, the Director did not enter a finding of willful misrepresentation against the Beneficiary. Rather, the Director stated: "By claiming the beneficiary was employed in a qualifying managerial position abroad, the *petitioner* willfully made a false representation." The presence of false information in an immigrant petition can result in denial of the petition, regardless of whether the petitioner or beneficiary is the original source of that information. *See* section 204(b) of the Act, 8 U.S.C. § 1154(b) (permitting approval of a petition upon a determination "that the facts stated in the petition are true").

One basis the Director stated for the finding of misrepresentation is that the Beneficiary's employment history as described in the immigrant petition appeared to conflict with the information that the Beneficiary provided in a series of nonimmigrant visa (NIV) applications that she earlier filed while she was in China.

We further note that some of the questionable information that the Beneficiary provided in her NIV applications concerns her claimed employment with other employers before she began working for the Petitioner's parent company in China in December 2014. While inconsistencies and discrepancies regarding that earlier employment may have consequences in other settings, such employment is not material to the petition before us. By statute and regulation, only employment experience within the Petitioner's multinational organization is relevant to the question of eligibility. *See* section 203(b)(1)(C) of the Act; *see also* 8 C.F.R. § 204.5(j)(3)(i)(C).

As quoted above, the Director concluded: "By claiming the beneficiary was employed in a qualifying managerial position abroad, the petitioner willfully made a false representation, and it is material to whether the beneficiary is eligible for the requested benefit." The section of the Director's decision under the heading "Misrepresentation" includes no further details about the claimed misrepresentation, but we can infer those details from the discussion under the heading "Qualifying Managerial Capacity – Overseas."

Below, we will discuss those details and explain our opinion that the inconsistencies in the record raise questions of credibility but do not appear to constitute willful misrepresentation of material facts.

A. The Nature of the Beneficiary's Duties with the Foreign Parent Company

Statements from the Petitioner and its parent company in China in support of the immigrant petition indicate that the Beneficiary served as the parent company's sales manager from December 1, 2014 to March 15, 2016. Letters from the foreign company indicate that the Beneficiary had the following duties:

- Directing the management of Sales Department;
- Managing imported goods' sales in domestic market;
- Setting annual/monthly sales target according to different territory;
- Overseeing client accounts assignment to individual salesman;
- Establishes and adjusts selling prices by monitoring costs, competition, and supply and demand;
- Formulating sales target for individual salesman according to their sales ability, monitoring the sales activities of salespersons and motivating salesman to achieve their best sales performance;
- Providing support to salespersons on sales strategy so that they can secure new business;
- Supervising monthly training for salespersons on company sales policy and products' knowledge;
- Visiting customers with salespersons and directing business negotiations;
- Supervising the collection of customer feedback and ensure that feedback go to technical department and production department;
- Presiding over regular trouble shooting analysis meeting and seek for final solutions.
- Evaluating sales teams' performance in general;
- Presenting sales report, monthly report to President regularly. Providing to the President on market development, marketing and strategic sales activities; and
- Perform all other job duties as assigned by the Management.

In a May 2022 notice of intent to deny the petition (NOID), the Director stated that the Beneficiary's claimed employment history as described in the Petitioner's immigrant petition conflicts with claims the Beneficiary had made previously on NIV applications that she filed in January 2015, April 2016, and February 2018. On each of those applications, she identified the Petitioner's foreign parent company as her then-current employer, but she listed somewhat different duties on each application:

2015 Responsible for duty of importing business department, handling documents preparing and translating.
2016 Be responsible for the international yarn market development and survey the information for the international yarn market; in charge of the import and export logistics management.
2018 As the sales manager, direct the management of sales department.

The Director stated: "Although the 2015 and 2016 visa applications do not provide a job title, the described duties do not appear to reflect duties similar to a Sales Manager. Nor are they similar to the duties described by the foreign employer and petitioner."

The Director also observed that, when the Petitioner filed an earlier nonimmigrant petition on the Beneficiary's behalf in 2016, the Petitioner stated: "Since December 2014, [the Beneficiary] has been serving . . . as Financial Manage[r] in the Chinese parent company." But that same 2016 letter also repeatedly referred to the Beneficiary as a "Sales Manager" overseeing the foreign company's "Sales Department." When viewed in context with the rest of the letter, the single reference to the Beneficiary as the "Financial Manage[r]" therefore appears to be an isolated error.

In response to the NOID, the human resources manager of the Petitioner's foreign parent company sought to address apparent discrepancies in the Beneficiary's NIV applications, stating: "[From] 2015 to 2020, the personnel who were specifically in charge of the visa preparation work in the company, had been changed several times. This was the reason that information and documentation were not exactly accurate, nor kept in a good consistent way." This explanation is inconsistent with the visa applications themselves. On each application, when asked "Did anyone assist you in filling out this application?," the Beneficiary consistently answered "No." The Petitioner did not cite any documentary evidence to show that employees of the foreign parent company prepared visa applications on the Beneficiary's behalf. On appeal, the Beneficiary states in an affidavit that her "employer . . . drafted and submitted the [NIV] applications," and asserts that she does not know why each application indicated that no one assisted her in filling them out.

More substantively, the human resources manager stated that the Beneficiary "was . . . responsible for sale of imported yarn, which was essentially a function of 'import and export logistic management'" as stated on the 2016 visa application. The Petitioner's response to the NOID included invoices showing that the Chinese parent company purchased and sold imported yarn. Subordinates' job descriptions, submitted with the petition in 2020 before the Director issued the NOID, indicate that the Beneficiary oversaw employees in "International Logistics" who were responsible for "[o]rganizing and scheduling shipping/receiving for import-export" and "[t]imely preparation [of] import documentation."

We agree with the Petitioner's observation on appeal that the job descriptions in the Beneficiary's 2015 and 2016 visa applications are "vague and broad." They are also very brief, each one being only one sentence long. But the visa applications do not outright contradict the claim that the Beneficiary served as the foreign company's sales manager. The reference to "preparing and translating" documents could point to duties below the managerial level, but the Beneficiary could have held a managerial title even if her responsibilities were not fully consistent with the statutory definition of a managerial capacity. We need not explore this issue in greater depth because the Petitioner has not contested the denial of the petition.

For the reasons discussed above, while the Beneficiary's NIV applications raise significant questions concerning the credibility and reliability of some of the Petitioner's subsequent claims about the Beneficiary's employment in China from 2014 to 2016, they do not show that the Petitioner engaged in willful misrepresentation when it claimed in the immigrant petition that the Beneficiary had been a sales manager at the parent company in China.

B. The Staffing of the Foreign Parent Company's Sales Department

In a letter dated February 11, 2020, submitted with the immigrant petition, an official of the foreign parent company stated that the Beneficiary had ten named subordinates in the sales department. An organizational chart likewise specified ten subordinates. In a letter dated April 2020, however, the Petitioner indicated that the Beneficiary "has been overseeing 20 professionals" "as the Sales Manager . . . in China."

In a September 2020 request for evidence, the Director noted the discrepancy in the stated number of subordinates. In response, the human resources manager of the foreign entity stated that the sales department had 20 employees when the Beneficiary began working there, but the Beneficiary "set about tackling . . . the overstaffing problem" and restructured the department with half the staff.

In the May 2022 NOID, the Director stated that "the record lacks independent evidence which supports [the] claim" about the downsizing of the foreign company's sales department. The Petitioner did not address this issue in its response to the NOID. The response did include a translated "Work Report of Sales Department in the First Half of 2015," credited to the Beneficiary. The three-page report provided statistics and described sales trends, but it did not mention any downsizing or "overstaffing problem."[1]

In the denial notice, the Director noted the inconsistent claims about staffing size, and concluded that the discrepancy impaired the Petitioner's credibility.

The Petitioner has presented two different claims regarding the staffing of the parent company's sales department, and has not submitted documentary evidence to corroborate the claim that the department had 20 employees. But it is not apparent that the claim of 20 employees in the sales department is material to the petition. As noted above, letters, job descriptions, and organizational charts directly from the foreign parent entity involved the smaller version of the staff, with only 10 employees. Vague references to 20 employees did not elaborate as to the titles or duties of the additional staff. Therefore, the claim that the Beneficiary served as a manager abroad revolves primarily around her authority over 10, not 20, employees.

The Petitioner's attempt to reconcile the two claimed staffing sizes is vague and unsupported, but we do not conclude that the Petitioner willfully misrepresented the size of the parent company's sales department in order to influence the outcome of the proceeding. But while the exaggerated staff size may not rise to the level of willful misrepresentation, it nevertheless diminishes the Petitioner's overall credibility. It is the petitioner's responsibility and burden to resolve any inconsistencies in the record with independent

[1] We note that, in the report, the Beneficiary stated: "I have been working as the sales manager for nearly 5 months." The report is dated July 23, 2015, implying that the Beneficiary became the sales manager in late February or early March 2015, not December 2014 as claimed elsewhere in the record.

objective evidence, and attempts to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth, in fact, lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). As stated above, we need not discuss the Petitioner's credibility in greater depth because the Petitioner does not dispute the denial of the petition.

## III. CONCLUSION

The Petitioner does not contest the Director's determination that the Beneficiary is not eligible for the classification sought. For this reason, we will dismiss the appeal. But we withdraw the Director's separate finding that the Petitioner willfully misrepresented material facts relating to the Beneficiary's claimed employment abroad. While the evidence cited by the Director raises questions of credibility, the Director has not established that these questions rise to the level of willful misrepresentation.

**ORDER:** The appeal is dismissed.