U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28469935

Date: OCT. 03, 2023

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a supplier of corrosion testing equipment and services, seeks to temporarily employ the Beneficiary as its director 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 L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the California Service Center denied the petition, concluding that the record did not establish that (1) the Beneficiary had been employed abroad in a managerial or executive capacity or in a position involving specialized knowledge, and (2) the Petitioner would employ him in a managerial or executive capacity in the United States. 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.

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. ANALYSIS

The primary issue we will address is whether the Petitioner established that the Beneficiary has been employed by a qualifying organization abroad in a managerial capacity for at least one year in the three years preceding the filing of the petition. The Petitioner did not claim that the Beneficiary was employed abroad in an executive capacity or in a position involving specialized knowledge.

In denying the petition, the Director evaluated the Petitioner's claim that its foreign affiliate, [redacted] had employed the Beneficiary in a managerial capacity as its director for at least one year in the three years preceding the filing of the petition in March 2022. Specifically, the Director discussed the submitted position description and other evidence pertaining to the Beneficiary's claimed role and concluded that the Petitioner did not meet its burden to establish that he was employed in a managerial capacity as defined at section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A).

Upon de novo review of the record, we conclude that the record contains several unresolved material discrepancies regarding the Beneficiary's foreign employment which were not addressed in the Director's request for evidence (RFE) or decision, and which cast doubt on the Petitioner's claims regarding the nature of the Beneficiary's employment abroad and the identity of his foreign employer. As the Petitioner indicates that the Beneficiary would be employed in essentially the same role within its U.S. operations, these unresolved issues may also impact a determination regarding his proposed employment in the United States. Therefore, to ensure that the Petitioner has adequate notice of these discrepancies and an opportunity to respond, we will withdraw the Director's decision and remand the matter for issuance of a new RFE or notice of intent to deny (NOID), and entry of new decision.

A. One Year Employment Abroad

The Petitioner must establish that the Beneficiary was employed by a qualifying entity in a managerial capacity abroad for at least one year in the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(iii). The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on March 29, 2022, and indicated that the Beneficiary had been physically present in the United States in B-1 nonimmigrant status since December 7, 2020. The Petitioner must therefore establish that the Beneficiary's one year of qualifying employment abroad occurred between March 2019 and December 2020, prior to his last entry to the United States.[1]

The Petitioner indicates that its foreign affiliate, [redacted] has employed the Beneficiary since 2012 in various positions, most recently in a managerial capacity in the position of director. The Petitioner did not provide the date on which he assumed that position in support of its claim that he held the position for at least one year during the relevant period. Further, the initial evidence submitted with the petition did not corroborate the Petitioner's claims regarding the Beneficiary's position title nor did it confirm his employment with [redacted] Rather, the Petitioner submitted copies of

[1] The one-year foreign employment requirement is only satisfied by the time a beneficiary spends physically outside the United States working full-time for a qualifying organization. *See* 8 C.F.R. § 214.2(l)(1)(ii)(A) (providing that trips to the United States for business or pleasure shall not be counted toward fulfillment of this requirement); *see generally*, 2 *USCIS Policy Manual* L.6(G)(1), https://www.uscis.gov/policy-manual.

April 2021 pay statements issued by a different company, [redacted] which show that the Beneficiary was on this company's payroll and held the job title "quality analyst III."[2] The Petitioner also provided a copy of [redacted] May 2021 social security filing with the Brazilian Ministry of Labor and Employment which lists the Beneficiary as an employee of this company with a hire date of August 19, 2019. This evidence contradicts the Petitioner's claims that he was most recently employed abroad as the director of [redacted]

The record does not contain payroll statements, personnel records, or other objective evidence identifying the Beneficiary as an employee of [redacted] or corroborating the Petitioner's claim that he held a full-time position as director for that company for at least one year between March 2019 and December 2020. Given the contradictory evidence in the record, letters from [redacted] representatives stating that he held the director position with this company for "the last few years," are not sufficient. Rather, the evidence indicates that the Beneficiary has been employed as a quality analyst with a different company since August 2019, and therefore could not have gained one year of full-time employment with [redacted] after March 2019.

Further, although the Petitioner asserts that [redacted] is also its affiliate and a member of the same larger qualifying organization, the record indicates that this company is wholly owned by [redacted] who holds only a two percent ownership stake in the U.S. petitioner. While it appears that [redacted] share a business premises and that the two foreign entities and the U.S. petitioner operate cooperatively, there is insufficient evidence of shared ownership and control to establish that the Petitioner has an affiliate relationship with [redacted] as defined at 8 C.F.R. § 214.2(l)(1)(ii)(L).

Based on the foregoing discussion, the record does not contain sufficient relevant, probative evidence demonstrating that the Beneficiary held the position of "director" with [redacted] for at least one year between March 2019 and December 2020. Therefore, we will not evaluate the Petitioner's claim that he meets the foreign employment requirement for L-1A classification based on his employment in that position, and its claim that the company is transferring him to the U.S. to continue performing the same or similar duties. The Petitioner must first resolve the discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho,* 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

Because the Director did not raise these issues in the RFE or decision, we are remanding the matter to the Director, who is instructed to issue a new RFE or NOID to notify the Petitioner of the inconsistencies outlined above, and to allow the Petitioner an opportunity to respond. The Director should also request independent evidence to establish the position(s) the Beneficiary held between March 2019 and December 2020, evidence he was a full-time employee, the identity of his employer(s) during this period and their relationship to the U.S. petitioner, the number and types of employees he supervised (including their names, job titles, job duties and proof of employment), and any other

[2] The record contains a description of quality analyst III position, indicating that the position-holder reports to the "quality manager" with duties that include implementing and organizing documentation related to the company's Quality Management System, maintaining quality and continuous improvement programs; and providing assistance to the quality manager.

evidence the Director deems necessary, including evidence relating to the Beneficiary's proposed U.S. employment and any other eligibility requirements for the requested classification.

III. CONCLUSION

For the reasons discussed, we are remanding this matter to the Director. On remand, the Director should consider all evidence already submitted, including the evidence and claims submitted on appeal, issue a new RFE or NOID providing adequate notice of the deficiencies and inconsistencies addressed above, 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.