



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

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

In Re: 28287846

Date: OCT. 31, 2023

Appeal of California Service Center Decision

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

The Petitioner, described as being in the “herbal and medicine market” and “provid[ing] logistics consulting services,” seeks to extend the Beneficiary’s temporary employment as chief executive officer 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).¹ 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 initially approved the extension petition, but later revoked that approval, concluding that the record did not establish that the Petitioner employed the Beneficiary in a managerial or executive capacity. This determination rested, in part, on information from a December 2018 site visit to the Petitioner’s place of business.

We dismissed the Petitioner’s appeal from that decision, and two combined motions to reopen and reconsider. After the Petitioner filed a third combined motion, we withdrew the revocation and remanded the matter in order for the Director to take certain specified actions. The Director then denied the petition.

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). Upon review, we will withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the following analysis.

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

¹ The Petitioner previously filed a “new office” petition on the Beneficiary’s behalf which was approved for the period from August 1, 2017 to July 31, 2018. The extension sought in the present petition would have extended the Beneficiary’s L-1A status until July 31, 2020.

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).

The director may revoke the approval of an L-1 petition at any time, even after the expiration of the petition. 8 C.F.R. § 214.2(l)(9)(i). The director must send to the petitioner a notice of intent to revoke (NOIR) under certain circumstances, such as if an employing organization violated statutory or regulatory requirements; if the statement of facts contained in the petition was not true and correct; or if approval of the petition involved gross error. *See* 8 C.F.R. § 214.2(l)(9)(iii)(A)(3)-(5). The NOIR must contain a detailed statement of the grounds for the potential revocation and allow the Petitioner an opportunity to submit rebuttal evidence. *See* 8 C.F.R. § 214.2(l)(9)(iii)(B).

The Director initially approved the extension petition in July 2018, but a post-approval site visit in December 2018 cast doubt on the Petitioner's claims. The Director issued a NOIR in January 2019, based solely on the information from the site visit. After the Petitioner responded to the NOIR, the Director revoked the approval of the petition in April 2019. The revocation notice cited additional grounds not discussed in the NOIR, relating to the Beneficiary's claimed duties with the Petitioner.

In our February 2022 remand notice, we agreed with the Petitioner that the Director had not raised concerns about the Beneficiary's job description in the NOIR, and therefore the Petitioner had no opportunity to offer rebuttal on that issue before the Director revoked the approval of the petition. We also concluded that some aspects of the NOIR were so vague that they limited the Petitioner's opportunity to offer rebuttal. We stated:

[T]he NOIR and the revocation decision state that “[s]ystem checks and the site visit indicated that the beneficiary is not working as the CEO of the company as stated in the petition.” However, neither the NOIR nor the decision informed the Petitioner of what “system checks” were conducted, what information they revealed to conclude that the Beneficiary is not working as the CEO, or how such information led, at least in part, to the decision to revoke the approval of the petition. USCIS [U.S. Citizenship and Immigration Services] must provide notice of any derogatory information that is discovered outside of the record of proceedings, and to make that derogatory information part of the record along with any rebuttal provided by the Petitioner. 8 C.F.R. § 103.2(b)(16)(i). The failure to do so in the NOIR issued in this case constitutes error.

We also acknowledged the Petitioner's concerns regarding aspects of the December 2018 site visit. We concluded our remand order with the following instructions:

[T]he matter will be remanded to the Director for the issuance of a new NOIR, to identify all derogatory information discovered outside the record of proceedings, fully inform the Petitioner of any deficiencies in the record which may serve as a basis for the revocation, and allow the Petitioner the opportunity to submit a rebuttal to the

proposed grounds for revocation before a final decision is issued. The Director should also consider the merits of the Petitioner's arguments that USCIS did not follow required procedures in conducting the administrative site visit in this matter and, if appropriate, conduct another site visit.

After we issued our remand order, USCIS conducted several new site visits in August and November 2022, visiting two of the Petitioner's business addresses and two of the Beneficiary's claimed residential addresses. Rather than issue a new NOIR as instructed, however, the Director issued a new decision in March 2023 without any prior notice to the Petitioner.

Furthermore, the new decision was a *denial* of the petition, rather than a *revocation* of its approval. As the Petitioner observes on appeal, the petition has already been approved, and we withdrew the revocation in our February 2022 decision. Therefore, there was no pending petition for the Director to deny. The petition remains approved, and the only adverse action the Director may take with regard to the approved petition is to revoke that approval, with prior notice, under the procedure set forth at 8 C.F.R. § 214.2(l)(9)(iii).

We will remand the matter for the Director to follow procedures set forth in 8 C.F.R. § 214.2(l)(9)(iii).

In our previous remand order in February 2022, we stated: "The withdrawal of the revocation decision . . . does not constitute a determination that the Petitioner established eligibility for the benefit sought." We reiterate and emphasize that we have not determined that the Petitioner has established the Beneficiary's eligibility for the classification sought. The purpose of this remand order is to address procedural issues with the site visit, NOIR, and decision.² The Petitioner is entitled to due process, but bears the burden of proof throughout this proceeding.

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

² We note that the Petitioner has filed two other petitions on the Beneficiary's behalf. In July 2020, the Petitioner filed a Form I-129 nonimmigrant petition, with receipt number [REDACTED] seeking to further extend the Beneficiary's L-1A status. USCIS records indicate the 2020 nonimmigrant petition is still pending. In January 2019, the Petitioner also filed Form I-140, Immigrant Petition for Alien Workers, with receipt number [REDACTED] seeking to classify the Beneficiary as a multinational manager or executive under section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C). The Director of the Nebraska Service Center approved the immigrant petition in June 2019. The approved immigrant petition is not before us, and we cannot determine whether the Nebraska Service Center was aware of, and took into consideration, the information from the 2018 site visit when approving the immigrant petition.