U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23809477

Date: DEC. 21, 2022

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner identifies itself as an engineering consultant operation and seeks to permanently employ the Beneficiary as its president 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 an executive or managerial capacity.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish statutory eligibility for the benefit sought.[1] The Director entered a separate finding of willful misrepresentation against the Petitioner, concluding that the Petitioner misrepresented the Beneficiary's job offer and place of employment as well as pertinent information regarding the Beneficiary's employment abroad.[2] The Petitioner then filed a motion to reopen and reconsider, which the Director denied, reiterating the prior analysis and finding of willful misrepresentation and concluding that the finding was properly made. The Petitioner filed a second motion to reopen and reconsider, which also resulted in a denial based on the determination that the Petitioner did not overcome the finding of willful misrepresentation. The matter is now before us on appeal.

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.

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[1] The Director concluded that the Petitioner did not provide evidence showing that: 1) it has a qualifying relationship with the Beneficiary's claimed foreign employer; 2) the Beneficiary was employed in a managerial or executive capacity abroad; 3) the Beneficiary would be employed in a managerial or executive capacity in the United States; 4) the Petitioner had been doing business in the United States for at least one year prior to filing this petition; 5) the Petitioner is a multinational entity that does business through a parent, subsidiary, or branch office abroad; and 6) the Petitioner has the ability to pay the Beneficiary's proffered wage.

[2] Although the Director's finding was for "fraud and willful misrepresentation," the Director did not list the elements of fraud, which are not identical to the elements of willful misrepresentation, nor did he include an analysis explaining how the Petitioner's actions constituted fraud. *See Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956) (stating that to constitute fraud the false representation must have been believed and acted upon by the officer). The Director therefore did not effectively make a finding of fraud and we need not further address this finding in the matter at hand.

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 issue to be addressed is whether the Petitioner filed a petition falsely claiming to have satisfied the requirements of a first preference immigrant classification for multinational executives or managers as described above.

To make a finding of willful misrepresentation of a material fact in visa petition proceedings, an immigration officer must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975).

As outlined by the Board of Immigration Appeals, a material misrepresentation requires that one willfully makes a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. at 289-90. The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he be excluded." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

In the Director's latest decision, the Petitioner's motion to reopen and reconsider was denied based on the conclusion that the Petitioner did not overcome a finding of willful misrepresentation, which stemmed from a fraudulent Form I-140 that was filed by the Petitioner through its administrative manager, [redacted]. The Director discussed the pertinent facts in this matter, pointing out that the Form I-140 was signed by [redacted], whom the Petitioner appointed as a company official with signatory authority that enabled her to file immigrant petitions on the Petitioner's behalf. The Director further noted that the Petitioner is responsible for petitions containing the signature of an authorized official of its organization and, because [redacted] was such an official at the time this petition was filed, the Petitioner is accountable for the current petition.

The Petitioner admits on appeal that the petition in question contains material misrepresentations and that it was filed by [redacted] in her authorized capacity as a personnel officer of the petitioning organization. However, the Petitioner argues that [redacted] acted fraudulently when she signed the petition, thus indicating that [redacted] in her personal capacity, rather than in her capacity as an officer of the organization, is responsible for the wrongful act.

In support of this argument, the Petitioner provides evidence that it filed a civil lawsuit alleging that [redacted] engaged in a conspiracy to file fraudulent immigration forms, which resulted in the Petitioner's withdrawal of employment petitions filed on behalf of its president and general manager. However, the Petitioner has not provided evidence showing that [redacted] assumed signatory authority fraudulently or without the Petitioner's knowledge. Despite filing a civil complaint against [redacted], alleging wrongdoing in her filing of immigration forms, we take administrative notice that the publicly available docket for the Petitioner's civil suit indicates that it was closed on [redacted], 2020, after the parties agreed and stipulated to its dismissal.[3]

Further, the argument that the Petitioner was unaware of the petition filed on behalf of the Beneficiary does not overcome the presumption that the corporate Petitioner, by virtue of having given [redacted] authority to sign immigration documents on its behalf, in effect had knowledge of the petition. *Cf. Matter of Valdez*, 27 I&N Dec. 496 (BIA 2018) (establishing that signature on an application creates a strong presumption of knowledge about the application's contents, which can be rebutted by establishing fraud, deceit, or other wrongful acts by another person). The Petitioner has not met its burden in rebutting this presumption..

III. CONCLUSION

In sum, the Petitioner does not contest that a petition containing material misrepresentations was filed on its behalf by an officer or employee of its organization. On this basis alone, this petition cannot be approved, and the appeal must be dismissed. Further, as previously noted, the Petitioner has not established that [redacted] assumed signatory authority through a wrongful act. Therefore, we will affirm the Director's finding of willful misrepresentation against the Petitioner.

ORDER: The appeal is dismissed.

[3] Although the petitioner bears the burden to establish eligibility for the benefit sought, USCIS has the right to verify information submitted to meet that burden. *See generally* sections 103, 204, 205, 291 of the Act; 8 U.S.C. §§ 1103, 1154, 1155, 1361. Agency verification methods may include but are not limited to the following: review of public records and information; contact via written correspondence, the Internet, facsimile or other electronic transmission, or telephone; unannounced physical site inspections of residences and places of employment; and interviews. *See* Form I-140 Instructions at 9 (03/05/13). The AAO hereby incorporates into the record of proceeding a printout from the publicly available docket for [redacted], 2020).