U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21761507

Date: NOV. 08, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, describing itself as a real estate investment company, seeks to permanently employ the Beneficiary as its general manager in the United States under the first preference immigrant classification for multinational executives or managers. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish, as required, that: (1) the Beneficiary would be employed in the United States in a managerial or executive capacity, (2) the Beneficiary was employed abroad in a managerial or executive capacity, (3) the Petitioner had the ability to pay the Beneficiary's proffered wage, and (4) the Petitioner was doing business as defined by the regulations.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Petitioner did not establish that it had the ability to pay the Beneficiary's proffered wage. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the other bases of denial. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

I. LEGAL FRAMEWORK

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

As indicated above, the Director denied the petition on multiple grounds. However, the Petitioner only addresses three issues on appeal, and does not indicate why the Director's conclusion with respect its ability to pay the Beneficiary's proffered wage was made in error. Since the Petitioner has not addressed ability to pay on appeal, it has abandoned this issue. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

When an appellant fails to properly challenge one of the independent grounds upon which the Director based the overall determination, the filing party has abandoned any challenge of that ground, and it follows that the Director's adverse determination will be affirmed. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014); *United States v. Cooper*, No. 17-11548, 2019 WL 2414405, at *3 (11th Cir. June 10, 2019); *McCray v. Fed. Home Loan Mortg. Corp.*, 839 F.3d 354, 361-62 (4th Cir. 2016); *In re Under Seal*, 749 F.3d 276, 293 (4th Cir. 2014) (finding "an appellant must convince us that every stated ground for the judgment against him is incorrect."); *United States v. Kama*, 394 F.3d 1236, 1238 (9th Cir. 2005).

Aside from the Petitioner's failure to discuss ability to pay on appeal, we affirm the decision as the previously submitted evidence is insufficient to establish that the Petitioner had the ability to pay the Beneficiary's proffered wage. The regulation at 8 C.F.R. § 204.5(g)(2) states:

> Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

In the Form I-140 Immigrant Petition for Alien Worker, Part 6, Item 8, the Petitioner indicated that the Beneficiary's annual wage would be $3,500 per month (or $42,000 per year).[1] In denying the

[1] The petition was filed on November 20, 2020. The Director issued a request for evidence (RFE) in August 2021 to which the Petitioner responded in October 2021. The petition was denied on January 28, 2022, and the current appeal was filed on February 10, 2022.

petition, the Director indicated that the Petitioner did not submit documentation sufficient to demonstrate its ability to pay the Beneficiary's proffered wage during 2020, the year the petition was filed, through to the date of the denial. More specifically, the Director emphasized that submitted pay receipts and employer's quarterly tax returns did not reflect wages paid to the Beneficiary as of the date the petition was filed or at any other time. Further, the Director stated that the Petitioner did not submit requested U.S. income tax returns or audited financial statements necessary to substantiate it ability to pay.

The regulation explicitly states that "the petitioner must demonstrate [the] ability [to pay] at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence" and that "evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." However, the Petitioner has not submitted its federal income tax returns or audited financial statements in the year the petition was filed or for any other year up until the date of this appeal in February 2022. In fact, the Director specifically asked that the Petitioner submit this documentation in the request for evidence (RFE), since it is explicitly required by the regulations. In response, the Petitioner only emphasized that it had generated profit from two recent residential remodeling projects and pointed to a future hotel remodeling project where it would generate additional income. The Petitioner asserted that this income was sufficient to pay the Beneficiary's proffered wage.

However, even if the Petitioner's asserted income from the claimed remodeling projects was clearly articulated and documented by the Petitioner, relevant to the time the petition was filed, and sufficient to pay the Beneficiary's proffered wage, this does not relieve the Petitioner from its regulatory requirement to submit federal income tax returns or audited financial statements demonstrating its ability to pay as of the date the petition was filed through the date of this adjudication. The Petitioner has not fulfilled this explicit evidentiary requirement and does not address this material deficiency on appeal. Therefore, we will affirm the Director's decision. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Again, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012).

In conclusion, because the Petitioner did not contest the Director's conclusion regarding its ability to pay the Beneficiary's proffered wage, we consider this issue to be abandoned, and the appeal will be dismissed for this reason. Further, notwithstanding the Petitioner's lack of a challenge to this ground for denial, the evidence does not establish that it had the ability to pay the Beneficiary's proffered wage.

ORDER: The appeal is dismissed.