U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22629217

Date: OCT. 27, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Multinational Manager or Executive

The Petitioner, a telecommunications company, seeks to permanently employ the Beneficiary as its "Interconnection Vice President and New Business Development Executive" 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 record did not establish that (1) the Petitioner's foreign affiliate has employed the Beneficiary in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition; (2) the Beneficiary would be employed in the United States in a managerial or executive capacity; (3) the Petitioner had been doing business in the United States for at least one year at the time of filing; and (4) the Petitioner's foreign affiliate was doing business abroad. The Director further concluded, based in part on derogatory information from outside the record of proceeding, that the Petitioner and Beneficiary had willfully misrepresented material facts relating to the Beneficiary's employment history and the offered U.S. employment. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This office reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director for further action and entry of a new decision, consistent with the following discussion.

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 as a manager or executive 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 noted above, the Director denied the petition on multiple grounds, concluding that the record did not establish that (1) 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, (2) that the U.S. and foreign entities were doing business as defined in the regulations, and (3) that the Beneficiary would be employed in the United States in a managerial or executive capacity. The Director also determined that both the Petitioner and Beneficiary had willfully misrepresented facts that are material to eligibility for the requested classification.

On appeal, the Petitioner asserts that the Director's decision contains erroneous conclusions of fact that adversely impacted the adjudication of the petition. Further, the Petitioner contends that the Director failed to address relevant evidence submitted in response to a notice of intent to deny (NOID). The Petitioner objects to the Director's determination that either party willfully misrepresented material facts and asserts that the evidence, when considered in its totality, demonstrates that the Petitioner and Beneficiary are qualified for the classification sought.

Upon review, the record supports the Petitioner's contention that there are factual errors in the Director's decision and that not all relevant information provided in support of the petition and in response to NOID was addressed in the decision, including evidence that was intended to address the derogatory information mentioned in the NOID. Further, although the NOID informed the Petitioner that the decision may be based on derogatory information from outside the record, that derogatory information was not sufficiently disclosed to the Petitioner prior to the denial. An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, because the adverse decision did not consider all relevant evidence and was based in part on an erroneous conclusion of fact, it did not fully explain the reasons for denial.

While we cannot sustain the appeal based on the record as presently constituted, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. We will address the individual grounds for denial below.

A. Beneficiary's Foreign Employment

A petition for a multinational manager or executive must be accompanied by evidence that the beneficiary has been employed outside the United States in a managerial or executive capacity by a

qualifying entity within the same multinational organization for at least one year in the three years preceding the filing of the petition. *See* 8 C.F.R. § 204.5(j)(3)(i)(A).[1] This petition was filed in February 2018 and therefore the Petitioner must demonstrate that the Beneficiary had at least one year of qualifying employment abroad between February 2015 and February 2018. Because the Beneficiary was already in the United States at the time of filing, following her admission as a visitor, the Petitioner must establish that she was employed abroad for at least one year between February 2015 and her entry on August 20, 2017. Her periods of stay in the United States in B1/B2 status cannot be considered in calculating whether she has the required one year of employment abroad.

The Director determined that there were inconsistencies in the record with respect to both the Beneficiary's job titles and dates of employment with the foreign entity and further concluded that she had been "residing in the United States since July 14, 2016" with the exception of "two brief interruptions in January and May of 2017."

On appeal, the Petitioner asserts that the Director's decision contains factual errors with respect to the Beneficiary's periods of stay in the United States. The Petitioner's response to the NOID included probative evidence of her departure from the United States on September 4, 2016, and evidence that she did not return until January 20, 2017. It does not appear that the Director considered this evidence. While the Beneficiary's September 4, 2016, departure was not recorded on the Beneficiary's Department of Homeland Security arrival and departure records, such records clearly show her arrival on July 14, 2016, and her arrival on January 10, 2017, indicating that she did in fact depart and re-enter. The Director's conclusion that she did not depart the United States during this period was therefore clearly erroneous. The record indicates that the Beneficiary was in the United States from July 14, 2016 to September 4, 2016, from January 10, 2017 to January 20, 2017, and from May 12, 2017 until May 21, 2017; it does not support the Director's conclusion that she had been residing in the United States since January 14, 2016.

The Director also denied the petition, in part, based on a determination that there are inconsistencies in the record concerning the Beneficiary's employment history with the Petitioner's foreign affiliate, [redacted] The Petitioner's initial letter in support of the petition indicated that the Beneficiary had been employed by its affiliate in Venezuela since 2007, initially as Legal Vice President, and most recently as Interconnection Vice President. The initial evidence also included the Beneficiary's resume indicating that she had worked for [redacted] in Venezuela since 2007. The Petitioner submitted copies of the Beneficiary's foreign pay receipts for the period January 2017 through January 2018, but these were not accompanied by English translations. Nevertheless, we note that they appear to confirm her job title as "VP Interconnection," and identified her start date with the company as "06/11/2015."

In a request for evidence (RFE), the Director advised the Petitioner that "USCIS records show in 2016 the beneficiary stated in her nonimmigrant visa application that she was employed as a legal consultant for a different organization," that is unrelated to the Petitioner or its Venezuelan affiliate. In response

[1] If a beneficiary is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which he or she was employed overseas, a petitioner must establish that in the three years preceding entry as a nonimmigrant, the beneficiary was employed by the entity abroad for at least one year in a managerial or executive capacity. 8 C.F.R. § 204.5(j)(3)(i)(B). Here, the Beneficiary was last admitted as a B1/B2 visitor on August 20, 2017 and was therefore was not working for a qualifying entity in the United States at the time of filing.

to the RFE, counsel for the Petitioner stated that the Beneficiary joined its overseas affiliate in February 2007 but had an interruption in her employment from 2014 to 2015, when she was enrolled in a master's degree program at a Spanish university. Counsel emphasized that she nevertheless had more than one year of employment abroad with [redacted] in the three years preceding her entry to the United States in August 2017, because she resumed her employment with that entity in 2015. The Petitioner's RFE response included copies of Venezuelan Social Security statements showing the Beneficiary's employer as [redacted] with a start date of November 2015, copies of the previously submitted salary receipts from 2017, and a "sampling" of older salary receipts from [redacted] dated between 2007 and 2013. The pay statements issued between 2007 and 2013 indicated the Beneficiary's start date with the company as February 2007 and identified her job title as "legal consultant."

In a subsequent NOID, the Director addressed the Beneficiary's Venezuelan social security statements. The Director acknowledged that they indicated her employment with [redacted] since November 2015 but questioned the probative value of this evidence in light of the Director's separate determination that the Beneficiary had been residing in the United States since July 2016. The Director also emphasized other perceived discrepancies in the statements, noting that one appeared to indicate that she joined the foreign entity in May 2018, while the two statements seemed to contain inconsistencies regarding the number of weeks she worked for the foreign entity in different years.

The Director also advised the Petitioner that "open-source information in the World Wide Web" reflects that the Beneficiary previously indicated that she was employed as "legal counsel" for [redacted] between February 2007 and March 2014,[2] which "brings into question the beneficiary's ability to be employed with the foreign organization through July 2016." The Director acknowledged the Beneficiary's earnings statements from 2017 but noted that some of them were issued during periods when she was physically present in the United States.

In response to the NOID, the Petitioner emphasized that [redacted] employed the Beneficiary in Venezuela from November 6, 2015 through her entry to the United States in August 2017, and she therefore satisfied the foreign employment requirement for this classification. With respect to the information the Beneficiary had provided on her nonimmigrant visa application, the Petitioner explained that she accurately identified a different foreign employer when she initially completed and filed the application in September 2015. Specifically, the Petitioner explained that the Beneficiary continued to provide legal consulting services to [redacted] during her time in Spain but did so as an employee of a Venezuelan law firm, which is the employer she identified on her visa application. The Petitioner explained that there was a 7-month delay between the Petitioner's submission of her visa application and her interview at the U.S. Consulate in April 2016. Thus, while the Petitioner acknowledged that the Beneficiary confirmed that the information provided on her visa application was still accurate as of April 2016, it maintained she did not willfully misrepresent her employment at the time of her interview. It emphasized that the Beneficiary does not recall being asked if there had been any changes in her employment since the filing of her application in September 2015 and that, if specifically asked, she would have updated that information to reflect her employment with

[2] The Director provided no additional information from this "open source" in the NOID. In the denial decision, the Director indicated that the Beneficiary's LinkedIn profile was the source, and she introduced additional information from that profile as being derogatory to the Petitioner's claims, but it is unclear whether all information was obtained from the Beneficiary's profile on the same date.

[redacted] The Petitioner emphasized that other evidence in the record corroborates that the resumed her employment with [redacted] in November 2015.

The Petitioner's response to the NOID included copies of the Beneficiary's pay receipts from [redacted] for the period May 2016 through August 2017. These receipts show a start date of November 6, 2015 and indicate her job title as "Interconnection V.P." Additionally, the Petitioner provided corrected translations of the Beneficiary's Venezuelan Institute of Social Security account statements acknowledging that those provided previously contained clear errors that introduced an inconsistency regarding her dates of employment with [redacted] The corrected translations indicate that the Beneficiary commenced employment with [redacted] in November 2015 and left the company's payroll in May 2018.[3]

The Director denied the petition after concluding that "the question of who the beneficiary's actual employer was and the dates she was employed abroad remain." In reaching this determination it does not appear that the Director considered the 2016-2017 pay receipts the Petitioner submitted in response to the NOID, noting that the documents were not accompanied by English translations required by 8 C.F.R. § 103.2(b)(3).[4] However, we observe that the pay receipts were submitted with certificates of translation that sufficiently comply with the regulatory requirements. This evidence, along with the Venezuelan social security statements, is particularly relevant to the Petitioner's claim that she was employed by the foreign entity during the relevant period.

Overall, we agree with the Director that the record contains inconsistencies regarding the Beneficiary's employment history with the foreign entity, some of which have not been adequately explained. However, there is objective evidence supporting the Petitioner's claim that she commenced employment with [redacted] in 2007, remained with the company until at least 2013, returned to the company after completing her master's degree in 2015, and was working for the affiliate company outside the United States until her last entry in August 2017. Most of the inconsistencies in the record relate to her job title, duties, and exact dates of employment prior to 2015.

The Petitioner has not explained why it did not disclose the Beneficiary's interruption in employment with the foreign entity at the time of filing. However, it appears that most of that interruption in employment occurred outside the relevant three-year period preceding the filing of the petition and as such, may not be material to establishing that she meets the foreign employment requirement for this classification. Further, as stated above, the Director's adverse findings related to the Beneficiary's foreign employment were based, in part, on the erroneous conclusion that she had resided in the United States since July 2016.

Based on the foregoing, we will withdraw the Director's determination that the Petitioner did not establish that the Beneficiary was employed by its foreign affiliate for at least one year in the three years preceding the filing of this petition, as well as the Director's determination that the Petitioner

[3] The record reflects that the Beneficiary obtained her U.S. employment authorization document in May 2018 and has been on the Petitioner's payroll since that time.

[4] The regulation at 8 C.F.R. § 103.2(b)(3) states: Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

and Beneficiary willfully misrepresented material facts regarding her employment abroad. While the record may ultimately support these determinations, the issues discussed above require further review and preclude us from affirming the Director's conclusions.

The Director is instructed to review the record of proceeding in light of the foregoing discussion and may issue a new notice of intent to deny after a complete review of the record. If the Director's new decision will be based on derogatory information of which the Petitioner may be unaware, such information must be fully disclosed in a new NOID. As noted, the Director appears to have based her decision, in part, on information obtained from the Beneficiary's LinkedIn profile, but did not provide sufficient notice of this potentially derogatory information in the NOID. As many of the unresolved questions in the record revolve around the Beneficiary's break in employment with the foreign entity, additional independent, objective evidence to corroborate her employment outside the United States between 2015 and 2017 may be requested.[5] For example, although the Petitioner submitted some evidence that the Beneficiary resumed employment with the foreign entity in November 2015, it did not provide any pay statements dated prior to May 2016. Evidence to corroborate the Beneficiary's receipt of wages, such as personnel records, bank records or tax documentation, may also be requested.

If the Director determines that the Beneficiary had the requisite one-year of employment abroad, it remains the Petitioners burden to establish that such employment was in a managerial or executive capacity as defined at section 101(a)(44)(A) or (B) of the Act. The Director addressed the Beneficiary's claimed foreign job duties in the NOID, but ultimately, did not appear to reach a conclusion as to whether the position of "VP Interconnection" satisfied one of the statutory definitions. Accordingly, the Director may request any additional evidence needed to determine whether the Beneficiary's employment abroad establishes her eligibility for classification as a multinational manager or executive.

B. Doing Business

The regulations require that the Petitioner provide evidence that it has been doing business for at least one year at the time of filing the Form I-140. *See* 8 C.F.R. § 204.5(j)(3)(i)(d). Further, the term "multinational" means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States. Therefore, the Petitioner must show that the entity that employed the Beneficiary abroad continues to do business. The Director denied the petition, in part, based on a determination that the record did not establish that the Petitioner and its foreign affiliate are doing business.

With respect to the foreign entity's business activities, the Petitioner's initial evidence included photographs of the interior and exterior of the office building occupied by [redacted] copies of approximately 40 invoices issued by [redacted] to its clients between January and December 2017, and documentation of payments the company made to SENIAT, Venezuela's revenue service, throughout 2017. However, the invoices and documentation of tax payments were not accompanied by English translations.

[5] We also note that the Beneficiary's social security statements reflect that she worked "0" weeks in 2014 which appears to contradict the Petitioner's claim that she worked for its foreign affiliate for part of that year, and for a Venezuelan law firm that provided consulting services to the foreign affiliate for the remainder of the year.

The Director did not address the foreign entity's business activities or any deficiencies in the submitted evidence in the RFE. In the NOID, the issue of the foreign entity's ongoing business operations was mentioned only in passing. Specifically, the Director noted that the record did "not include any objective documentary evidence to show that the foreign organization is doing business." The Director did not acknowledge the evidence submitted at the time of filing or why such evidence was insufficient. Further, the NOID did not include a list of suggested evidence the Petitioner could provide to meet this requirement. In the denial decision, the Director concluded that the record is "devoid of evidence showing that the foreign entity has been operational or was operational at the time of filing."

The record does not support the Director's conclusion that Petitioner's submissions lacked any evidence of the foreign entity's business activities. Further, the Director did not provide the Petitioner with sufficient notice of the deficiencies in the evidence that it submitted in support of this requirement. Accordingly, the Director's adverse determination with respect to the foreign entity's business operations is withdrawn. As the matter will be remanded, the Director is instructed to clearly address this issue in a new RFE or NOID, and allow the Petitioner a reasonable opportunity to respond, prior to issuing a new decision.

With respect to the Petitioner's own business activities, the record contains copies of the Petitioner's formation documents, local business licenses for the period 2015 to 2020, lease agreements, photographs of its physical premises, copies of its payroll documentation and state and federal quarterly filings through 2020, copies of all tax returns requested by the Director showing significant gross receipts and rents paid, dozens of invoices issued to clients in 2017 and 2018, and copies of monthly bank statements from 2017 and 2018 which show transactions with the clients named in the invoices.

In both the RFE and the NOID, the Director informed the Petitioner that there were questions regarding the company's business operations because unidentified "open sources in the World Wide Web" showed that the building at the address listed on the petition and in the lease agreements was vacant and listed as being on the market. The Director is obligated to not only provide notice of any derogatory information that is discovered outside of the record of proceedings, but to make that derogatory information part of the record. 8 C.F.R. § 103.2(b)(16)(i). The Director may make such evidence part of the record by describing it in the notice, provided there is sufficient detail that the Petitioner may make an informed rebuttal.

The Director's adverse determination regarding this issue focuses primarily on the Petitioner's lease agreements and questions their validity based on information found on the internet. Although the decision identifies sources of some of this potentially derogatory information, such information should have been disclosed to the Petitioner previously in the RFE or NOID. Further the Director's conclusion that "the petitioner has failed to provide documentation" showing that it was doing business as defined in the regulations suggests that no weight was given to the evidence of business activities listed above, some of which was specifically requested by the Director to establish that the Petitioner was doing business.

Accordingly, we will also withdraw the Director's determination that the Petitioner did not meet its burden to establish that it had been doing for at least one year at the time the petition was filed. Any new RFE or NOID should specifically describe any derogatory information that may adversely impact

the decision on this issue, identify its source, and advise the Petitioner of evidence it may submit to rebut such information.

C. U.S. Employment in a Managerial or Executive Capacity

The final issue addressed in the decision is whether the Petitioner established that the Beneficiary would be employed in the United States in a managerial or executive capacity as defined at sections 101(a)(44)(A) and (B) of the Act.

In the denial letter, the Director addressed the evidence submitted in support of the petition, including descriptions of the Beneficiary's proposed duties, the Petitioner's organizational charts and evidence of wages paid to employees. However, the Director's determination that the Petitioner did not meet this eligibility requirement appears to have been based on a determination that the record contained unresolved inconsistencies and a determination that the Petitioner had willfully misrepresented material facts regarding the U.S. employment. The Director also raised concerns based on the Petitioner's statements that the Beneficiary's proposed staff, at least initially, would be in Venezuela, but neither the statute nor regulations prohibit a manager or executive from receiving support from other staff within the same multinational organization.

The petition was filed in February 2018 when the Petitioner was seeking to fill a new position within its U.S. operations. At the time the Petitioner responded to the Director's NOID in July 2020, the Beneficiary had already been working in the position for over two years and the submitted payroll summaries for 2020 show that the company's staffing had increased. Therefore, some of the changes in staffing cited as inconsistencies appear to have been the result of the passage of time.

The Director's determination that the submitted evidence of the Beneficiary's job duties and organizational structure was inconsistent and lacked credibility is not sufficiently supported by the record and did reflect consideration of all evidence submitted in support of the petition. While the record may raise valid concerns regarding the ability of the U.S. company to support the proposed managerial or executive capacity as of the date of filing, it does not support the Director's determination that the Petitioner willfully misrepresented material facts regarding the proposed U.S. employment. Accordingly, the Director's decision with respect to this issue is withdrawn. On remand, the Director should review the record and may address the Beneficiary's proposed employment in a new RFE or NOID prior to issuing a new decision.

III. CONCLUSION

For the reasons discussed, the Director's decision is withdrawn. On remand, the Director may issue a new request for evidence or notice of intent to deny allowing the Petitioner an opportunity to provide additional evidence relevant to the issues discussed above, and any other evidence deemed necessary to demonstrate eligibility for the classification sought, before issuing 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.