U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26350188

Date: APR. 25, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Multinational Managers or Executives)

The Petitioner, a manufacturer of blow molding machinery, seeks to permanently employ the Beneficiary as its "Customer Care Manager – Key Accounts" 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 that the Beneficiary would be employed in the United States in a managerial or executive capacity or that he was employed abroad in a similar capacity for at least one year during the qualifying three-year period. 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 conclude that the Director did not offer a complete and accurate analysis of the submitted evidence. We will therefore withdraw the Director's decision and remand the matter for entry of a new decision consistent with the analysis below.

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. BASIS FOR REMAND

As previously indicated, the Director's decision did not offer a complete analysis or adequately explain the deficiencies in the evidence. *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).

First, the Director discussed the Beneficiary's proposed position under the section heading "Executive or Manager – United States." The Director acknowledged the Petitioner's claim that it seeks to employ the Beneficiary in a managerial capacity but determined that the initially submitted evidence included a vague job description and included "no supporting evidence to support the managerial claim." The Director did not acknowledge the Petitioner's lengthy supporting statement, which included a job duty breakdown with percentage allocations discussing the Beneficiary's proposed employment. The Director ultimately focused his analysis of the proposed position on an introductory paragraph in the Petitioner's response to a request for evidence (RFE), meanwhile overlooking the Petitioner's more detailed job duty breakdown with time allocations, which was part of the RFE response. Although the Director recognized that the Petitioner responded to the RFE, he did not acknowledge the Petitioner's submission of the supplemental job duty breakdown.

Further, although the Director acknowledged the Petitioner's submission of an organizational chart in response to the RFE, he questioned the chart's accuracy based on the "disproportionate manager-employee workforce" and determined that the Petitioner "does not appear to have any employees to handle the duties and tasks associated with its products and services." However, the Director made this determination without having considered the Petitioner's overall size and composition, or the Beneficiary's job duties and placement within the organization.

The Director also appears to have misquoted the Petitioner as stating that "the [B]eneficiary would 'continue to work as a Project Managerial function within the organization." The Director's confusing reference to the position title "Project Managerial function" is unclear and unsupported by the record, which contains several of the Petitioner's statements explaining that although the Beneficiary "continued as Project Manager Execution" when he first arrived to work for the U.S. entity, he was promoted to his current position of "Customer Care Manager – Key Accounts" in January 2020. The Director added further confusion to the analysis by incorrectly referring to the Beneficiary's position abroad as that of customer care manager and stating that this was his "role for the foreign entity" when discussing his proposed position in the United States. In fact, the Petitioner has consistently maintained that the Beneficiary's foreign employment was in the position of "Project Manager Execution," which he is claimed to have held from the start of his foreign employment in March 2013, until he came to work for the U.S. entity in October 2015.[1]

Next, the Director concluded that the Beneficiary "does not have the qualifying period of managerial or executive employment abroad" because he "held a temporary business visitor visa and not a managerial or executive position abroad" prior to his entry into the United States in June 2015.

[1] The Petitioner states that the Beneficiary's employment in the United States commenced in October 2015, which followed his entry into the United States in September 2015 pursuant to an approved blanket L-1 visa.

However, the Director's conclusion is not consistent with the relevant provision put for in the statute and presiding case law. According to the statute, the relevant period during which a beneficiary must have had one year of managerial or executive employment abroad is the three years "preceding the time of the alien's application for classification and admission into the United States under this subparagraph." Section 203(b)(1)(C) of the Act; *Matter of S-P-, Inc.*, Adopted Decision 2018-01 (AAO Mar. 19, 2018). If the beneficiary is *outside* the United States at the time of filing, the petitioner must demonstrate that the beneficiary's one year of qualifying foreign employment occurred within the three years immediately preceding the *filing* of the petition. 8 C.F.R. § 204.5(j)(3)(i)(A). However, if the beneficiary is already working *in* the United States for the petitioner, or its affiliate or subsidiary, at the time of filing, the petitioner must demonstrate that the beneficiary's one year of foreign employment occurred in the three years preceding his or her *entry as* a nonimmigrant. *See* 8 C.F.R. § 204.5(j)(3)(i)(B); *Matter of S-P-*.

In this matter, the Director incorrectly determined that the Beneficiary's June 2015 U.S. entry as a B1/B2 non-immigrant precludes a showing that he has the required period of employment abroad. Government records show that while the Beneficiary did enter the United States in June 2015 pursuant to a non-immigrant visitor visa, he subsequently reentered the United States in September 2015 for the purpose of working for the U.S. Petitioner pursuant to an approved blanket L-1 petition. According to *Matter of S-P-*, only "a break in qualifying employment *longer than two years* will interrupt a beneficiary's continuity of employment with the petitioner's multinational organization." Applying that reasoning to the facts in this matter, the Beneficiary's stay in the United States as a B1/B2 non-immigrant was not for a period of longer than two years and therefore that stay did not interrupt his "continuity of employment." As such, the relevant reference point for purposes of calculating the three-year period of foreign employment is the Beneficiary's September 2015 entry as an L-1 nonimmigrant. As noted earlier, the Beneficiary's claimed period of employment with the foreign entity is from March 2013 until June 2015. Although the Petitioner must still establish that the Beneficiary's employment during that time period was in qualifying managerial capacity and lasted at least one year, the mere fact that he entered the United States in June 2015 pursuant to a non-immigrant visitor visa would not disqualify the Beneficiary from meeting the foreign employment requirement.

Lastly, in a section titled "Executive or Manager – Overseas," the Director sought to address the Beneficiary's foreign employment. However, multiple references to "the petitioning entity" make it unclear whether the Director's discussion truly pertains to the Beneficiary's employment abroad, or whether it is a continuation of the Director's discussion of the proposed employment. Further, despite acknowledging the Petitioner's claim that the Beneficiary would be employed in a managerial capacity, the Director concluded that the Petitioner failed to establish that "the petitioning entity employed the beneficiary in a qualifying capacity as an executive." Given that the Petitioner claimed the Beneficiary was employed abroad in a managerial capacity, the Director's reference to "executive" indicates that he did not properly analyze the evidence under the statutory definition of managerial capacity, which is relevant in this matter based on the Petitioner's claim.

Further, it is unclear whether the Director considered the entirety of the foreign job description contained in the RFE response statement, which was comprised of a four-paragraph general discussion of the Beneficiary's role within the foreign entity and ten separate bullet points listing the Beneficiary's job duties and the percentage of time allocated to each one. Although the Director restated the first of the four paragraphs, he provided virtually no analysis of the contents of that

paragraph or of the three paragraphs and job duty breakdown that followed. The Director also did not acknowledge or discuss other supporting evidence, which includes a description of the Beneficiary's role in the project management process, a list of the positions the Beneficiary is claimed to have supervised, and sample emails to and from the Beneficiary.

Notwithstanding the lack of an analysis, the record is currently insufficient to establish that the Beneficiary was employed abroad and would be employed in the United States in a managerial capacity, as claimed.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." *Id.* If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 204.5(j)(2). On the other hand, if a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that "(1) the function is a clearly defined activity; (2) the function is 'essential,' i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations." *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

Although the Petitioner provided several job descriptions and organizational charts, it did not establish that the Beneficiary's duties and respective placements within the foreign and U.S. organizations were consistent with a position that involved and would involve managing a department, subdivision, function, or component of the organization pursuant to sections 101(a)(44)(A)(i) of the Act. Further, applying the above analysis, the record does not demonstrate that the Beneficiary managed and would manage an essential function within the organization, or a department or subdivision of the organization pursuant to sections 101(a)(44)(A)(ii) of the Act.

Regardless, because the Director's decision did not adequately analyze the facts of the matter and apply the law, we will remand the matter for entry of a new decision. The Director should request any additional evidence deemed warranted and allow the Petitioner to submit such evidence within a reasonable period of time.

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