U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28882293

Date: DEC. 19, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an IT company, seeks to permanently employ the Beneficiary in the position of senior manager advanced technology under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) section 203(b)(l)(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 Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that: (1) the Beneficiary's proposed employment would be in a managerial or executive capacity; (2) the Beneficiary's employment abroad was in a managerial or executive capacity; (3) the Petitioner was doing business; and (4) the foreign employer continues to do business. 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). 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.

I. LAW

Section 203(b)(1)(C) of the Act makes an immigrant visa 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.

The Form I-140, Immigrant Petition for Alien Workers, 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). In addition, a petition for a multinational manager or executive must be accompanied by evidence that the prospective United States employer has

the ability to pay the proffered wage from the time the petition is filed and continuing through adjudication. *See* 8 C.F.R. § 204.5(g)(2).

II. PROCEDURAL HISTORY

On the Form I-140, the Petitioner indicated that it was an IT company established in 2006 with 53 employees and a gross annual income of approximately $5.4 million. It stated that the Beneficiary would be employed in the position of "Senior Manager Advanced Technology."

Finding the initial evidence insufficient to warrant approval, the Director issued a request for evidence (RFE). The Director noted that the record as constituted did not establish that a qualifying relationship existed between the Petitioner and the Beneficiary's foreign employer, or that the Beneficiary had been employed abroad and would be employed in the United States in a managerial or executive capacity. The Director also observed that the record did not demonstrate that the Petitioner was doing business.

In response, the Petitioner addressed the Director's concerns and submitted fourteen exhibits which included documentation pertaining to both the Petitioner's and the foreign employer's ownership, the duties of the Beneficiary in the U.S. and abroad, and organizational charts, staffing information, and payroll records for both companies.

The Director subsequently issued a notice of intent to deny (NOID) the petition. In the notice, the Director cited to derogatory information newly obtained after USCIS site visits to the foreign employer and the Petitioner's U.S. premises, as well as an investigation conducted by the U.S. Department of State that raised questions regarding the validity of the Petitioner's claimed in-house projects, the foreign employer's staffing levels, and the overall business operations of both entities. The Director requested independent objective evidence to clarify the discrepancies in staffing and the deficiencies in the evidence of record to demonstrate that the Petitioner and the foreign employer were doing business as claimed. In addition, the Director again requested additional evidence in support of the Beneficiary's employment in a qualifying capacity both in the U.S. and abroad.

In response to the NOID, the Petitioner submitted a detailed letter supported by 22 exhibits, which included client letters, contracts, bank statements, invoices, employee attestations, U.S. federal tax and wage statements, and corporate documentation. The Petitioner asserted that the evidence provided in response to the NOID, in addition to the "600+ pages" of documentation submitted in response to the RFE, demonstrated that it met all eligibility requirements. After considering the Petitioner's response and supporting documentation, the Director denied the petition, concluding that the Petitioner did not establish that the Beneficiary's employment abroad and proposed U.S. employment was in a managerial or executive capacity or that the Petitioner and the foreign employer were doing business.

On appeal, the Petitioner asserts that the Director failed to apply the preponderance of the evidence standard, and asserts that the abundance of documentation provided prior to adjudication demonstrates that the Petitioner has met its evidentiary burden. In support of this assertion, the Petitioner resubmits copies of documentation previously submitted in response to the RFE and the NOID, and reiterates that it has satisfied all evidentiary requirements.

To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, for the reasons discussed below, we conclude that the Director properly analyzed the Petitioner's extensive documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of the evidence. We therefore adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

First, the Director thoroughly reviewed and analyzed the Petitioner's claim that the Beneficiary's U.S. employment would be in a qualifying managerial or executive capacity as defined at sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44)(A)-(B). The Director evaluated the Beneficiary's position descriptions, evidence of the nature and scope of the Petitioner's business, and documentation relating to the company's staffing and organizational structure, noting that discrepancies identified during the USCIS site visit and consular investigation regarding staffing levels and in relation to some of the Beneficiary's subordinate positions remained unresolved. The Director concluded that despite its submission of extensive documentation, the Petitioner did not show that it had sufficient staff to relieve the Beneficiary from involvement in the day-to-day operational, administrative, and other non-qualifying tasks associated with operating the business, and further determined that his position appeared akin to the of a first-line supervisor. The Director again pointed to discrepancies between the Petitioner's claimed staffing levels and payroll records, noting that the record did not clearly identify the Beneficiary's subordinate staff at the time of filing despite affording the Petitioner the opportunity to remedy the noted incongruities prior to adjudication. Accordingly, the Director determined that the Petitioner did not meet its burden to establish that the Beneficiary's actual tasks would be primarily managerial or executive in nature, and we concur with that determination. The lack of independent, objective evidence clarifying the subordinate staffing structure, when considered with the other discrepancies and inconsistencies mentioned by the Director, undermines the Petitioner's assertion that the Beneficiary would be relieved from significant involvement in the day-to-day operations of its business.[1]

Similarly, in evaluating the Beneficiary's employment abroad, the Director noted discrepancies between the foreign employer's organizational chart and payroll records, and further noted insufficient evidence to demonstrate that several of the Beneficiary's claimed subordinates were remitted a wage. Citing these unresolved discrepancies, as well as the derogatory findings from the USCIS site visit

[1] We acknowledge that the Beneficiary is also the beneficiary of an approved L-1A nonimmigrant petition that was reaffirmed after a notice of revocation raised issues regarding the proposed U.S. position. While we note the Petitioner's assertions that the reaffirmation of that petition should weigh favorably in the adjudication of the instant petition, each petition is separate and independent and must be adjudicated on its own merits, under the corresponding statutory and regulatory provisions. As noted, the issues identified in the notice of intent to revoke the L-1A petition's approval differ from the issues identified in the instant petition as a result of the USCIS site visit and consular investigation. Therefore, the fact that the Beneficiary was granted L-1A status is not binding, because the facts here do not support approval of the immigrant petition. Further, we are not bound by a decision of a service center or district director. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *3 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001).

regarding staffing levels, the Director clearly articulated the reasons why the record did not demonstrate that the Beneficiary had been employed abroad in a qualifying capacity. In addition, the Director identified the documentary evidence reviewed and considered in reaching this determination.

The Director further explained in detail why the record was insufficient to establish that both the Petitioner and the foreign employer were doing business. The Director acknowledged the sampling of invoices provided by the Petitioner in support of its business operations, but determined that such minimal documentation was insufficient to demonstrate that the Petitioner had been and continued to be engaged in the regular, systematic and continuous provision of goods and services. The Director again cited to the derogatory information raised in the NOID as a result of the site visit and consular investigation, concluding that the Petitioner did not resolve the noted discrepancies with independent, objective evidence as requested.

Regarding the foreign employer's business operations, the Director acknowledged the substantial amount of documentary evidence submitted, including but not limited to corporate documentation, audited financial statements, and samplings of invoices. The Director concluded, however, that while such evidence demonstrated that the foreign entity was still in existence, it was insufficient to demonstrate that it continued to be engaged in the regular, systematic and continuous provision of goods and services. The Director further noted that the derogatory information obtained during the site visit, which concluded that the foreign employer had no employees at the time the visit was conducted, had not been sufficiently resolved or refuted with independent, objective evidence. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

On appeal, the Petitioner generally challenges the denial by contending that the Director did not apply the preponderance of the evidence standard, but it does not articulate with any specificity how the Director failed to do so. The Petitioner also asserts that the Director's determinations regarding the unresolved evidentiary discrepancies were erroneous. However, as noted by the Director, the Petitioner did not submit independent, objective evidence to resolve the noted discrepancies prior to adjudication, and it has not submitted sufficient evidence to resolve these discrepancies on appeal. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (stating that a petitioner must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*; *see also Matter of O-M-O-*, 28 I&N Dec. 191, 197 (BIA 2021) ("by submitting fabricated evidence, the appellant compromised the integrity of his entire claim") (cleaned up). The Petitioner's general objections in support of the appeal do not otherwise contest the Director's reasoning or conclusions regarding the insufficiency of the evidence and the unresolved discrepancies and derogatory information in the record.

For the reasons discussed, the Petitioner has not met its burden under the preponderance standard. The the appeal will be dismissed.

ORDER: The appeal is dismissed.