U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27518585

Date: JUN. 30, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology and software services company, seeks to permanently employ the Beneficiary as a principal consultant 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)(l)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in a managerial or executive capacity.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary was employed abroad, or would be employed in the United States, in a managerial capacity. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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

As noted, the Director concluded that the Petitioner did not establish that the Beneficiary was employed abroad or would be employed in the United States, in a managerial capacity as defined at section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). The Director's conclusion was based primarily on a determination that the Petitioner "did not address USCIS' questions regarding . . . discrepancies in the Beneficiary's job duties" that had been raised in a request for evidence (RFE).

On appeal, the Petitioner asserts that the Director's decision was erroneously based on perceived unresolved discrepancies between the job descriptions submitted in this matter and the job descriptions it provided in support of a second-preference immigrant petition it filed on the Beneficiary's behalf in 2017, which was accompanied by a labor certification application (Form ETA 9089). The Petitioner further contends that the Director failed to address relevant evidence submitted in support of the petition and in response to the RFE. Upon review, we agree with the Petitioner's assertions.

Further, we observe that the RFE issued in this matter did not advise the Petitioner that there were discrepancies in the record that must be resolved; the Director only requested that the Petitioner provide additional evidence in support of its claim that the Beneficiary was employed abroad and would be employed in the United States, in a managerial capacity. In fact, the Director stated in the RFE that the duties stated in the Petitioner's letter dated December 15, 2020 are "in line with the information provided in the ETA Form 9089" for the same position. If the Director intended to request that the Petitioner address discrepancies in the record, this request was not clearly conveyed in the RFE. A review of the Petitioner's response to the RFE demonstrates that it made a good faith effort to respond to the issues raised therein by providing additional explanations and documentation in support of its claims. As noted by the Petitioner, the decision lacks any analysis of most of the evidence submitted with the initial filing and RFE response.

An officer must fully explain the reasons for denying a visa petition 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). Because the Director's decision does not provide a complete analysis of the evidence submitted in support of the instant petition, we will withdraw that decision and remand for further review and entry of a new decision, consistent with our discussion below.

The Petitioner has offered the Beneficiary permanent employment in the position of principal consultant, a position he has held since his transfer to the United States in L-1A status in October 2014. The record reflects that he was similarly employed abroad, with the same job title of principal consultant, for more than one year immediately prior to his transfer within the multinational organization.

The Director concluded that there are unresolved discrepancies between the job descriptions submitted in support of this petition and those the Petitioner submitted with the 2017 second preference petition filed on the Beneficiary's behalf, and therefore USCIS cannot determine what duties either position entails or whether either position meets the definition of managerial capacity at section 101(a)(44)(A)

of the Act. However, the Director's decision does not address any substantive inconsistencies between the position descriptions, nor does the decision evaluate the actual position descriptions at all. The Director's conclusory finding that the two versions of the job description for the Beneficiary's former and proffered positions are inconsistent did not provide an adequate basis for denial of the petition. Further, based on our review, we find the position descriptions prepared in connection with the 2017 second preference petition to be too generalized to reveal any clear inconsistencies.

The Petitioner also accurately asserts that the Director improperly disregarded pieces of relevant documentary evidence submitted in support of the instant petition. The Director acknowledged that the Petitioner submitted "detailed descriptions" of the Beneficiary's former and proposed positions but did not evaluate those descriptions or reach a conclusion that they did not establish that the Beneficiary had been or would be employed in a managerial capacity. The Petitioner also submitted a substantial amount of evidence intended to corroborate the Beneficiary's performance of managerial duties in the United States and abroad that is not addressed in the decision. This evidence includes, but is not limited to: copies of the Beneficiary's promotion letters; copies of diplomas for his U.S.- and foreign-based subordinate personnel; performance reviews conducted by the Beneficiary in his role as a principal consultant in the U.S. and abroad; detailed organizational charts with duty descriptions for the Beneficiary's subordinates; and internal e-mails intended to support the Petitioner's claims that the nature of the Beneficiary's work is primarily managerial in nature.

On remand, the Director should fully evaluate the evidence submitted by the Petitioner to date, including the Petitioner's appeal, to determine whether the Beneficiary was employed abroad in a managerial capacity and whether he would be employed in the United States in a managerial capacity.

III. CONCLUSION

For the reasons discussed, the Director's decision is withdrawn. On remand, the Director may issue a new request for evidence 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.