U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 24228399

Date: MAR. 31, 2023

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, which owns three restaurants, seeks to permanently employ the Beneficiary as its general manager 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 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 has been employed abroad, and will be employed in the United States, in a managerial or executive 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.

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).

In the portion of the denial notice that discusses the grounds for denial, there is only one sentence that clearly relates to the Beneficiary's intended U.S. employment: "However, the petitioner failed to clarify how the other organizations, managers of [the petitioning U.S. employer] will relieved [sic] the

beneficiary from operational and administrative duties associate Software products and services [sic]." Without further elaboration, this single sentence did not afford the Petitioner an adequate opportunity to prepare an effective appeal. The denial notice must explain the specific reasons for denial. 8 C.F.R. § 103.3(a)(1)(i). Furthermore, the meaning and purpose of the last five words in the quoted sentence are not clear, as the petitioning U.S. employer is not a software company.

Discussing the Beneficiary's claimed employment abroad, the Director stated:

> The petitioner failed to provide an organizational chart and provide position description[s] for the other employees of the company. Additionally, the beneficiary's position description did not provide any details of what the beneficiary actually did on a day-to-day basis, and there was no evidence to indicate that the individuals that perform the non-managerial duties associated to her [sic] position or to relieve the beneficiary from non-managerial duties.

The second quoted sentence appears to be incomplete, and the Director did not sufficiently elaborate on the stated deficiencies. The Petitioner had previously submitted organizational charts for the foreign entity, at Exhibit D1 of the initial filing and Exhibit H3 of the response to a notice of intent to deny (NOID). The Petitioner had also submitted position descriptions for the Beneficiary's subordinates abroad, in a letter that accompanied the petition and again in Exhibit C of the response to the NOID. Because the Director incorrectly stated that the Petitioner did not submit those documents, it is not clear that the Director considered them.

The denial notice also refers to "the role held by the beneficiary at [redacted] but that is not the name of the Beneficiary's claimed employer abroad.

The Director's denial also relied heavily on a perceived discrepancy in the Beneficiary's employment history. The petition's record of proceeding indicates that he worked for [redacted] since 2009, but when the Beneficiary filed a nonimmigrant petition at the U.S. Embassy in Beijing, China in 2017, he identified his employer as [redacted] He also indicated that he had studied at [redacted] University from 2013 to 2015. The Director concluded that this information contradicts the Petitioner's claims about the Beneficiary's employment at [redacted]

The Director's NOID did not mention the perceived conflicting information; the issue appeared for the first time in the denial notice. Therefore, the Director did not give the Petitioner a chance to address that information before the Director issued a decision, as required by 8 C.F.R. § 103.2(b)(16)(i).

On appeal, the Petitioner establishes that the two names [redacted] refer to the same company. The logo for [redacted] includes four Chinese characters pronounced as [redacted] and the address and telephone number that the Petitioner provided for the company on his nonimmigrant visa application match information for [redacted] in the record. Thus, there is no contradiction in the employment claims.

The Petitioner also addresses the Beneficiary's graduate studies on appeal, asserting that the Beneficiary attended classes on weekends without interrupting his employment. Even so, an interruption in employment would be material only if it prevented a beneficiary from working for at least one continuous year during the three years immediately preceding the petition's filing date. *See* 8 C.F.R. § 204.5(j)(3)(i)(A). In this case, the classes ended in July 2015, four years before the Petitioner filed the petition in August 2019. Therefore, the classes did not overlap with the material three-year period from August 2016 to August 2019.

The Director's decision at present is deficient for the reasons stated above. We will therefore withdraw that decision. The Director must issue a new decision, fully addressing the evidence of record, including the information provided on appeal. If the Director uncovers evidence outside the record that appears to cast doubt on the Petitioner's claims, then the Director must advise the Petitioner of the derogatory information 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.