



**U.S. Citizenship
and Immigration
Services**

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

In Re: 19784450

Date: FEB. 02, 2022

Motion on Administrative Appeals Office Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, which is self-described as an exporter of herbal medicines, supplements, and other food products, seeks to temporarily employ the Beneficiary as its chief executive officer (CEO) under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Section 101(a)(15)(L) of the Immigration and National Act (the Act), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center initially approved the petition but later revoked the approval on notice, concluding that the Petitioner did not establish, as required, that the Beneficiary would be employed in the United States in a managerial or executive capacity. The revocation decision was based on the Director's assessment of the submitted evidence and conclusions that resulted, in part, from a post-adjudicative site visit conducted by an immigration officer (IO). We dismissed the Petitioner's subsequent appeal of the revocation decision, and the Petitioner subsequently filed two combined motions to reopen and reconsider. We initially dismissed the first motion as untimely filed but, upon review of the second motion, reopened it and issued a decision dismissing it on the merits, concluding that the Petitioner had not overcome the grounds for dismissal of its appeal. The matter is now before us again on a combined motion to reopen and motion to reconsider.

The burden of proof to establish eligibility for the benefit sought remains with the petitioner in revocation proceedings. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); and *Matter of Esteve*, 19 I&N Dec. 450, 452, n.1 (BIA 1987). Upon review, we will grant the motion to reconsider, withdraw the previous decisions, and remand the matter to the Director for further action and entry of a new decision, consistent with the following discussion.¹

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involved specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must

¹ Because we are granting the Petitioner's motion to reconsider, we will dismiss the motion to reopen as moot.

seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

The approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, a director must issue a notice of intent to revoke that contains a detailed statement of the grounds for revocation and the time allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence 8 C.F.R. § 103.5(a)(2). A motion to reconsider must (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). We cannot grant a motion that does not meet applicable requirements.

II. ANALYSIS

As noted, the Director of the California Service Center revoked the approval of the L-1A nonimmigrant petition, concluding that the Petitioner did not establish that it would employ the Beneficiary in a managerial or executive capacity, and we dismissed the Petitioner's subsequent appeal of that decision.

In the previously filed motion, the Petitioner contended that both the Director's revocation decision and our decision dismissing its appeal should not have included adverse findings regarding the Beneficiary's stated job duties. Specifically, the Petitioner argued that the Director's notice of intent to revoke (NOIR) had merely restated, but offered no analysis of, the job description the Petitioner had provided in support of the petition. As such, the NOIR did not inform the Petitioner of any deficiencies concerning the Beneficiary's job description, and the Petitioner was effectively precluded from an opportunity to rebut the Director's adverse findings on this issue. *See* 8 C.F.R. § 214.2(l)(9)(iii)(B) (requiring that USCIS provide the petitioner with a detailed statement of the grounds for revocation). We agreed with the Petitioner's argument and therefore withdrew our prior adverse findings with respect to the Beneficiary's job description.

We nevertheless dismissed the motion after concluding that the Petitioner had not resolved certain discrepancies that arose based on a post-adjudication site visit conducted by an IO in December 2018, noting that the revocation decision was based, in part, on these issues. Specifically, we emphasized that the Petitioner had not adequately explained why the two employees the IO interviewed at the Beneficiary's worksite were unfamiliar with the Beneficiary. We acknowledged that the employees were relatively new hires at the time of the site visit and claimed to be "still undergoing training," but questioned why they would have been left unsupervised if they were new employees in training. We also acknowledged the Petitioner's claim that the IO referred to the Beneficiary by her Chinese first and last names, while the employees know her as '[REDACTED]' or as "General Manager [REDACTED]". However, we determined that the Beneficiary's last name alone should have been sufficient for the company's employees to identify her as the company's CEO. In addition, we noted a lack of evidence regarding the Beneficiary's whereabouts at the time of the 2018 site visit, as she was not present when the IO

visited the worksite. As a result, we concluded there were sufficient uncertainties in the record to uphold our prior decision dismissing the appeal.

On motion, the Petitioner argues that the deficiencies discussed in our most recent decision were not addressed in the NOIR and therefore should not have formed the basis for upholding the revocation. Although outside the scope of our immediate prior decision, the Petitioner also maintains that the site visit did not follow established USCIS policies and procedures, noting that the two employees interviewed by the IO were not native English speakers and were not provided with an interpreter or informed of their right to an interpreter. In addition, the Petitioner emphasizes that according to USCIS policy regarding administrative site visits, the IO should have made additional efforts to contact the Beneficiary and an authorized representative of the Petitioner, noting that neither of these relevant parties were interviewed in this case and that the employees who spoke to the IO did not reasonably have access to all the information that he sought.

Finally, the NOIR and the revocation decision state that “[s]ystem checks and the site visit indicated that the beneficiary is not working as the CEO of the company as stated in the petition.” However, neither the NOIR nor the decision informed the Petitioner of what “system checks” were conducted, what information they revealed to conclude that the Beneficiary is not working as the CEO, or how such information led, at least in part, to the decision to revoke the approval of the petition. USCIS must provide notice of any derogatory information that is discovered outside of the record of proceedings, and to make that derogatory information part of the record along with any rebuttal provided by the Petitioner. 8 C.F.R. § 103.2(b)(16)(i). The failure to do so in the NOIR issued in this case constitutes error. Accordingly, the revocation decision will be withdrawn, along with our prior decisions upholding the revocation decision. The withdrawal of the revocation decision, however, does not constitute a determination that the Petitioner established eligibility for the benefit sought.

Because USCIS did not comply with the regulation at 8 C.F.R. § 103.2(b)(16)(i), the matter will be remanded to the Director for the issuance of a new NOIR, to identify all derogatory information discovered outside the record of proceedings, fully inform the Petitioner of any deficiencies in the record which may serve as a basis for the revocation, and allow the Petitioner the opportunity to submit a rebuttal to the proposed grounds for revocation before a final decision is issued. The Director should also consider the merits of the Petitioner’s arguments that USCIS did not follow required procedures in conducting the administrative site visit in this matter and, if appropriate, conduct another site visit.

ORDER: The motion to reconsider is granted, and the matter is remanded for the entry of a new decision consistent with the foregoing analysis.