



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

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

In Re: 19936815

Date: JUL. 22, 2022

Appeal of California Service Center Decision

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

The Petitioner seeks to continue the Beneficiary's temporary employment as its chief executive officer (CEO) under the L-1A nonimmigrant classification for intracompany transferees.¹ Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in an executive or managerial capacity.

The Director of the California Service Center approved the petition, but subsequently revoked the approval after serving multiple notices of intent to revoke (NOIR). As discussed in the procedural history below, the Director initially revoked the approval on notice in August 2019. The Director granted the Petitioner's subsequent motion to reopen, vacated the prior decision, issued a new NOIR, and, after reviewing the Petitioner's response to that notice, issued a new revocation decision in January 2021. In the ultimate revocation decision, the Director concluded that the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. See *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 to the Director for further action and entry of a new decision.

¹ The Petitioner was established in December 2015 and filed a "new office" L-1A petition on behalf of the Beneficiary in May 2016. The petition was approved with a validity period from June 14, 2016 to May 31, 2017. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation one year within the date of approval of the petition to support an executive or managerial position.

I. LEGAL FRAMEWORK

A. L-1A Nonimmigrant Classification

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 involves 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 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.*

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary’s duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary’s foreign employer. 8 C.F.R. § 214.2(l)(14)(ii). This evidence must demonstrate that the beneficiary will be employed in a managerial or executive capacity, as defined at sections 101(a)(44)(A) and (B) of the Act, under the extended petition, and must establish eligibility at the time of filing.

B. Revocation Authority

Under U.S. Citizenship and Immigration Services (USCIS) regulations, 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 the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).

II. PROCEDURAL HISTORY

The Petitioner filed the petition in May 2017, seeking to extend its previously approved “new office” petition. In a supporting letter submitted at the time of filing, the Petitioner stated that it and its Chinese affiliate continue to be engaged in data management services, including publication of digital libraries for clients such as educational institutions, libraries, and museums. The Petitioner explained that it had also decided to expand its operations to include a café and smoothie bar. The Petitioner provided a copy of its 2016 federal tax return, which did not indicate any receipts or income from business activities during the previous fiscal year.

The Director issued a request for evidence (RFE) and in its October 2017 response, the Petitioner acknowledged the data management business had struggled to establish a foothold in the United States which resulted in its decision to establish the café and smoothie bar to increase revenue. The Petitioner provided evidence that the Beneficiary had signed a lease for restaurant premises in June 2017, that it incorporated the café [REDACTED] as its wholly owned subsidiary and opened a bank account in July 2017, and that it had obtained permits for renovation and remodeling of the restaurant in August 2017. The Petitioner also submitted a revised business plan dated September 2017 discussing the new

endeavor. After reviewing the Petitioner's response to the RFE, the Director approved the petition for a two-year period.

In May 2018, USCIS conducted two post-adjudication site visits to verify the information provided on the petition. An immigration officer (IO) interviewed the Beneficiary at the café location and the Beneficiary acknowledged that the Petitioner's data management company had not previously made a profit. The IO also interviewed employee [REDACTED] (L-P-), who stated that she was hired by the Beneficiary in March 2017 as a babysitter for the Beneficiary's child and that the Petitioner compensated her for those services. L-P- also indicated that she had later agreed to work for the café and did not know of other employees working for the data management company.

Based on the information from the site visits and further review of the record, the Director issued a NOIR in May 2019 (first NOIR). In the NOIR, the Director advised the Petitioner of potentially derogatory information obtained during the site visits (including L-P-'s statement) and noted that it was unclear whether all information provided on the petition was true and correct. In addition, the Director questioned: (1) whether the Petitioner's new café business had a qualifying relationship with the Beneficiary's foreign employer; and (2) whether the Petitioner itself was doing business, noting that it was operating a café rather than a digital publishing business as stated on the petition. In this regard, the Director emphasized that the Petitioner did not file an amended petition to advise USCIS of changes in the terms and conditions of the Beneficiary's employment or withdraw the petition. Finally, the Director stated that the evidence did not establish that the Beneficiary had been employed abroad, and was employed in the United States, in a managerial or executive capacity, but did not further elaborate on any specific evidentiary deficiencies that led to this conclusion, such as issues with the Beneficiary's job descriptions or the evidence submitted to establish the staffing and organizational structure of the Petitioner and the affiliate entity.

In a rebuttal to the first NOIR, the Petitioner re-submitted evidence establishing that it wholly owns the company that operates the café, noting that the subsidiary therefore has a qualifying relationship with the foreign affiliate. The Petitioner also emphasized that it had disclosed its plans to open the café and provided supporting documentation regarding its subsidiary, both in its initial filing and in response to the RFE issued prior to the approval of the petition. The Petitioner maintained that it was therefore not required to file an amended petition. Finally, the Petitioner reiterated the Beneficiary's duties for the foreign entity and provided an updated duty description and organizational chart for its U.S. operations in support of its claim that she was employed abroad, and would be employed in the United States, in an executive capacity.

In August 2019, the Director revoked approval of the petition (first revocation) on the sole ground that the Petitioner did not establish that it employs the Beneficiary in a managerial or executive capacity. The Director's determination was based on an analysis of the Beneficiary's job duties and the staffing and organizational structure of the café business as documented in the NOIR response. The decision did not discuss evidence submitted to establish the Petitioner's eligibility at the time of filing, any issues raised by the site visit, or other issues raised in the NOIR. The Director observed that most of the Petitioner's employees (as of 2019) appeared to be part-time workers and emphasized that the record lacked job descriptions for subordinate staff and payroll records to verify their employment.

The Petitioner filed a motion to reopen with additional evidence of its current staffing, including payroll records, job descriptions and educational credentials of subordinate staff, in support of its claim that the Beneficiary is employed in an executive capacity. The Director granted the motion, vacated the August 2019 revocation decision, and issued a new NOIR in June 2020 (second NOIR). The Director emphasized that a petitioner must establish eligibility at the time of filing the petition and stated that the Petitioner's organizational hierarchy was insufficient to demonstrate that the Beneficiary would be relieved of performing primarily non-executive duties. However, the Director did not further elaborate on any deficiencies in the evidence pertaining to the Beneficiary's eligibility at the time of filing. Instead, the Director analyzed evidence of the company's staffing and organizational structure submitted in 2019 and 2020. The Director advised the Petitioner that the record did not show that the Beneficiary's subordinate employees in the café are managers and determined that the evidence did not demonstrate that she primarily performs duties in an executive capacity as claimed.

In rebuttal to the second NOIR, the Petitioner maintained that it satisfied all requirements for L-1A classification at the time of filing and continued to do so. The Petitioner asserted that the Beneficiary is an executive and leads its operations in the United States. The Petitioner provided a timeline detailing the dates of employment of general managers, supervisors, and other department managers that had worked for the Petitioner from 2017 to present, accompanied by organizational charts depicting the company's staffing over time.

In January 2021, the Director revoked the approval of the petition for a second time (second revocation). The second revocation was based, in part, on issues raised during the May 2018 site visits and in the first NOIR, even though these issues were not raised in the second NOIR or in the first revocation decision. For example, the Director observed that the Petitioner claimed that L-P- was previously employed as the company's general manager but noted that it did not address the fact that she stated to an IO that she was initially hired by the Beneficiary to provide childcare services. The Director observed that L-P-'s statement to the IO conflicted with the Petitioner's claim and thus, the statement of facts in the petition was not true and correct. The Director also emphasized that the Petitioner was established as a data management and digital publishing company but that it had since started operating a café, noting that for this additional reason, it appeared the statement of facts in the petition was not true and correct. The Director further determined that the job description for the subordinate general manager position was insufficient to demonstrate that the position involves managerial or supervisory duties and therefore raised questions about the Petitioner's organizational complexity. The Director concluded that the record did not establish that the Petitioner could support the Beneficiary in a primarily executive or managerial capacity.

On appeal, the Petitioner emphasizes that it notified USCIS of its plans to change the focus of its operations from data management to operating a café and smoothie bar and that it did so prior to the approval of the petition in December 2017. In addition, the Petitioner claims that it was not afforded a fair opportunity to respond to the statements made by its former employee during the site visit, an issue that was not raised in the second NOIR. The Petitioner further contends that based on the evidence submitted in support of its previous motion (which it re-submits on appeal), it has reached the organizational complexity necessary to support the Beneficiary in an executive position.

III. ANALYSIS

The primary issue before us on appeal is whether the Director properly revoked the approval of the petition in accordance with the regulations at 8 C.F.R. § 214.2(l)(9)(iii)(A). As noted, 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 the revocation. 8 C.F.R. § 214.2(l)(9)(iii)(B).

A. Withdrawal of Director's Decision

Here, the Director's second revocation decision is based, in significant part, on issues that were not raised in the second NOIR issued in June 2020. While some of these issues were raised in the first NOIR, the Director did not incorporate that notice by reference or otherwise advise the Petitioner that those issues were unresolved. Nor did the Director notify the Petitioner that it would be required to rebut once again, for example, information gathered during the 2018 site visits or the change in its business model. We cannot conclude that the second NOIR included a "detailed statement of the grounds for revocation" given that the Director ultimately revoked the approval for reasons not stated in the second NOIR. We further note that an officer must fully explain the reasons for denying a visa petition in order 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).

Accordingly, we will withdraw the Director's decision and remand the matter so the Director may address the following specific issues.

B. Basis for Remand

Based on our *de novo* review, the record as presently constituted does not establish that the Petitioner was eligible for the benefit sought as of the date it filed this extension petition and therefore the approval of the petition may have involved gross error.² Further, we observe that the site visit raised legitimate concerns as to whether certain facts stated in the petition were true and correct. Accordingly, we will remand the matter to the Director for further consideration, issuance of a new NOIR and, if warranted, a new revocation decision.

The record reflects that, at the time of filing the extension request in May 2017, which also marked the end of the initial one-year new office validity period, the Petitioner had not yet established its subsidiary company and therefore was not yet operating a café through that subsidiary. The Petitioner indicated that it intended to open the café later in 2017 and would hire additional managers and lower-level employees. However, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the intended U.S. operation one year within the date of approval of the petition to support an executive or managerial position. If a petitioner does not have the necessary staffing and business activity after

²² The term "gross error," although used at 8 C.F.R. § 214.2(l)(9)(iii)(A)(5), is not defined by the regulations or statute. Based on the regulatory history and the common usage of the term, we interpret the term "gross error" to be an unmitigated or absolute error, such as an approval that was granted contrary to the requirements stated in the statute or regulations. Regardless of whether there can be debate as to the legal determination of eligibility, any approval that is granted contrary to law must be considered an unmitigated error, and therefore a "gross error."

one year to support a position in which the L-1A beneficiary is able to primarily performs managerial or executive duties, then the petitioner is ineligible for an extension. While USCIS must consider a Petitioner's prospective business and hiring plans when adjudicating a new office petition, a petition to extend a Beneficiary's L-1A status at the end of that one-year period must demonstrate the company's ability to support a managerial or executive position at the time of filing. *See* 8 C.F.R. § 214.2(l)(14)(ii)(C) and (D).

Further, the regulations require the Petitioner to provide evidence that the new office has been doing business for the previous year. *See* 8 C.F.R. § 214.2(l)(14)(ii)(B). "Doing business" means the "regular, systematic and continuous provisions of goods and/or services." 8 C.F.R. § 214.2(l)(1)(ii)(H).

Therefore, a determination as to whether the Petitioner is eligible for an extension of its new office petition should be based on evidence of its business activities during the previous year (June 2016 through May 2017), and evidence related to its staffing and operations at the time of filing the extension request. The Petitioner must establish that it has reached a stage of development where the business could support the Beneficiary in a managerial or executive capacity under the extension petition as of May 2017.

At the time of filing the extension request, the Petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that it had three employees, that it was engaged in digital publishing, and that the Beneficiary would work at the address where the Petitioner's subsidiary (which was not yet incorporated) eventually opened a café.³ In a supporting letter, the Petitioner explained that it was investing in a café and smoothie bar in order to diversify and ensure cash flow, but emphasized that its data management and digital publishing business would continue its attempts to gain a foothold in the U.S. market. The Petitioner's 2016 tax return indicated that the company paid some business expenses but did not establish that it had earned any income from provision of goods or services. Nor did the evidence establish that the company's activities during the first five months of 2017 were consistent with the definition of "doing business" under 8 C.F.R. § 214.2(l)(1)(ii)(H). If the Petitioner was not yet doing business at the time it filed the extension request, that fact alone would provide sufficient basis to deny the new office extension petition under 8 C.F.R. § 214.2(l)(14)(ii).

With respect to the company's staffing levels, the Petitioner indicated that it had three employees when it filed the petition in May 2017. At the time the Petitioner responded to the RFE in October 2017, the Petitioner indicated that its subsidiary's café had opened with nine employees, and that another employee (L-P-) was managing the data management/publishing division. It appears that the Director's initial approval of the petition was ultimately based on the Petitioner's business operations, staffing and structure as of October 2017, rather than on the facts as they existed at the time of filing in May 2017. As noted, in May 2017, the Petitioner had not yet established its subsidiary café, remained minimally staffed, and provided only minimal evidence related to its data management and publishing business. A petitioner must establish that the position offered to a beneficiary, when the petition was filed, merits classification as a managerial or executive position. *See Matter of Michelin*

³ The Petitioner later submitted a lease agreement for this location. The lease agreement had a start date of August 1, 2017, with early possession of the premises permitted on June 10, 2017. The Petitioner mentioned at the time of filing that it was in negotiations to secure a lease for a restaurant.

Tire Corp., 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). Absent evidence that the Petitioner was doing business and had grown to the point where it could support the Beneficiary in a managerial or executive capacity as of May 31, 2017, the record does not support a determination that it was eligible for an extension of its new office petition. Approval of the petition based on facts that came into being after the expiration of the new office petition in May 2017 would be contrary to the regulation at 8 C.F.R. § 103.2(b)(1), and would constitute gross error on the part of the Director.

In addition, information obtained during the site visit raised additional questions as to whether the Petitioner provided true and correct information regarding its staffing and structure at the time of filing. As noted, employee L-P- stated that the Petitioner paid her for providing childcare services for the Beneficiary's family in 2017 and that she eventually assumed a position with the café business. This information contradicted the Petitioner's claim that L-P- was hired to manage its data management/digital publishing business. Further, one of the employees who was on the Petitioner's payroll in April 2017 was the individual hired to be the manager for the future subsidiary's café that opened in October 2017; it is unclear what services she performed for the Petitioner at the time of filing.

On remand, the Director should provide the Petitioner with a detailed statement explaining why the evidence related to its business activities, staffing and structure at the time of filing in May 2017 was insufficient to establish eligibility for an extension of its new office petition and allow the Petitioner an opportunity to rebut and submit additional evidence. Further, if the Director intends to revoke the petition based on any information obtained during the May 2018 site visits, or on any derogatory information from outside the record, such information must be included in the NOIR and made part of the record along with any rebuttal provided by the Petitioner. *See* 8 C.F.R. § 103.2(b)(16)(i).

IV. CONCLUSION

For the reasons discussed, the grounds for the revocation decision were not adequately articulated in the NOIR and the Director's decision must be withdrawn. We will remand the matter for further consideration, issuance of a new NOIR, and a new decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.