U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20615532

Date: MAY 17, 2022

Appeal of California Service Center Decision

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

The Petitioner, a "professional media solution company," seeks to continue the Beneficiary's temporary employment as its president 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.[1] *See* 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 a managerial or executive capacity.

The Director of the California Service Center revoked the approval of the petition after conducting a post-adjudicative investigation, which led the Director to conclude the following: 1) the Beneficiary was not employed abroad by a qualifying organization for one year prior during the relevant three-year period that preceded the Beneficiary's entry to the United States to work for the petitioning entity; and 2) the Beneficiary's employment abroad was not in a managerial or executive capacity. The decision refers to two phone interviews conducted by investigators of the Fraud Prevention Unit (FPU), who interviewed the Beneficiary and an unnamed HR director, whom the Director stated was an employee of the qualifying foreign entity, [redacted].[2] The Director determined that both the Beneficiary and the HR director at [redacted] made statements that called into question the claim that the Beneficiary was employed abroad at [redacted] during the three-year period that preceded her application for admission to the United States to be employed at the petitioning entity. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will remand the matter for further consideration.

[1] The Petitioner previously filed, and secured approvals for, three petitions on the Beneficiary's behalf, with the latest petition (with receipt number [redacted]) expiring on August 28, 2018.

[2] Qualifying organization in this instance refers to the foreign entity which is an affiliate of the petitioning U.S. entity. *See* 8 C.F.R. § 214.2(l)(ii)(G)(*1*); *see also* 8 C.F.R. § 214.2(l)(ii)(L) (for definition of "affiliate").

I. LEGAL FRAMEWORK

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 specialized knowledge capacity. *Id.*

In addition, 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). Prior to revoking 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. BASIS FOR REMAND

In order to properly revoke a petition on the basis of an investigative report, the report must have some material bearing on the grounds for eligibility for the visa classification. The investigative report must establish that the Petitioner did not meet the burden of proof on an essential element that would warrant the denial of the visa petition. Observations contained in an investigative report that are conclusory, speculative, equivocal, or irrelevant do not provide a proper basis for the issuance of a notice of intent to revoke and cannot serve as the basis for revocation. *See Matter of Arias*, 19 I&N Dec. 568 (BIA 1988) (discussing revocation of an immigrant visa petition based on a consular return). Rather, "[s]pecific, concrete facts are meaningful." *Id.* at 570-71.

In the matter at hand, the Petitioner asserts on appeal that the FPU investigator did not accurately convey the Beneficiary's interview responses. We note that the record contains no transcript of that interview, nor does it include the name or contact information of the HR director who is the claimed source of the derogatory information pertaining to the Beneficiary's position with [redacted] the Petitioner's foreign affiliate. In light of these deficiencies, we find that the Director did not provide the Petitioner with a meaningful opportunity to challenge the findings from the FPU investigation which led to the adverse conclusion regarding the Beneficiary's foreign employment.

The Petitioner also argues that the Director disregarded the Beneficiary's email, which followed her interview with FPU and included an explanation about her position at [redacted] an unaffiliated foreign entity where the Beneficiary claimed her position was limited to chairing board of directors' meetings and making decisions "on important issues" that did not concern the daily management of operations of that entity. The Petitioner also contends that the HR director whom the FPU interviewed was an employee of [redacted] rather than [redacted] and that the information provided during that interview was correct with respect to the Beneficiary's limited role with [redacted] The Petitioner maintains that because the names of the two entities are notably similar, the Director confused those entities and incorrectly concluded that the Beneficiary was employed by [redacted] rather than [redacted] the Petitioner's foreign affiliate.

In support these assertions, the Petitioner provides new evidence, which includes the following: a letter from [redacted]'s CEO and board of directors' chairman; a letter from the general manager of the foreign affiliate; an employment contract for [redacted], [redacted]'s HR director, showing a hire date that preceded the FPU's investigation; and [redacted]'s employment contracts identifying the Beneficiary as the "legal representative" with hiring authority during her claimed period of employment abroad.

Lastly, the Petitioner argues that although the Director concluded that the Beneficiary's employment abroad was not in a managerial or executive capacity, the revocation decision did not include an analysis of the foreign employment, thereby leaving the Petitioner to question how its submissions were deficient with respect to that issue.

Because of the defects discussed above, we will withdraw the Director's decision and remand the matter. On remand, the Director must issue a new NOIR specifying the facts and evidence supporting the proposed revocation grounds. Pursuant to this remand, the Director shall also consider the new evidence submitted on appeal.

Accordingly, the following order shall be issued.

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