



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

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

In Re: 24550074

Date: FEB. 2, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a company engaged in the graphic design and printing solution business, seeks to extend the Beneficiary's temporary employment as its president and chief executive officer under the L-1A nonimmigrant classification for intracompany transferees. *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 Texas Service Center denied the petition, concluding the Petitioner did not establish, as required, that the Beneficiary was employed in a managerial or executive capacity abroad or that he would be employed in a managerial or executive capacity in the United States. In addition, the Director stated that "it was determined that fraud and/or misrepresentation are confirmed in the immediate Petition for a Nonimmigrant Worker." The Petitioner later filed a motion to reopen and a motion to reconsider with the Director, which was also dismissed. The matter is now before us on appeal.

On appeal, the Petitioner asserts that it submitted sufficient evidence to establish that the Beneficiary qualified for the benefit sought and indicates that the Director's determination as to his managerial or executive roles, both abroad and in the United States, was incorrect. Further, the Petitioner indicates that the Beneficiary did not commit fraud or willfully misrepresent material facts regarding her foreign employment.

The Applicant 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. FRAUD AND WILLFUL MISREPRESENTATION

In the denial decision, the Director pointed to a nonimmigrant B-2 visitor visa the Beneficiary was granted in 2015. The Director indicated that in the questionnaire completed with the B-2

nonimmigrant visa application, the Beneficiary stated that she had been employed abroad by a non-profit entity called [redacted] in apparent contradiction to her claimed foreign employment with [redacted] from 2003 to the date the petition was filed in January 2020. The Director proceeded to list the evidence submitted by the Petitioner in response to a notice of intent to deny (NOID) issued in October 2020, including documentation specific to the Beneficiary's asserted foreign employment with [redacted] such as foreign tax documentation, paystubs, and a letter from the chairman of the foreign employer. The Director also included the Beneficiary's claimed duties while employed with [redacted] abroad as a director, her duties with the Petitioner, and her duties with [redacted] (an NGO associated with the United Nations) as an adviser. After listing this evidence, the Director stated that "it was determined that fraud and/or misrepresentation are confirmed in the immediate Petition for a Nonimmigrant Worker" and that "the beneficiary's foreign employment was misrepresented on the Form I-129."

First, the Director did not clearly articulate a definitive conclusion as to whether the Petitioner and the Beneficiary had each, or both, committed fraud and/or willfully misrepresented material facts. As such, in any new decision, the Director should clearly articulate whether a finding of fraud and/or willful misrepresentation is being made, and, if so, whether each finding is being made against the Petitioner, the Beneficiary, or against both parties.

Next, the decision insufficiently analyzed the elements of fraud and willful misrepresentation of material fact. A finding of fraud against a petitioner or beneficiary requires the following elements:

- The petitioner or beneficiary procured, or sought to procure, a benefit under U.S. immigration laws;
- The petitioner or beneficiary made a false representation;
- The false representation was willfully made;
- The false representation was material;
- The false representation was made to a U.S. government official, generally an immigration or consular officer;
- The false representation was made with the intent to deceive a U.S. government official authorized to act upon the request (generally an immigration or consular officer); and
- The U.S. government official believed and acted upon the false representation by granting the benefit.

*See Matter of Y-G-*, 20 I&N Dec. 794, 796 (BIA 1994), *see also Matter of Tijam*, 22 I&N Dec. 408, 424 (BIA 1998), *see also Matter of G- G-*, 7 I&N Dec. 161 (BIA 1956), *see generally* 8 *USCIS Policy Manual* J.2(C), <https://www.uscis.gov/policymanual>.

A finding of willful misrepresentation of material fact against a petitioner or beneficiary requires the following elements:

- The petitioner or beneficiary procured, or sought to procure, a benefit under U.S. immigration laws;

- The petitioner or beneficiary made a false representation;
- The false representation was willfully made;
- The false representation was material; and
- The false representation was made to a U.S. government official.

*See Matter of Y-G-*, 20 I&N Dec. 794, 796 (BIA 1994), *see also Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975), *see generally* 8 USCIS Policy Manual, *supra*, at J.2(B).

Here, the Director did not sufficiently analyze the elements of fraud and willful misrepresentation. The Director stated only that “fraud and/or misrepresentation are confirmed.” Further, in response to the notice of intent to deny (NOID), the Petitioner submitted additional assertions and documentary evidence to rebut the discrepancies noted by the Director. However, the Director did not properly analyze the Petitioner’s assertions, or the additional evidence, provided in response to the NOID prior to finding there was fraud and/or willful misrepresentation.

In addition, the Petitioner also provided additional assertions and evidence in support of the previously filed motion to reopen and motion to reconsider. In denying the motions in September 2021, the Director stated that “the evidence submitted with the motion to reopen overcomes the grounds stated for the denial,” but then indicated in the order that the motion was dismissed, and that the denial of the petition would remain undisturbed. The Director’s statements in the September 2021 decision appear to conflict, and the decision does not discuss or analyze any of the statements or documentation submitted by the Petitioner on motion. 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).

Therefore, we will withdraw the finding of “fraud and/or willful misrepresentation” and we will remand this matter to the Director to sufficiently analyze the elements of fraud and willful misrepresentation in this case, if deemed necessary. The Director should make any specific findings of fraud and/or willful misrepresentation, if applicable, against the proper parties. The Director must properly consider the evidence submitted in response to the NOID, on motion, and on appeal.

## II. GROUNDS FOR DENIAL

As discussed previously in this decision, the Director denied the petition on two separate grounds, concluding that the Beneficiary was not employed in a managerial or executive capacity abroad and that the Beneficiary would not be employed in a managerial or executive capacity in the United States. The Director did not sufficiently analyze each ground of denial consistent with the applicable statutory and regulatory requirements.

For example, as noted, the Director only discussed the Beneficiary’s listed dual employment abroad and stated that “fraud and/or misrepresentation” was “confirmed.” Further, although the Director listed the Beneficiary’s stated duties abroad with  they did not sufficiently analyze

whether she was employed in a managerial or executive capacity abroad.<sup>1</sup> For instance, the Director listed the Beneficiary's duties abroad, but did not discuss or analyze them. Likewise, the Director did not discuss or analyze the foreign employer's asserted organizational structure, the Beneficiary's asserted place therein, the duties of her claimed subordinates abroad, or any other documentary evidence relevant to her foreign employment.

Furthermore, when analyzing whether the Beneficiary would act in a managerial or executive capacity in the United States, the Director discussed the claimed discrepancies in the Beneficiary's foreign employment and did not sufficiently consider the provided documentation relevant to her asserted employment in the United States. For example, the Director provided the Beneficiary's asserted duties in the United States and concluded that they "did not establish that the beneficiary will be primarily performing qualifying duties," the description and evidence "indicate that the beneficiary does not have the authority required by the regulations," and the Petitioner must demonstrate that she had personnel authority. However, the Director provided no support for these conclusions and did not specifically discuss the evidence provided by the Petitioner when making these determinations.

As such, in any new decision, the Director should analyze each ground for denial separately, and clearly analyze and articulate why the Petitioner has not met its burden with respect to each ground for denial, consistent with the applicable statute and regulations.

### III. CONCLUSION

For the foregoing reasons, we will withdraw the Director's decision and the matter will be remanded for further consideration, consistent with the direction provided in this decision. The Director may request any additional evidence considered pertinent to the new determination and any other issue.

**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.

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<sup>1</sup> When examining the managerial or executive capacity of a given beneficiary, we will review the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in a managerial or executive capacity. See 8 C.F.R. § 214.2(l)(3)(ii). If the petitioner establishes that the offered position meets all elements set forth in the statutory definition, the petitioner must prove that the beneficiary will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the petitioner's other employees. See *Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's duties will be primarily managerial or executive, we consider the petitioner's description of the job duties, the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.