U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28568033

Date: DEC. 7, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Multinational Managers or Executives)

The Petitioner, an iron reduction facility, seeks to permanently employ the Beneficiary as an IT manager under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) section 203(b)(l)(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 an executive or managerial capacity.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that a qualifying relationship exists between the petitioning U.S. employer and the Beneficiary's prior foreign employer.

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.

Section 203(b)(1)(C) of the Act makes an immigrant visa 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.

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 addition, a petition for a multinational manager or executive must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage from the time the petition is filed and continuing through adjudication. *See* 8 C.F.R. § 204.5(g)(2).

The Form I-140 was filed by [redacted] on November 5, 2021. The Petitioner asserted in its supporting letter that the Beneficiary had been employed by [redacted] from September 2012 until his July 2019 transfer to the United States to work for the Petitioner in nonimmigrant status. The Petitioner asserted that it and [redacted] were both wholly owned by [redacted] In support of this assertion, the Petitioner submitted a copy of Form I-797, Notice of Action, from a blanket L petition indicating that a qualifying relationship existed between the Petitioner and the Beneficiary's foreign employer as of September 21, 2017. The Beneficiary concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status.

The Director issued a request for evidence (RFE) on August 10, 2022, noting that the initial supporting evidence was insufficient to demonstrate that the Beneficiary had been employed abroad in a managerial capacity or that the Petitioner had the ability to pay the proffered wage. In response to the RFE, the Petitioner addressed these evidentiary deficiencies and noted that it had changed its name subsequent to filing to [redacted] as a result of its acquisition by [redacted] and subsequent corporate restructuring. The Petitioner asserted that the Beneficiary had a new offer of employment from [redacted] and submitted a copy of Supplement J to Form I-485, Confirmation of Bona Fide Job Offer or Request for Job Portability, filed by the Beneficiary with USCIS on August 17, 2022. The Petitioner asserted that USCIS must approve the petition because the Beneficiary qualifies for "portability." *See* section 204(j) of the Act, 8 U.S.C. § 1154(j); *see also* §106(c) of the American Competitiveness in the Twenty-First Century Act of 2000 (AC21), Pub. L. No. 106-313. Under the portability provision, a petition for a beneficiary whose adjustment of status application remained unadjudicated for at least 180 days "shall remain valid" if the beneficiary changes jobs or employers, and receives a new job offer in the same or similar occupation for which the petition was filed. Section 204(j) of the Act.

Based on this new information, the Director issued a notice of intent to deny (NOID), noting that the record as currently constituted did not establish a qualifying relationship continued to exist between [redacted] and the Beneficiary's foreign employer. In its response to the NOID, the Petitioner again asserted that since the eligibility requirements for a qualifying relationship were met at the time of filing and through 180 days since the filing of the adjustment of status application, the pending Form I-140 petition should be approved.

Following receipt of the Petitioner's response to the NOID, the Director denied the petition, determining that the Petitioner did not establish that a qualifying relationship continued to exist between the Petitioner and the Beneficiary's foreign employer because it did not provide sufficient evidence demonstrating that the Petitioner and the foreign entity both continue to be owned and controlled by the same entity. On appeal, the Petitioner asserts that the Director erred by failing to address its assertions regarding portability, and maintains that the petition warrants approval because it would have been approvable had it been adjudicated before the Beneficiary's adjustment of status application had been pending for 180 days.

An adjustment of status applicant may affirmatively demonstrate to USCIS, on Form I-485 Supplement J, that they have a new offer of employment from a different U.S. employer in the same or similar occupational classification, provided that the application to adjust status has been pending for 180 days or more, and the qualifying immigrant visa petition has already been approved, or is

subsequently approved. *See generally* 8 C.F.R. § 245.25(a). A pending immigrant petition will be approved if it was eligible for approval at the time of filing and until the applicant's adjustment of status has been pending for 180 days, unless approval of the qualifying immigrant visa petition at the time of adjudication is inconsistent with a requirement of the Act or another applicable statute. 8 C.F.R. § 245.25(a)(2)(ii)(B)(2).

In response to both the RFE and the NOID, the Petitioner asserted that the Beneficiary is eligible for portability pursuant to 8 C.F.R. § 245.25(a)(2)(ii)(B). On appeal, the Petitioner maintains that the Director's decision constituted an abuse of discretion by misapplying the applicable regulations and ignoring its assertions regarding portability. Here, the Director did not address the Petitioner's assertions that a qualifying relationship existed at the time of filing until 180 days had passed since the filing of the adjustment of status application and did not evaluate whether the Beneficiary is eligible for portability.

In order for the Beneficiary to benefit from the Act's job portability provisions, the pending Form I-140 must be approved, and it may only be approved if the record shows that the Petitioner maintained a qualifying relationship with the Beneficiary's foreign employer pursuant to 8 C.F.R. § 245.25(a)(2)(ii)(B)(2). As such, we will remand the matter for the entry of 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.