U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24227614

Date: FEB. 16, 2023

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, a real estate company, seeks to permanently employ the Beneficiary as its "managing director" under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(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 the Petitioner's eligibility. The Director questioned whether the Petitioner is a multinational entity doing business in the United States and at least one other country and concluded that the Petitioner did not establish that the Beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity. The matter is now before us on appeal.

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 conclude that the Director did not offer a complete and accurate analysis of the submitted evidence. We will therefore withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

An immigrant visa is 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. Section 203(b)(1)(C) of the Act.

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).

II. BASIS FOR REMAND

As previously indicated, the Director's decision did not offer a complete analysis nor did it adequately explain the deficiencies in the evidence. *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). We would also note that the decision contained errors, and we will remand in part for the record to be accurately reflected.

First, the Director raised the issue of whether the Petitioner is a multinational entity, noting that although the Petitioner provided the foreign entity's business license and balance sheets, such documents do not establish that the foreign entity is doing business. *See* 8 C.F.R. § 204.5(j)(2) (for definitions of the terms *multinational* and *doing business*).[1] The Director also raised the issue of whether the Petitioner itself is currently doing business, pointing out that the Petitioner provided 2019 Form W-2 statements for employees of [redacted], an entity whose name and employer identification number do not match the Petitioner's. However, there is no evidence that the Director took notice of the certificate of amendment that the Petitioner submitted at the time of filing showing that it changed its name from [redacted] in December 2019. Further, aside from noting that additional evidence was requested to establish that the Petitioner is a multinational entity doing business in the United States and abroad, the Director reached no conclusion on either issue.

Next, the Director discussed the Beneficiary's proposed position under the section heading "Hybrid: Executive or Manager – United States."[2] The Director reiterated the Beneficiary's proposed job duty breakdown and the initial job offer; the latter states that the Beneficiary would be employed in an executive position. The Director issued a notice of intent to deny (NOID) because the Petitioner did not demonstrate that the Beneficiary will be employed "as a multinational managerial executive."[3] The Director's use of the phrase "multinational managerial executive" is confusing, and does not clearly distinguish the regulatory provisions specific to either managerial or executive capacity, whichassign separate criteria to each term. *See* 8 C.F.R. § 204.5(j)(2). And even though the Petitioner claimed that the Beneficiary would assume an executive position in his proposed employment, the Director did not assess that claim; instead, the Director concluded that the Beneficiary would not

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[1] The Director stated that the NOID was issued on "September July 22, 2020," thereby failing to clearly state when the NOID was issued. The Director also pointed out that the translated business license and balance sheets did not meet regulatory requirements because they were not accompanied by a translator's certification attesting to the completeness and accuracy of the documents and the translator's competency to translate from the foreign language into English. *See* 8 C.F.R. § 103.2(b)(3).

[2] A petitioner claiming that the beneficiary's position will consist of a mixture of managerial and executive duties will not meet its burden of proof unless it has demonstrated that the beneficiary will primarily engage in either managerial or executive capacity duties. *See* section 101(a)(44)(A)-(B) of the Act.

[3] We note that the NOID incorrectly stated that the Petitioner "claims the foreign entity in Mexico employed the [B]eneficiary in a Managerial Executive capacity." The record shows that the foreign entity is based in the United Arab Emirates and there is no evidence that the Petitioner claimed the foreign entity is based in Mexico. The Petitioner also did not claim that the Beneficiary was employed "in a Managerial Executive capacity," but rather claimed that the employment abroad was in a managerial capacity.

primarily perform "managerial duties" and stated that his proposed position does not meet "the statutory definitions [sic] of managerial capacity." Likewise, the Director's reference to the lack of clarity as to the Beneficiary's "overall purpose of the activity or function" is also confusing, as the Petitioner made no claim that the Beneficiary would manage an activity or function.

In the final portion of the discussion concerning the Beneficiary's U.S. employment, the Director referred to the Beneficiary's 2015 nonimmigrant visa (NIV) application and the brief description of job duties he provided in that application. The Director focused on the portion of the description where the Beneficiary stated that he was "temporarily positioned as general manager of [the foreign entity] pending return to managing director of [redacted] Texas . . . ." The Director interpreted this statement as the Beneficiary's attestation "that he was only holding a temporarily [sic] position in [the] U.S. pending the return of [the] real managing director." In other words, it appears the Director misinterpreted the Beneficiary's claim to mean that his proposed position was temporary, when in fact the Beneficiary claimed that his position abroad was temporary. Accordingly, in concluding that the evidence that was "neither probative nor credible," the Director relied on a deficient analysis and incorrect interpretation of a statement that the Beneficiary provided in a previously filed NIV application.

Finally, the Director discussed the Beneficiary's foreign employment. In doing so, the Director reiterated a portion of the Beneficiary's foreign job description, which states that the Beneficiary directly and indirectly supervised professionals and managers, occupied a senior-level position within the organization, and reported directly to the chief executive officer. Although the job description also included a job duty breakdown with percentages of time, the Director did not acknowledge or discuss the breakdown. As such, it is unclear whether the Director considered all relevant evidence prior to concluding that the job description consisted of "broad responsibilities" and lacked "specific information to ascertain the duties and tasks performed." The Director also determined that the foreign entity's organizational chart depicted a "disproportionate manager-employee workforce," explaining that "[e]very individual depicted on the organizational chart was a manager." However, aside from the managerial position titles, the organizational chart in question also lists a number of non-managerial position titles, such as "accounting" and "marketing and public relations," which are depicted at the organizational tier directly subordinate to the Beneficiary, as well as the following other non-managerial position titles that are depicted at the two lower organizational tiers: Construction crew, a senior architect, a senior engineer, two electrician/plumbers, quality control, an accountant, a public relations officer, a quality control officer, and three quality control positions.

Based on the foregoing, it is not clear that the record was reviewed in its entirety and analyzed sufficiently. Notwithstanding the lack of proper analysis, however, the record lacks sufficient evidence to establish: (1) that the Beneficiary was employed abroad in a managerial or executive capacity; (2) that the Beneficiary would be employed in the United States in a managerial or executive capacity; (3) that the Petitioner has the ability to pay the Beneficiary's proffered wage; and (4) that the Petitioner and the foreign entity were doing business as of March 2020 when this petition was filed. Regarding the issue of the Petitioner doing business, we note that a recent search of the corporate database in Texas, where the Petitioner was incorporated, shows the Petitioner's status as "forfeited." *See* https://mycpa.cpa.state.tx.us/coa/coaSearchBtn. This new information leads us to question whether the Petitioner conducts business and is able to extend a bona fide job offer. In sum, the record as presently constituted does not establish that the Petitioner is eligible for the benefit sought.

Regardless, because the Director's decision did not adequately analyze the facts of the matter and clearly apply the regulatory standards, we will remand the matter for entry of a new decision. The Director should request any additional evidence warranted and allow the Petitioner to submit such evidence within a reasonable period of time.

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