U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35642819

Date: DEC. 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a fitness clothing retailer and wholesaler, seeks to permanently employ the Beneficiary as its president and CEO 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 a managerial or executive capacity.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that it will employ the Beneficiary in the United States in an executive capacity.[1] The matter is now before us on appeal. 8 C.F.R. § 103.3.

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). While we conduct de novo review on appeal, *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that a remand is warranted in this case because the Director's decision is insufficient for review. The decision contains several factual errors, lacks sufficient analysis and discussion of the evidence in the record, and reaches conclusory findings with respect to the Beneficiary's eligibility for the requested classification. Accordingly, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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 Workers, 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).

[1] The Petitioner does not claim that the Beneficiary has been or will be employed in a managerial capacity.

In denying the petition, the Director determined that the Petitioner did not demonstrate that the Beneficiary would be employed in the United States in an executive capacity as defined at section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). In reaching this conclusion, the Director provided some brief analysis of the submitted evidence. However, in several instances, the analysis references facts that do not appear in the record or pertain to the Petitioner's business operations. For example, the Director stated that because the Petitioner's business was maritime wholesale sales, it "would need a sufficiently large productive staff to limit the amount of time the [B]eneficiary personally devotes to productive and administrative duties." As emphasized by the Petitioner on appeal, it is not engaged in maritime wholesale sales but rather the wholesale and retail sale of fitness clothing. The Petitioner asserts that the Director's erroneous reference to another form of economic activity, and the subjective determination that a maritime wholesale sales company would require more employees than currently employed by the Petitioner to relieve the Beneficiary from performing non-qualifying tasks, constituted material and factual errors.

The Director further stated that "after review of the employment contracts submitted for each employee, each employee appears to have a manager title, without actually managing over any employees. Instead, all duties provided for each employee, including the [B]eneficiary, mostly appear operational." On appeal, the Petitioner points out that it did not submit employment contracts for any of its employees either initially or in response to the Director's request for evidence (RFE), and asserts that this reference suggests that the Director was reviewing evidence from an unrelated petition in reaching this conclusion. The Petitioner further contends that despite submitting an organizational chart and position descriptions for the Beneficiary's subordinates, such documentation was not fully considered by the Director.

Finally, the Petitioner submits a copy of the initial denial decision it received by mail, which includes two pages of analysis that references individuals and subject matter not related to the instant petition. The Petitioner notes that upon contacting U.S. Citizenship and Immigration Services (USCIS) for a corrected decision, it received an updated decision that omitted the prior unrelated references but still contained factual errors as noted above. It further notes that despite submitting an abundance of evidence both initially and in response to the RFE, the Director's decision made little reference to such evidence.

Overall, the errors noted, particularly the reference to evidence that was submitted with an unrelated petition, and the lack of specific references to the evidence in the record, make it unclear whether the Director fully analyzed the evidence submitted by the Petitioner and based the decision solely on that evidence. An officer must fully explain the reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(i). This explanation should be sufficient to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g., 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). Here, the Director's decision did not sufficiently explain the reasons for denial.

Therefore, we will withdraw the Director's decision. On remand, the Director should review the entire record, including the Petitioner's appeal, in considering whether the Petitioner has established that the Beneficiary will be employed in a primarily executive capacity. The Director may request any

additional evidence considered pertinent to the determination prior to issuing a new decision. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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