U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34815972

Date: NOV. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is an IT consulting and software services company. It seeks to permanently employ the Beneficiary as a group project manager 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 Petitioner did not establish that the Beneficiary was employed abroad and would be employed in the United States in a managerial capacity.[1] The matter is now before us on appeal pursuant to 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). 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 analysis below.

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

[1] The Petitioner does not claim that the Beneficiary's employment abroad or in the United States was or would be in an executive capacity.

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).

First, in discussing the Beneficiary's proposed position under the section heading "Qualifying Managerial Capacity – United States," the Director determined that the Petitioner did not provide "sufficient documentation about all the personnel whom the [B]eneficiary will manage." The Director also noted what was perceived as an inconsistency concerning the number of subordinates the Beneficiary would be expected to manage. The Director found that the Petitioner did not consistently claim the same number of projected subordinates in the proposed U.S. position. We disagree. As pointed out on appeal, documentation provided both initially and in response to a request for evidence (RFE), including an organizational chart that depicts the U.S. staffing hierarchy with respect to the Beneficiary's proposed position, shows that the Petitioner has consistently claimed the Beneficiary would oversee 18 subordinates. The Petitioner further states, and the record confirms, that job descriptions for all subordinate positions were provided in response to the RFE. These errors indicate that the Director did not properly and fully review the evidence.

The Director also provided a confusing observation stating in part the following: "Despite the beneficiary having a managerial job title, without detailed documentation regarding the subordinate positions." This statement is incomplete and lacks any analysis of the evidence. As stated above, it also does not accurately reflect the evidence that was actually submitted.

Ultimately, the Director concluded that the evidence does not show "that the petitioning entity employed the [B]eneficiary in a qualifying capacity as a manager." We note the Director's use of the past tense – "employed." It is unclear whether the Director used this verb tense to indicate erroneously the expectation that the Petitioner must show that it would not only employ the Beneficiary in a managerial capacity under an approved petition, but also that the position the Beneficiary has held in the United States prior to filing this petition must also fit the statutory definition. However, the regulation at 8 C.F.R. § 204.5(j)(5), which outlines the details of the job offer requirement, specifically mentions employment with the "prospective employer" and states that a petitioner must provide a statement "which indicates that the [beneficiary] *is to be employed* in the United States in a managerial or executive capacity." (Emphasis added). Accordingly, there is no evidentiary burden on the Petitioner within the context of this petition[2] to establish that it has employed the Beneficiary in a managerial capacity, only that it will do so at the time of adjustment or consular processing should this petition get approved. The Director intended to indicate that the Petitioner's evidentiary burden

[2] USCIS records indicate that the Petitioner has filed several Forms I-129, Petition for a Nonimmigrant Worker, on the Beneficiary's behalf. While there may be some degree of overlap regarding the eligibility criteria for the current and previously filed employment-based petitions, we note that each petition filing is a separate proceeding with a separate record and a separate burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii).

in this matter includes a showing that its employment of the Beneficiary in the United States in the period leading up to this petition's filing was in a managerial capacity, imposing this additional evidentiary burden would be incorrect.

Further, in discussing the Beneficiary's employment abroad, the Director made the incorrect determination that the Petitioner did not submit job duty descriptions for the Beneficiary's subordinates. In fact, the Petitioner provided a listing of the Beneficiary's subordinates' position titles and job descriptions in response to the RFE, much like it did with respect to the Beneficiary's proposed U.S. position. It appears, however, that the Director did not accurately and properly review the record prior to reaching an adverse conclusion concerning the Beneficiary's foreign entity employment in a managerial capacity. The Director also determined that the Petitioner "failed to demonstrate that the [B]eneficiary supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function." Given that the Beneficiary is not currently employed abroad, but rather has been working in the United States since 2015, the Director's use of the present tense – "supervises and controls" and "manages" – under the subject heading "Qualifying Managerial Capacity – Overseas" is confusing and leads us to question whether the Director's determination in fact pertains to the Beneficiary's prior employment abroad.

Accordingly, given the errors outlined above, it does not appear that the Director fully considered the entirety of the record prior to making adverse conclusions about the Beneficiary's foreign and proposed positions in a managerial capacity.

Notwithstanding the deficient analysis, the record is currently insufficient to establish that the Beneficiary was employed abroad and would be employed in the United States in a managerial capacity, as claimed.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

(i) manages the organization, or a department, subdivision, function, or component of the organization;
(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

The Petitioner claims that the Beneficiary has and would continue to assume the role of a personnel manager who managed and would manage a component of the organization. The Petitioner states that the Beneficiary's foreign position as project manager of [redacted] a client of the foreign organization, and his proposed position as group project manager of [redacted] the Petitioner's client in the United States, satisfy the first prong of the statutory definition for managerial capacity based on the Beneficiary's respective project manager roles with respect to specific clients of the organization. We disagree.

In a supporting cover letter, the Petitioner stated that its organization "has ongoing contracts with more than 1872 major companies for software development" and it provided organizational charts depicting the Beneficiary's respective positions within each entity. One of two foreign organizational charts depicts the Beneficiary as "Project Manager, [redacted] overseeing a nine-person staff comprised of five technology analysts, three technology leads, and one senior systems engineer. Despite indicating that the Beneficiary's position was supervisory with respect to these IT personnel, the chart pertained exclusively to an unidentified cross section of the foreign organization and included no information clarifying the placement of this cross section within the broader scope of the organization. As such, we are unable to assess the Beneficiary's organizational placement or that of [redacted] the client he managed, within the overall scope of the organization.

The Petitioner provided a separate organizational chart depicting the foreign entity's reporting structure with respect to the Beneficiary. This chart shows the Beneficiary at the bottom of a hierarchy in which he was subordinate to seven managerial tiers, starting with "Senior Project Manager, [redacted] as the Beneficiary's direct superior, followed by these six successive layers of management: "Delivery Manager, [redacted] "AVP Delivery Partner, [redacted] "VP Delivery Head, [redacted] "EVP–Service Offer Head, [redacted] "EVP–Co-Head of Delivery, [redacted]; and "DIR, Chief Executive Officer and Managing Director."

The Petitioner provided two comparable organizational charts elaborating on the Beneficiary's proposed position in the United States. One chart depicts the Beneficiary's proposed position with respect to an 18-person IT staff, while another chart depicts the Beneficiary at the bottom of a hierarchy in which he is once again shown as occupying a position that is subordinate to seven managerial tiers, starting with "Program Manager, [redacted] as his direct superior, followed by these six successive layers of management: "Delivery Manager, [redacted]; "AVP Delivery Partner, [redacted] "VP Delivery Head, [redacted]; "EVP–Service Offer Head, [redacted]; "EVP–Co-Head of Delivery, [redacted]; and "DIR, Chief Executive Officer and Managing Director."

The Petitioner did not provide definitions for the acronyms [redacted] that are referenced in charts pertaining to both entities. As such, we cannot gauge the significance of these acronyms with respect to either organization. Regardless, to establish that the Beneficiary has been and would be employed in a managerial capacity, the Petitioner must establish that the Beneficiary's respective positions meet all elements of the statutory definition in the course of performing primarily managerial duties. Here, the record indicates that the Beneficiary has and would exercise discretion over the day-to-day operations of projects with respect [redacted] which are the clients assigned to him in his positions abroad and in the United States. However, the Petitioner has not established that these clients represent a component of the organization and that managing projects related to these clients demonstrates that the Beneficiary managed and would manage a

department, subdivision, function, or component of the organization, as required by section 101(a)(44)(A)(i) of the Act.

For the reasons discussed above, the record as presently constituted does not show that the Beneficiary's positions abroad and in the United States satisfy all components of the term "managerial capacity" as defined in the statute governing this classification.

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.