U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33728328

Date: SEPT. 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, which describes itself as a wholesaler of wire and cable products and a "provide[r of] solutions for the energy and telecommunications industry," seeks to permanently employ the Beneficiary as its chief financial officer 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 approved the petition, but then revoked that approval, concluding that the petitioner had willfully misrepresented material facts. The matter is now before us on appeal under 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 will 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. ANALYSIS

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Section 205 of the Act, 8 U.S.C. § 1155. By regulation this revocation authority is delegated to any U.S. Citizenship and Immigration Services (USCIS) officer who is authorized to approve an immigrant visa petition. *See* 8 C.F.R. § 205.2(a). USCIS must give the petitioner notice of its intent to revoke the prior approval of the petition and the opportunity to submit evidence in response, before proceeding with written notice of revocation. *See* 8 C.F.R. § 205.2(b) and (c). The Board of Immigration Appeals has discussed revocations on notice as follows:

> [A] notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)). Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that "the facts stated in the petition are true." In this instance, the Director concluded that the Petitioner's material claims about the Beneficiary's employment experience were not true, and that, therefore, the petition should not have been approved.

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. at 590. "[T]he approval of a visa petition vests no rights in the beneficiary of the petition. Approval of a visa petition is but a preliminary step in the visa or adjustment of status application process, and the beneficiary is not, by mere approval of the petition, entitled to an immigrant visa or to adjustment of status." *Id.* at 589.

The Petitioner had previously filed a Form I-129 nonimmigrant petition, with receipt number [redacted] seeking to classify the Beneficiary as an L-1A intracompany transferee. The approval of that petition, filed in October 2017, granted the Beneficiary L-1A status from October 2017 to October 2020.

The Petitioner then filed the Form I-140 immigrant petition in December 2019, while the Beneficiary was in L-1A nonimmigrant status. On Form I-140, asked to "provide the address where the person will work," the Petitioner specified its address in [redacted] Texas. In a separate letter, the Petitioner stated that the Beneficiary "was the Administrative and Accounting Director of the [Petitioner's affiliate in Venezuela] from 2007 to 2018, at which time she was transferred to work at the U.S. company."

The Petitioner also stated that the Beneficiary "will be directing two (2) coordinators in the U.S.," specifically a commercial coordinator and a financial coordinator, "and the Financial teams of

[affiliates in four other countries], directly supervising the administrative and accounting coordinators of each location and indirectly supervising the work [of] eleven (11) employees."

The Petitioner submitted a copy of the Beneficiary's résumé, indicating that she worked as a dentist from 2002 to 2007, and then at the Petitioner's foreign affiliate from 2007 to 2018, first as a marketing coordinator, then as a sales coordinator, and finally, beginning in 2012, as administrative and accounting director. The Petitioner also submitted copies of pay receipts from the foreign affiliate, showing the Beneficiary's hiring date in 2007.

The Director of the Texas Service Center approved the immigrant petition in May 2020. Following the approval, the Director learned that the Beneficiary worked from her home in [ ] Florida, rather than at the company's offices in [ ] Texas. A USCIS officer interviewed the Beneficiary in [ ] in August 2020 and determined that the information she provided was not consistent with the claims in the approved immigrant and nonimmigrant petitions.[1]

In March 2023, the Director issued a notice of intent to revoke (NOIR) for the immigrant petition, citing "discrepancies regarding the beneficiary's job duties" and stating: "the beneficiary was unable to name the people she supervised, nor was she able to describe her job duties in detail. The beneficiary didn't seem to have any knowledge of the company's finances. Therefore, the beneficiary could not be performing the role of Chief Financial Officer."

The Director also noted that the Beneficiary worked in Florida rather than Texas as stated on the petition, and had been employed as a dentist before she began working for the Petitioner. The Director concluded that the Petitioner had misrepresented the Beneficiary's experience, and that "it appears that the beneficiary never worked for [the Petitioner's affiliate] in Venezuela." The Director gave the Petitioner the opportunity to submit evidence to show that the "[m]isrepresentation of the beneficiary's job experience and title" was not willful.

In response, the Petitioner submitted affidavits from the Petitioner's chief executive officer (CEO) and financial director (FD), who attested to the Beneficiary's current duties as CFO and her past employment with the Petitioner's foreign affiliate. Also, the Petitioner submitted a copy of an affidavit than the Beneficiary had executed in 2021, as part of a response to the earlier NOIR relating to the Form I-129 nonimmigrant petition. In her affidavit, the Beneficiary repeated what she asserted were some of the questions and answers from the August 2020 interview. Consistent with the information on her résumé, the Beneficiary indicated that she practiced dentistry until 2007, and then began working for the Petitioner's foreign affiliate.

The Petitioner also submitted printouts of email conversations between the Beneficiary and various personnel at the Petitioner's foreign affiliates, dated between August 2021 and January 2023. Several messages deal with issues such as payments from clients, salary adjustments, and financial statements.

[1] The Director issued a notice of intent to revoke the approval of the nonimmigrant petition in July 2021. The Petitioner submitted a timely response, part of which is reproduced in the record before us. USCIS records do not indicate that the Director revoked the approval of that petition.

The Director revoked the approval of the Form I-140 immigrant petition in April 2024, acknowledging the Petitioner's response to the NOIR but noting that most of the documentation submitted with that response dates from after the issuance of the NOIR. The Director concluded that the Petitioner submitted "no substantial documentation that [substantiated the Beneficiary's] role as a Chief Financial Officer."

The revocation notice includes the following passages:

> By claiming the beneficiary had job experience as a Chief Financial Officer, the petitioner willfully made a false representation, and it is material to whether the beneficiary is eligible for the requested benefit.
>
> USCIS [i]ntends to enter a finding of willful misrepresentation of a material fact against the petitioner. . . .
>
> Therefore, this finding of willful misrepresentation of a material fact shall be considered in any future proceeding where admissibility is an issue.
>
> In conclusion, the petitioner did not establish that it has satisfied each adjudicative element to establish eligibility for the requested benefit. Therefore, the following issues independently form the basis for this revocation:
>
> - Evidence to establish that the misrepresentation of a material fact was not at will

The bulleted final phrase is not a basis for revocation. Rather, it is language directly quoted from the NOIR, which instructed the Petitioner to submit "[e]vidence to establish that the misrepresentation of a material fact was not at will."

On appeal, the Petitioner cites *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984), in which the Ninth Circuit held that revocation of an immigrant petition must rest on "substantial evidence." *Id.* at 1309. The Petitioner asserts that the "weak and generic statements" in the NOIR and notice of revocation "are not sufficient" to meet that burden.

We agree with the Petitioner that the Director did not adequately set forth how the record supports revocation. The NOIR does not include enough information about the 2020 interview to support the conclusions that the Beneficiary "was unable to name the people she supervised" and "to describe her job duties in detail," and "didn't seem to have any knowledge of the company's finances." While the NOIR cited "discrepancies regarding the beneficiary's job duties," the NOIR did not specify what those discrepancies were. The vague wording limited the Petitioner's ability to meaningfully respond to the NOIR.

Of particular significance, the information about the Beneficiary's prior career as a dentist does not appear to warrant a finding that the Petitioner misrepresented her employment history. As the Petitioner observes on appeal, the Petitioner had never concealed the Beneficiary's prior employment as a dentist, but had consistently indicated that the Beneficiary practiced dentistry until 2007 and then

began working for the Petitioner's affiliate in Venezuela. The Director cited no evidence that the Beneficiary continued practicing dentistry, or described herself as a dentist to immigration authorities or other government officials, after 2007.

The Beneficiary's residence in [ ] after the Petitioner specifically stated that the Beneficiary's workplace would be in [ ] might raise questions, but does not appear to rise to the level of discrediting the Petitioner's claim to employ the Beneficiary. The Director did not cite any evidence that the Beneficiary is otherwise employed in a manner that would conflict with her claimed employment with the Petitioner, and the nature of the Beneficiary's claimed duties does not appear to rule out remote work. The Beneficiary's claimed duties include authority over employees in several different countries.

The NOIR and notice of revocation lacked detail and corroboration, and the record as currently constituted does not appear to be sufficient to warrant the serious step of a finding of willful misrepresentation of a material fact. We will therefore remand the matter to the Director for further consideration and action. If the Director believes that there is stronger evidence of misrepresentation, then the Director must advise the Petitioner of that information in enough detail to allow the Petitioner to attempt a rebuttal.

When reviewing the record on remand, the Director must also review materials submitted on appeal, including email conversations involving the Beneficiary that date from before the 2021 issuance of the first NOIR. These materials address the Director's observation that the evidence submitted in response to the NOIR is from after 2021.

At the same time, the Director should consider the duties the Beneficiary described during her 2020 interview, and determine whether those duties rise to the level of a managerial or executive capacity as defined at 8 C.F.R. § 204.5(j)(2).

Another issue that merits attention concerns an apparent discrepancy in the Petitioner's financial documentation. A quarterly tax return indicates that the Petitioner paid $67,755 in wages and salaries to four employees in the last three months of 2018. On its 2018 income tax return, however, the Petitioner reported paying only $36,808 in salaries for the entire year, not counting officer compensation paid to the company's vice president. This apparent discrepancy raises questions about the consistency and accuracy of the Petitioner's evidence. The Petitioner should have an opportunity to address this on remand.

III. CONCLUSION

We will withdraw the Director's decision because the NOIR and notice of revocation were impermissibly vague, and because the grounds cited in support of the finding of willful misrepresentation of material facts do not appear to warrant such a finding at present. We will remand the matter for a new decision for further consideration of (1) the finding of willful misrepresentation, and (2) issues of potential concern regarding the merits of the petition.

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