U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33358590

Date: SEP. 10, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a provider of hardware and software services, seeks to permanently employ the Beneficiary as its director of client services 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 Nebraska Service Center denied the petition, concluding the record did not establish that the Petitioner would employ the Beneficiary in a managerial capacity in the United States. 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 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 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 (or for at least one year in the three years preceding their entry to the United States as a nonimmigrant); the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer; and 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 sole issue addressed by the Director is whether the Petitioner established it would employ the Beneficiary in the United States in a managerial capacity.[1]

"Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function or component of the organization; 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; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A).

Here, the Petitioner consistently claimed that it will employ the Beneficiary as a function manager. If a petitioner claims that a beneficiary will manage an essential function, as opposed to primarily managing subordinate personnel, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that "(1) the function is a clearly defined activity; (2) the function is 'essential,' i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations." *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

In evaluating whether a beneficiary will be employed a managerial capacity, USCIS reviews the totality of the evidence, including the required description of their job duties, the company's organizational structure, the duties of a beneficiary's subordinate employees (if any), the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other evidence contributing to understanding a beneficiary's actual duties and role in a business. In the case of a function manager, other factors considered may include a beneficiary's position within the organizational hierarchy, the depth of a petitioner's organizational structure, the scope of a beneficiary's authority and its impact on a petitioner's operations, the indirect supervision of employees within the scope of the function managed, and the value of the budgets, products, or services that a beneficiary manages. *See Matter of Z-A-*, Inc., Adopted Decision 2016-02 (AAO Apr. 14, 2016).

When staffing levels are considered in determining whether an individual will act as a function manager, USCIS must also consider relevant evidence in the record concerning the reasonable needs of the organization as a whole, including any related entities within the broader organization. *See* 101(a)(44)(C) of the Act; *see also Matter of Z-A-, Inc.*, Adopted Decision 2016-02.

[1] The Petitioner does not claim that it would employ the Beneficiary in an executive capacity as that term is defined at section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B).

A. Withdrawal of Director's Decision

On appeal, the Petitioner contends that the Director's decision does not reflect consideration of the relevant factors outlined in *Matter of G-* and *Matter of Z-A-* and instead was based almost exclusively on the fact that the Beneficiary was the Petitioner's sole employee at the time of filing.

The Petitioner's assertions are persuasive. The record reflects that the Director did not sufficiently address the Petitioner's evidence and explain the reasons for denial of the petition based on the relevant adjudicative factors set forth in the statute and the AAO's adopted decisions addressing adjudication of petitions involving function managers under section 101(a)(44)(A) of the Act.

While the Director correctly noted the record indicates the Beneficiary was the Petitioner's sole employee at the time of filing, the decision does not include an analysis of the Beneficiary's submitted job description, the Petitioner's descriptions of its business and the client services function, the group's global organizational chart, job descriptions and proof of employment for other employees within the multinational organization who work offshore on U.S. contracts and projects, and internal email communications intended to illustrate how the Beneficiary relies on overseas staff in carrying out her responsibilities in the United States. *See generally* 2 *USCIS Policy Manual* L.8(C), https://www.uscis.gov/policy-manual (identifying the types of evidence USCIS should consider when a petitioner claims that foreign staff will support a managerial or executive position in the United States).

Although the record may not ultimately support a conclusion that the Beneficiary is eligible for classification as a multinational manager, such determination cannot be based entirely on the Petitioner's U.S. staffing levels, particularly given the Petitioner's consistent claim that other staff within the multinational organization directly support its day-to-day functions.

An officer must fully explain the specific reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(1)(i). Absent a specific explanation for denial and adequate notice of why the submitted evidence was insufficient to establish eligibility, a petitioner does not have a fair opportunity to contest a denial through the motion or appellate process. *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 include a discussion of most of the evidence of record and therefore did not explain why that evidence was insufficient to meet the Petitioner's burden to demonstrate that the Beneficiary would be employed in a managerial capacity.

Accordingly, we will withdraw the Director's decision and remand the matter for further consideration and entry of a new decision. On remand, the Director is instructed to re-evaluate the evidence relating to the Beneficiary's U.S. employment, as well as the Petitioner's claims on appeal.

While the Petitioner has consistently indicated that the Beneficiary will continue to rely on the contributions of overseas-based staff who assist with the day-to-day duties of the U.S. company, it has also consistently stated that it would be recruiting and hiring additional local U.S. staff on a predetermined timeline. For example, at the time of filing in March 2022, the Petitioner indicated it was "committed to hire 5 local talents" in 2022. In response to the Director's request for evidence,

the Petitioner indicated it would hire eight local staff in "year 3" (including the five staff it originally intended to hire in 2022), and that it would be temporarily transferring three staff from overseas to the United States. The Petitioner also stated in its initial letter of support dated March 11, 2022, that it had recently hired a Vice President, Strategy and would be hiring a "U.S. Sales team" in 2022, but these positions do not appear on any of the submitted organizational charts. Despite its stated commitment to grow the U.S. staff, the Petitioner did not provide evidence that it had hired any additional staff as of the date it filed the appeal, nor is there evidence that the foreign staff has grown to meet the Petitioner's increasing personnel needs. As the matter is being remanded to the Director, they may request that the Petitioner address and clarify its prior claims regarding its projected hiring in the United States.

B. Employment Abroad in a Managerial or Executive Capacity

Although not addressed by the Director, the record as presently constituted does not contain sufficient evidence to demonstrate that the Beneficiary was employed abroad in a managerial or executive capacity for at least one year in the relevant three-year period.

The record reflects that, as of the date of filing, the Beneficiary was in the United States and had been authorized by USCIS to work for the Petitioner in L-1A nonimmigrant status since November 30, 2020. If a beneficiary is already in the United States working for the petitioner or a related entity, the record must demonstrate that the beneficiary was employed by a qualifying entity abroad in a managerial or executive capacity for at least one year in the three years preceding their entry as a nonimmigrant. *See* 8 C.F.R. § 204.5(j)(3)(i)(B). The Petitioner states that the Beneficiary served as director of client services for its foreign affiliate from the company's establishment in August 2016 until December 2018, when she temporarily relocated to the United States in H-4 nonimmigrant status. She was granted a change of status from H-4 to L-1A in November 2020, and the record reflects she was not employed by the Petitioner or foreign entity while in H-4 status.

The Petitioner indicated in its initial support letter that the Beneficiary's main responsibilities during her tenure with the foreign entity included assessing potential customer acquisitions, developing new business, participating in industry-related events, and maintaining strong relationships with current and prospective clients. In a request for evidence, the Director advised the Petitioner that this description was too "broad and vague" and did not clarify the nature of the Beneficiary's day-to-day tasks. The Director asked that the Petitioner submit a detailed explanation of the specific tasks the Beneficiary performed and the amount of time she allocated to each duty; a list of employees and/or contractors in the Beneficiary's immediate division, department or team, including a summary of their job duties, educational level and salary; and copies of payroll summaries for the Beneficiary and her subordinates.

Although the Petitioner responded to the RFE, its response did not provide the information requested by the Director with respect to the Beneficiary's foreign employment. The Petitioner reiterated that the Beneficiary worked for its affiliate in Singapore from August 2016 until December 2018 and stated that she "managed our client services function" and performed job duties and functions "aligned with" the statutory definition of managerial capacity. The Petitioner did not elaborate on the initial position description, nor did it identify and document the foreign affiliates' staffing and organizational structure during the Beneficiary's tenure with that company.

The record reflects that the Petitioner's affiliate was established in Singapore in August 2016 but does not document when the company hired staff or when it commenced operations. Although the Petitioner has consistently indicated that the four affiliated companies in its multinational group collaborate to carry out the group's activities, the Indian affiliate was not incorporated until November 2017, while the U.S. and Malaysian companies were both established in 2018, with the U.S. company commencing operations in 2020. Therefore, the Petitioner cannot rely on the submitted global organizational charts from 2022 and 2023 and expect USCIS to assume that the organization had the same staffing and structure in place when the Beneficiary worked for the Singapore entity between 2016 and 2018, at a much earlier stage of development.

On remand, the Director should review the previously submitted evidence relating to the Beneficiary's foreign employment between 2016 and 2018 and may request additional evidence pertaining to her job duties, as well as the operating status of the Singapore entity and its affiliates during this time. The Petitioner should also be instructed to document the group's organizational structure and staffing during this period, identify the employees who reported directly or indirectly to the Beneficiary, and provide their job duties and dates of employment.

If the Director ultimately denies the petition, the new decision must explain the specific reasons for denial in accordance with 8 C.F.R. § 103.3(a)(1).

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