U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9780707

Date: SEPT. 24, 2020

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, an "e-business" that provides on-site software and IT services to oil and gas companies, seeks to permanently employ the Beneficiary as its president 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, as required, that the Beneficiary was employed abroad in a managerial or executive capacity. The Director also entered a separate finding of fraud or willful misrepresentation of a material fact.

The matter is now before us on appeal. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we conclude that the decision lacks an analysis of the Beneficiary's foreign employment claim, thereby denying the Petitioner a meaningful opportunity to challenge the Director's finding of ineligibility. We also conclude that the Director did not provide an adequate analysis to support the finding of fraud or willful misrepresentation of a material fact. Therefore, we will withdraw the Director's decision and remand the matter for further proceedings.

I. LEGAL FRAMEWORK

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

As noted earlier, we conclude that the Director's decision did not 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). As the Petitioner correctly points out on appeal, despite issuing a notice titled "Decision," the Director confusingly allowed the Petitioner 33 days to submit additional evidence regarding the Beneficiary's employment abroad and used phrases like "USCIS intends to deny" and "this Notice of Intent to Deny" in reference to the notice. Therefore, it was unclear whether the effect of the "Decision" was to deny the petition or to inform the Petitioner that a denial would be forthcoming at a future time, pending the Petitioner's submission of a response to the notice. The Director also reiterated incorrect information about the Beneficiary's proposed job location, even though the Petitioner pointed to the error and provided the correct information in response to previously issued notice of intent to deny (NOID).

Next, the Director laid out the elements of material misrepresentation and stated that "USCIS intends to enter a finding of willful misrepresentation of a material fact against the beneficiary." However, the Director also determined that the Beneficiary "misrepresented material facts committed fraud," thereby conflating fraud and willful misrepresentation, despite acknowledging that a finding of willful misrepresentation is not synonymous with a finding of fraud.[1] The Director did not explain or provide an analysis for finding that the Beneficiary "misrepresented material facts committed fraud."

Further, the Director noted that the Petitioner signed the petition "under penalty of perjury" and acknowledged the Petitioner's "legal responsibility for the truth an accuracy" of the information contained in that petition. However, the Director did not explain the relevance of this information to the matter at hand, thereby leading us to question whether the Director intended to enter a separate finding of fraud or willful misrepresentation against the Petitioner. In addition, the record shows that the Director previously issued a NOID that raised concerns about the validity of the Beneficiary's foreign employment claim because of inconsistencies between that claim and information the Beneficiary provided in a 2012 nonimmigrant visa application regarding her education and employment history. Although the Petitioner offered additional evidence in response to that NOID, the Director did not discuss that evidence in the denial or explain why such evidence did not overcome the noted inconsistencies.

[1] The Director stated that for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, he or she must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); Matter *of Kai Hing Hui*, 15 I&N Dec. at 288. The Director further stated that a finding of fraud requires a determination that the alien made a false representation of a material fact with knowledge of its falsity and with the intent to deceive an immigration officer. Furthermore, the false representation must have been believed and acted upon by the officer. *See Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956).

In light of the deficiencies described above, we hereby withdraw the Director's decision and remand the matter so that the Director can properly consider the evidence and evaluate the validity of the Petitioner's claims.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.