U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30927561

Date: APR. 25, 2024

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner, a prospective provider of information technology consulting services, seeks to employ the Beneficiary as its president. The company requests his classification in L-1A nonimmigrant visa status as an intracompany transferee who would temporarily work in the United States in a "managerial" or "executive capacity." *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition. The Director concluded that, contrary to the Act and regulations, the Petitioner did not demonstrate that, within the three years before the petition's filing, a "qualifying organization" employed the Beneficiary abroad for at least one continuous year. The Director also found insufficient evidence of the Beneficiary's foreign work in a capacity that was managerial, executive, or involved "specialized knowledge." On appeal, the Petitioner states that it did not receive notice of the denial grounds and requests an opportunity to review them and respond.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the record casts significant doubt on the company's receipt of the petition denial decision. We will therefore withdraw the Director's decision and remand the matter to ensure the decision's receipt.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) must explain "the specific reasons" for a petition's denial "in writing." 8 C.F.R. § 103.3(a)(1)(i). The Agency may send a written denial notice "by ordinary mail addressed to the affected party . . . at [their] last known address." 8 C.F.R. § 103.8(a)(1)(i).

If a petition's decision is properly addressed to the petitioner and sent by regular mail according to normal office procedures, we presume the decision's delivery to the address. *See Mauricio-Benitez v. Sessions*, 908 F.3d 144, 149 (5th Cir. 2018); *Matter of M-R-A-*, 24 I&N Dec. 665, 673 (BIA 2008).

This presumption, however, is weaker than the "strong presumption" that applies to documents sent by certified mail. *Id.*

"[A]ll relevant evidence submitted to overcome the weaker presumption of delivery must be considered." *Matter of M-R-A-*, 24 I&N Dec. at 674. In determining whether a petitioner has rebutted the weaker presumption, an adjudicator may consider a variety of factors including, but not limited to: 1) the petitioner's affidavit; 2) affidavits from people who are knowledgeable about whether notice was received; 3) the petitioner's actions upon learning of the denial, and whether they exercised due diligence in seeking to redress the situation; and 4) any other circumstances or evidence indicating the decision's possible nonreceipt. *Mauricio-Benitez*, 908 F.3d at 149-50; *Matter of M-R-A-*, 24 I&N Dec. at 674.

II. ANALYSIS

The record shows that the Petitioner filed this L-1A nonimmigrant petition for the Beneficiary in May 2023. The company requested a "change of status" from his B-1 nonimmigrant business visitor status. *See* section 248 of the Act, 8 U.S.C. § 1258 (authorizing eligible noncitizens to change nonimmigrant visa status while in the United States); *see generally* 2 *USCIS Policy Manual* A.(4)(A) (discussing petitions to change nonimmigrant visa status to L-1), www.uscis.gov/policy-manual.

In September 2023, the Director sent separate decisions denying the requested L-1A classification and change of status to the Petitioner. The Director mailed the decisions by ordinary mail to the company address provided on the Form I-129, Petition for a Nonimmigrant Worker. The Director properly addressed the denial decisions to the petitioner and sent them by regular mail according to normal office procedures. We therefore would presume that the company received the decisions. *See Mauricio-Benitez,* 908 F.3d. at 144; *Matter of M-R-A-*, at 673.

The Petitioner acknowledges that it received, and provides a copy of, the decision denying the requested change of nonimmigrant visa status for the Beneficiary. But the company states that it did not receive the decision detailing the grounds for the L-1A classification's denial. *See Maknojiya v. Gonzales*, 432 F.3d 588, 590 (5th Cir. 2005) ("[I]n the case of failed mail delivery when regular mail is used, the 'only proof' is the [petitioner]'s statement that [it] did not receive notice.") (citation omitted). The Petitioner indicated that it requested the L-1A classification decision from USCIS. But the record does not show whether the company received the decision.

The record shows that the Director mailed both the L-1A classification and change-of-status decisions to the Petitioner on the same day, to the same address the company listed on the Form I-129. The record also shows the address's checkered history of receiving USCIS notices. The U.S. Postal Service twice returned the petition's receipt notice to the Director – in May 2023 and August 2023 – as "undeliverable as addressed." Yet, at the same address, the company received the Director's June 2023 request for additional evidence and the September 2023 change-of-status decision. USCIS records also indicate that, after mailing the L-1A classification decision in September 2023, the Director again received returned mail in October 2023. The record lacks a copy of the most recent returned mail. But, because USCIS received this mail later than the receipt notice returns and after the issuance of the L-1A classification decision, the most recent returned mail presumably is the classification decision that the Petitioner claims it did not receive.

There is no evidence that USCIS mailed any of the notices in this matter to an improper address. But, based on the Petitioner's statement, the most recent returned mail, and the address's prior history of non-receipt, the record overcomes the presumption of delivery and demonstrates that the Petitioner likely did not receive the petition's L-1A classification decision. We will therefore withdraw the Director's classification decision and remand the matter.

On remand, the Director should certify the classification decision to us, separately notifying the Petitioner of the decision and certification. *See* 8 C.F.R. § 103.4(a)(1), (2). The company may submit any response to the classification decision within 33 days of receiving certification notification from the Director. *See* 8 C.F.R. § 103.4(a)(2); *see also* 8 C.F.R. § 103.8(b)(1) (adding three days of response time to a mailed decision).[1]

ORDER: The Director's decision is withdrawn. Consistent with the foregoing analysis, the matter is remanded for the decision's certification to us.

[1] If the Petitioner has another address at which the company is more likely to receive mail, it should notify USCIS. *See* USCIS, "How to Change Your Address," www.uscis.gov/addresschange.