U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-P-A-, INC.

DATE: APR. 5, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a service station and retail store, sought to employ the Beneficiary as an auto service station manager. It requested classification of the Beneficiary as a skilled worker or professional under section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). The petition was approved in the professional category that allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status. *See* section 203(b)(3)(A)(ii) of the Act.

The Director of the Vermont Service Center initially approved the petition, but the Director of the Texas Service Center subsequently revoked the petition's approval with a finding of fraud. The Director cited numerous discrepancies regarding the Beneficiary's experience that were brought to light through an overseas investigation and concluded that the Beneficiary's experience letters are fraudulent.

On appeal, the Petitioner states that the Director did not have "good and sufficient cause" to revoke the approval of the petition.

Upon *de novo* review, we will remand the matter to the Director for further proceedings consistent with the following opinion.

I. LAW

A. The Employment-Based Immigrant Petition Process

Employment-based immigration generally follows a three-step process. First, an employer must obtain an approved labor certification from the U.S. Department of Labor (DOL).[1] *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. Section 212(a)(5)(A)(i)(I)-(II) of the

[1] The date the labor certification is filed, in cases such as this one, is called the "priority date."

Act. Second, the employer may file an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

B. Revocation of Approval

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department 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." A director's realization that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho,* 19 I&N Dec. 582, 590 (BIA 1988).

II. ANALYSIS

The Director revoked the petition's approval based on a finding that the evidence of the Beneficiary's experience was fraudulent. However, we need not reach the finding of fraud, as the record does not establish the Beneficiary's eligibility for the offered position in the first place. For example, it appears that the Beneficiary lacks the experience and education required by the terms of the labor certification. As such, we will remand the matter to the Director to consider the issues of eligibility that we discuss below.

A. Education and Experience Requirements of the Labor Certification

A beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977). In this case, the Form ETA 750, Application for Alien Employment Certification (labor certification) states the following requirements:

> EDUCATION
> College: 4 years.
> College Degree Required: BA or BS.
> Major Field of Study: Business Administration or related field.
> TRAINING: None Required.
> EXPERIENCE: Two (2) years in the job offered.
> OTHER SPECIAL REQUIREMENTS: 2 years minimum retail management experience preferred.

Thus, the job offers requires four years of college and a bachelor's degree in business administration or a related field. But the labor certification states that the Beneficiary only completed government high school and secondary school, and does not reflect that the Beneficiary attended college or a university and completed a bachelor's degree.

In addition, we note that the labor certification requires two years of experience in the job offered, i.e., as an auto service station manager. Yet no evidence exists that the Beneficiary has two years of experience as an auto station manager. Even assuming that the Beneficiary's claimed experience was not fraudulent, an issue that we do not address here, none of the claimed experience was as an auto service station manager, and therefore does not qualify the Beneficiary for the proffered position.

B. Ability to Pay the Proffered Wage

The Petitioner must demonstrate its ability to pay the proffered wage as of the priority date and continuing until the Beneficiary obtains lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2). The Petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142, 144 (Acting Reg'l Comm'r 1977).

Because of the length of time from the initial approval of the Form I-140 petition until the present, we will remand the matter to the Director to determine whether the Petitioner has the continuing ability to pay the Beneficiary's proffered wage. The Director may request any additional evidence considered pertinent, and the Petitioner may provide whatever additional evidence it wishes within a reasonable period of time that the Director specifies, regarding both its ability to pay and the nature of the Beneficiary's qualifications. Upon receipt of all the evidence, the Director will review the entire record and enter a new decision.

III. CONCLUSION

For the foregoing reasons, the matter will be remanded to the Director for consideration of whether the Beneficiary has the required two years of experience in the job offered and a four-year bachelor's degree. The Director may also address whether the Petitioner has the ongoing ability to pay the proffered wage.

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.

Cite as *Matter of B-P-A-, Inc.*, ID# 163581 (AAO Apr. 5, 2017)