U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-B- INC.

DATE: APR. 13, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a convenience store/gas station, seeks to employ the Beneficiary as an assistant manager. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires at least two years of training or experience.

The Director of Texas Service Center initially approved the petition, but subsequently revoked the approval with a finding of fraud or willful misrepresentation of a material fact. The Director found that the Beneficiary did not qualify for the job offered because she did not meet the minimum experience requirement of the labor certification. The Director also found that the Beneficiary misrepresented her employment experience and produced false and conflicting evidence in furtherance of that misrepresentation.

On appeal the Petitioner submits a brief and additional documentation and asserts that the Beneficiary meets the minimum experience requirement of the labor certification and did not commit fraud or willfully misrepresent any material fact.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

A. Employment-Based Immigration 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). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, 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. *See* section 212(a)(5)(A)(i)(I)-(II) of the 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

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 [Procedure for Granting Immigrant Status]." The regulation at 8 C.F.R. § 205.2(a) provides that "[a]ny Service [now USCIS] officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner . . . when the necessity for the revocation comes to the attention of [USCIS]." The realization by the Director that the petition was approved in error may be good and sufficient cause for revoking the approval. *See Matter of Ho,* 19 I&N Dec. 582, 590 (BIA 1988).

II. ANALYSIS

The Director revoked the petition's approval on two grounds: (1) the Beneficiary presented conflicting information about her employment history and the evidence did not establish that she had two years of managerial experience as of the petition's priority date as required for her to be eligible for classification as a skilled worker under section 203(b)(A)(i) of the Act and to qualify for the job offered under the terms of the labor certification; and (2) the Beneficiary and the Petitioner provided false evidence in support of the Beneficiary's claim of employment which constituted the willful misrepresentation of a material fact. During the pendency of the appeal we issued a request for evidence (RFE) notifying the petitioner that a USCIS investigation into the Beneficiary's claimed employment had raised additional questions regarding the credibility of the evidence submitted. As will be discussed below, considering the evidence submitted on appeal and in response to the RFE, we find that the Petitioner has not overcome the Director's findings in his decision to revoke the petition's approval.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) provides, in pertinent part, that "[i]f the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification. . . . The minimum requirements for this classification are at least two years of training or experience." Moreover, the qualified immigrant must have all of the education, training, and experience specified on the labor certification as of the petition's priority date, which in this case is April 27, 2001.[1] *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977).

In this case, the labor certification requires two years of managerial experience. In order to qualify for the positon offered, the Beneficiary claimed experience as a manager with a grocery store in

[1] The priority date of the petition is the date the underlying labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

India, from January 1998 to September 2000. The Petitioner submitted a letter from the purported owner of the grocery store which stated that the Beneficiary was employed by the in as a "start manager" from January 1, 1998, to September 30, 2000, and described the job duties.

In reviewing the evidence, we note that the Beneficiary, on a Form G-325A, Biographic Information, dated November 30, 2004, which was submitted with her initial Form I-485, Application for Adjustment of Status, filed in December 2004, entered "N/A" in response to the instruction to list her employer(s), if any, in the last five years. However, on a subsequent Form G-325A, dated January 2, 2007, which accompanied her second Form I-485 application filed in January 2007, the Beneficiary provided different information about her employment history, stating that she worked for the in India, from January 1998 to September 2000 (even though the Form G-325A only asked for employment in the last five years).

According to the Petitioner, the reason for this inconsistency is that the Beneficiary thought her employment history was unnecessary on the first Form G-325A since the form accompanied an application for adjustment of status as a derivative of her husband and she was not seeking employment authorization, whereas her second Form G-325A accompanied another application for adjustment of status that was based on her own employment-based immigrant petition which required two years of experience to be eligible for the requested visa classification. However, we note that the purpose of the form does not affect the information required on the form.

Moreover, on the November 2004 Form G-325A, the Beneficiary stated that she had resided in India, uninterruptedly from February 1994 to June 2004. On the January 2007 Form G-325A, the Beneficiary stated that she had resided in India, uninterruptedly from December 1984 to June 2004.[2] The Petitioner asserts that the Beneficiary maintained her family residence in for the entire 20-year period from 1984 until 2004, and that when she worked in from January 1998 to September 2000 she rented a room five minutes away from her job site – the The Petitioner states that this sort of arrangement is not unusual in India, where one family member may move away for a while to work at a job in another locale while the rest of the family stays put.

As noted by the Director in his decision, however, and are nearly 400 miles apart. That geographical distance presents the obvious question of how the Beneficiary could maintain her residence in a city that was so far away from her alleged place of work for nearly three years. The Petitioner claims that the Beneficiary traveled back and forth between and "often" to visit her family. In response to our RFE the Petitioner asserts that:

> While there might have been a few nights of the week that [the Beneficiary] used a room in India, to reduce commuting time to her job in (during 1998

[2] This date discrepancy is not explained by the Petitioner, but it appears from all the other evidence in the record that the Beneficiary claims to have resided in from 1984 (not 1994) to 2004.

> to 2000), that did not negate her principal residence in [redacted] with her family. . . . [S]he discharged her work as quickly as possible by working long days . . . . and then she would be back to her family residence in [redacted] for multiple day periods.

No explanation is provided, however, as to how the Beneficiary could commute over such a long distance as "often" as the Petitioner asserts she did, especially since the Petitioner also asserts that she worked for 40 hours per week in [redacted] In response to our RFE, the Petitioner submitted three affidavits and letters from individuals in India who assert that they remember the Beneficiary traveled regularly between her home in [redacted] and her work in [redacted] during the years 1998 to 2000. However, the same number of letters were submitted from the Beneficiary's neighbors in [redacted] describing the Beneficiary and her family's residence in [redacted] during the time period in question, without mention of her time away or frequent travels. As such, we do not find the letters sufficient to overcome the doubt raised by the evidence in the record. The Petitioner must resolve the discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

Furthermore, the results of an investigation by USCIS officials in India show that the store in [redacted] where the Beneficiary claims to have worked was owned by the Beneficiary's brother, and that the residential property where she claims to have rented a room while working in [redacted] was owned by her uncle. Given the Beneficiary's familial relationship with her claimed employer and purported landlord, the statements from these individuals do not constitute independent, objective evidence and are not sufficient to overcome the inconsistencies in the record.

Based on the foregoing, we conclude that the Beneficiary's claim to have resided in [redacted] and commuted on a regular basis to a worksite nearly 400 miles away in [redacted] for a period of two years and nine months from January 1998 through September 2000 is not credible. As such, the Petitioner has not established that the Beneficiary is eligible for the benefit sought.

III. CONCLUSION

The Petitioner has not overcome the Director's findings in the revocation. Accordingly, we will affirm the Director's decision.

ORDER: The appeal is dismissed.

Cite as *Matter of S-B- Inc.*, ID# 80672 (AAO Apr. 13, 2017)