U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 14721478

DATE: APR. 15, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for a Skilled Worker

The Petitioner, a convenience store with gas station, seeks to employ the Beneficiary as a store manager. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(B)(3)(A)(i). This employment-based "EB-3" 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 the Texas Service Center denied the petition on two grounds: the Director determined that the Petitioner did not establish its continuing ability to pay the proffered wage from the priority date onward or that the Beneficiary had two years of qualifying experience by the priority date, as required to meet the minimum requirements of the labor certification. The Petitioner filed an appeal, which we dismissed on the same grounds. The Petitioner then file a motion to reopen and a motion reconsider. In our decision dismissing the motions we withdrew our previous finding that the Petitioner did not establish its ability to pay the proffered wage, but affirmed our other previous finding that the Petitioner did not establish that the Beneficiary gained at least two years of qualifying experience by the priority date of September 6, 2017.

The matter is now before us on another motion to reopen and motion to reconsider. The Petitioner reiterates its claim that the Beneficiary has the qualifying experience required by the labor certification. Upon review, we will dismiss the motions.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. *See* 8 C.F.R. § 103.5(a)(2). A motion to reconsider must demonstrate that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. *See* 8 C.F.R. § 103.5(a)(3).

To qualify for classification as a skilled worker a beneficiary must have at least two years of training or experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(B). A beneficiary must also meet the specific educational, training, experience, or other requirements of the labor certification. *Id.* All requirements

must be met by the petition's priority date,[1] which in this case is September 6, 2017. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

II. ANALYSIS

A. Motion to Reopen

The labor certification that accompanied the Petitioner's Form I-140, Immigrant Petition for Alien Worker, states that the minimum experience required for the job of store manager is 24 months in the job offered or in a related managerial position. The labor certification claims that the Beneficiary met and exceeded this requirement with more than ten years of experience as a manager/owner at [redacted] a general store and milk shop located in [redacted] Pakistan, from June 1, 2007, to the priority date of September 6, 2017.

During the course of these proceedings the Petitioner submitted numerous documents in support of its claim that the Beneficiary gained the alleged experience with [redacted] – including copies of a partnership deed between the Beneficiary and [redacted] identifying these two individuals as the owner/operators of [redacted] affidavits from [redacted] and the prior owner of [redacted] identified as the Beneficiary's uncle), letters from customers and suppliers of [redacted] a couple of business records, and tax filings by [redacted] with the Pakistani government, in addition to some color photographs of the store. In our previous decisions we discussed various evidentiary shortcomings and discrepancies in the record that raised questions as to whether the Beneficiary actually worked and gained managerial experience at [redacted] For example, there were no tax records from Pakistan documenting the Beneficiary's ownership and operation (along with [redacted] of [redacted] during the years 2007-2017. We also noted in both of our earlier decisions that the photographs of the shop in Pakistan were inconsistent in that four of them identified the business name as [redacted] while a fifth identified the business name as [redacted]

With its current motion the Petitioner submits copies of tax records on the letterhead of Pakistan's Federal Board of Revenue which appear to document the Beneficiary's income tax filings, with income from a business, during the years 2013-2020. In view of the evidentiary issues we have discussed in our previous decisions, however, we have reservations about the authenticity of these documents. The overall credibility of the Petitioner and the Beneficiary is not enhanced by their failure to address the inconsistent business names in the photographs which we pointed out in two earlier decisions. As initially noted in our dismissal of the appeal, and referenced again in our dismissal of the previous combined motion, four photographs show a business sign reading [redacted] above the shop entrance. Another photograph of the business sign without the shop entrance below reads [redacted] Neither the Petitioner nor the Beneficiary has provided any explanation for why the business name appears as [redacted] in four photographs and [redacted] in a fifth photograph. Furthermore, a close inspection of the photographs seems to indicate that the business signs were not an original part of any of the photos. The hue, texture, and shading of the

[1] The priority date of an employment-based immigrant petition is the date the underlying labor certification is filed with the Department of Labor. *See* 8 C.F.R. § 204.5(d).

[redacted]' signs are different from the other parts of those photographs, and it looks as though the business signs were separately affixed or photo-shopped to a pre-existing photograph (or photographs) of the shop entrance. Similar internal inconsistencies apply to the photograph of the [redacted]" sign that looks like it's affixed to a separate photo of an awning over the store entrance. Thus, it does not appear that any of the photographs containing both the business name and a view of the store are authentic. As stated by the Board of Immigration Appeals in a recent decision: "Courts have long recognized that Immigration Judges may find that documents are not genuine if they contain 'hallmarks of fraud,' which include misspellings, overwriting, incorrect information, and alterations." *Matter of O-M-O-*, 28 I&N Dec. 191, 194 (BIA 2021). The BIA's observation is directly applicable in this case as well.

It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's evidence also reflects on the reliability of the petitioner's remaining evidence. *See id.* The failure of the Petitioner and the Beneficiary to explain the inconsistencies in their photographic evidence casts doubt on the reliability of all the evidence submitted in these proceedings in support of the Petitioner's claim that the Beneficiary gained at least two years of qualifying experience at [redacted] in Pakistan.

In visa petition proceedings it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act. 8 U.S.C. § 1361. The Petitioner has not met that burden with the evidence submitted in the current motion. It has not established that the Beneficiary gained at least two years of qualifying experience as a store manager in Pakistan by the priority date of September 6, 2017, as required to meet the terms of the labor certification and to be eligible for classification as a skilled worker. Therefore, we will dismiss the motion to reopen.

2. Motion to Reconsider

The Petitioner does not assert that that our previous decision with regard to the Beneficiary's experience was based on an incorrect application of law or policy, as required for a motion to reconsider under 8 C.F.R. § 103.5(a)(3). Therefore, we will dismiss the motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.