U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 08303266

DATE: APR. 17, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for a Skilled Worker

The Petitioner, a fried chicken and halal food store, seeks to employ the Beneficiary as a specialty cook. It requests skilled worker classification for the Beneficiary 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 Nebraska Service Center initially approved the petition, but subsequently revoked the approval. The Director found that the Petitioner and the Beneficiary had provided conflicting evidence about the Beneficiary's employment history and therefore did not establish that the Beneficiary had the requisite experience to meet the terms of the labor certification and qualify for classification as a skilled worker. On appeal the Petitioner asserts that the Director did not properly consider the documentation it submitted and that the evidence of record establishes the Beneficiary's eligibility for the requested immigration benefit.

Upon *de novo* review, we will withdraw the Director's decision. We will remand the case for further consideration and the issuance of a new decision.

## I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains 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, 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. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files 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.

Section 205 of the Act, 8 U.S.C. § 1155, provides that the Secretary of Homeland Security may "for good and sufficient cause, revoke the approval of any petition." By regulation this revocation authority

is delegated to any USCIS officer who is authorized to approve an immigrant visa petition "when the necessity for the revocation comes to the attention of [USCIS]." 8 C.F.R. § 205.2(a). USCIS must give the petitioner notice of its intent to revoke the prior approval of the petition and the opportunity to submit evidence in opposition thereto, before proceeding with written notice of revocation. *See* 8 C.F.R. § 205.2(b) and (c). A notice of intent to revoke (NOIR) "is not properly issued unless there is 'good and sufficient cause' and the notice includes a specific statement not only of the facts underlying the proposed action, but also of the supporting evidence." *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). Per *Matter of Estime*, "[i]n determining what is 'good and sufficient cause' for the issuance of a notice of intention to revoke, we ask whether the evidence of record at the time the notice was issued, if unexplained and unrebutted, would have warranted a denial based on the petitioner's failure to meet his or her burden of proof." *Id.*

## II. ANALYSIS

The petition in this case was filed in April 2016. The initial evidence included a letter from [redacted] on the letterhead of [redacted] in [redacted] Pakistan, asserting that the Beneficiary had been employed as a "catering-cook" from February 2008 to November 2010, which exceeded the two-year requirement to meet the terms of the labor certification and to qualify for skilled worker classification. The petition was approved in May 2016.

In May 2019, however, the Director sent the Petitioner a NOIR stating that "USCIS is in possession of adverse information that you may be unaware of regarding your [petition] filed on behalf of [the Beneficiary]." After citing the sections of the labor certification indicating that two years of experience in the job offered were required to qualify for the position of specialty chef, the Director stated that following "a secondary review of the evidence of record, USCIS discovered that the [B]eneficiary . . . does not possess the knowledge or skills for which the labor certification was approved." Without identifying a specific source, the Director indicated that the Beneficiary "stated that she was never employed, and she was a homemaker until the present time." The Director stated further that "the experience letter [from [redacted] appears to be a willful misrepresentation of a material fact involving the labor certification application," and concluded that the existing evidence did not establish the Beneficiary's fulfillment of the minimum experience requirement for the proffered position.

In response to the NOIR the Petitioner submitted a statement from the Beneficiary asserting that her employment verification letter from the restaurant in [redacted] Pakistan, was correct, that she was employed as a cook in Pakistan from February 2008 to November 2010, and that she was a housewife at the time all of her immigrant applications and petitions were filed from 2011 onward. The Petitioner also submitted a letter from a Pakistani tax advisor stating that the Beneficiary was a client of his since June 2011 and before that worked at [redacted] until the end of November 2010.

The Director proceeded to revoke the approval of the petition. In his decision the Director acknowledged the materials submitted in response to the NOIR, but referred to a statement by the Beneficiary in her Form I-485 (application for adjustment of status) "that she was never employed" and "was a homemaker until the present time." The Director concluded that the Beneficiary "never worked at the restaurant," that "the experience letter appears to be a willful misrepresentation of a

material fact involving the labor certification application," and that the evidence did not establish that the Beneficiary met the minimum experience requirement for the proffered position. While revoking the petition's approval, the Director did not make a specific finding of fraud or willful misrepresentation of a material fact against the Petitioner or the Beneficiary.

The Petitioner filed a motion to reopen and a motion to reconsider,[1] accompanied by a brief and additional evidence. The Petitioner reiterated the claim that the Beneficiary was employed by the Pakistani restaurant as a cook in the years 2008-2010, and maintained that the Director's finding to the contrary was incorrect. The Petitioner claimed that the Director erred in finding that the Beneficiary was never employed based on an alleged statement in her I-485 application because the Form I-485 (which was filed in 2016) asks only for "current occupation" to which the Beneficiary correctly answered "housewife" (in Part 3.A.). Furthermore, the accompanying Form G-325, Biographic Information, dated in June 2016, asked for the applicant's employment in "the last five years" which made the entry of "house wife" correct since that is how the Beneficiary had been "employed" going back to 2011. We note, however, that the Form G-325 also asked for the applicant's "[l]ast employment abroad" and that the Beneficiary left this space blank, which conflicts with her claim to have worked at the Pakistani restaurant in the years 2008-2010. This inconsistency must be resolved on remand.[2] The Petitioner also submitted some business records, allegedly from the restaurant, and some additional letters from Pakistan attesting to the Beneficiary's employment.

The Director dismissed the combined motions. The Director acknowledged that new evidence of work experience had been submitted, but stated that it did not overcome the previous grounds for denial. The Director also stated that the Petitioner had not established that the prior decision was incorrect based on the evidence of record at that time.

The matter is now before us on appeal. Based on the entire record we will remand for the Director to reissue the NOIR to set forth in greater detail "the facts underlying the proposed action" and "the supporting evidence," in accord with *Matter of Estime*. The Director referred to "a secondary review of the evidence of record" and a statement by the Beneficiary that she "was never employed," but did not identify any specific document in which the Beneficiary made the purported statement, although this appears to be an interpretation of her response to information in her Form I-485. Thus, the Director's statement that the employment verification letter from Pakistan was a misrepresentation of the facts did not sufficiently detail the adverse evidence to allow the Petitioner the opportunity to address any potential defects.

Next, in the revocation decision the Director described relevant entries in the Beneficiary's I-485 application slightly differently than the Beneficiary. The Beneficiary stated that her current employment (in 2016) was "housewife," rather than stating she "was never employed," as referenced

[1] A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish 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. 8 C.F.R. § 103.5(a)(3).

[2] 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.*

by the Director. Moreover, the Director did not address the Beneficiary's Form G-325, which accompanied the Form I-485, in which she indicated "housewife" as her employment in the last five years (2011-2016), but also left blank the space requesting information about her last occupation abroad which conflicts with her claim to have worked in the Pakistani restaurant in the years 2008-2010. In his decision, however, the Director did not explain how either of these documents supports his conclusion that the Beneficiary "never worked at the restaurant" in Pakistan, or that the employment verification letter from the restaurant was *ipso facto* a willful misrepresentation of the facts.

Finally, in dismissing the motions to reopen and reconsider, the Director did not explain why the newly submitted evidence was insufficient to reopen the proceeding. While acknowledging the submission of the evidence, the Director did not address the specific items of documentation or discuss their content. The Director also maintained that the Petitioner had not established that the prior decision was incorrect based on the evidence of record, but did not fully address the evidence in the Beneficiary's I-485 application and Form G-325.

## III. CONCLUSION

For the reasons discussed above, we will remand this case to the Director for further consideration. If the Director issues a new NOIR, the content of that notice and the consideration of any evidence submitted by the Petitioner should comply with the requirements of 8 C.F.R. § 205.2(b) and (c) and *Matter of Estime*. The Director shall then issue a new decision.

**ORDER**: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.