U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 14913983

Date: APR. 27, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner, a dry cleaning and laundry service, seeks to employ the Beneficiary as an alteration tailor. It requests classification of the Beneficiary under the third-preference, immigrant category as a skilled worker. 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" category allows a U.S. business to sponsor a foreign national for lawful permanent resident status based on a job offer requiring at least two years of training or experience.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary was eligible for classification as a skilled worker. Due to inconsistencies in the record, the Director found that the Petitioner did not submit sufficient evidence to establish that the Beneficiary possessed the minimum experience required for the offered position. The Director also found that the Beneficiary willfully misrepresented a material fact in listing her claimed employment on the labor certification.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See Matter of Christo's Inc*., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. EMPLOYMENT BASED IMMIGRATION

Employment-based immigration generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position. *Id*. Labor certification also indicates that the employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id*.

If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a beneficiary meets the

requirements of a certified position and a requested immigrant visa classification. If USCIS approves the petition, a foreign national may finally 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.

II. THE BENEFICIARY'S EXPERIENCE

The accompanying labor certification was filed on April 28, 2017.[1] The labor certification states that the offered position requires 24 months of experience in the offered job of alteration tailor, and no alternate experience is accepted. The duties and required skills for the offered position are stated as:

> Alter clothing to fit individual customers; and repair defective garment parts using tailor tools and/or commercial sewing machines and hand stitching.

On the labor certification, the Petitioner asserts that the Beneficiary gained experience as an alteration specialist from March 5, 2010 to September 20, 2014 with [redacted] Cleaners in South Korea. The Petitioner did not submit evidence in support of the Beneficiary's experience with the petition.

The Director issued a request for evidence (RFE), requesting evidence to establish that the Beneficiary met the minimum requirements for the offered position as of the priority date. In response to the RFE, the Petitioner provided a certificate of employment and a letter of experience from the owner of [redacted] Dry Cleaners, with English translations. The certificate states that the Beneficiary was employed as an alteration tailor from March 5, 2010 to September 20, 2014 and lists her job duties as "alteration tailoring and cleaning garments." The letter from the owner also states that the Beneficiary worked from March 5, 2010 to September 20, 2014 as an alteration tailor, but does not list any specific job duties.

Upon review of the Petitioner's response, the Director issued a notice of intent to deny (NOID) the petition. The Director identified inconsistencies in the Beneficiary's employment history as claimed in the labor certification and supporting evidence, and as listed on other records. Specifically, in a nonimmigrant visa application submitted in July 2014, the Beneficiary listed her present occupation as "not employed/I am a housewife of two young children," and listed no previous employment. Further, in a Form G-325A, Biographic Information, that she signed on October 20, 2017, the Beneficiary lists no employment in the last five years. The Director also informed the Petitioner that the Beneficiary's attestation on the labor certification of her employment with [redacted] Cleaners appeared to be a willful misrepresentation of a material fact.

In response to the NOID, the Petitioner explained that the Beneficiary, inadvertently and through counsel, neglected to include her previous employment on her nonimmigrant visa application. The Petitioner submitted statements from both the Beneficiary and her former counsel, stating that the error in omitting her employment history on her nonimmigrant visa application was not intentional, as the Beneficiary was applying for a derivative nonimmigrant visa category with her spouse as the primary visa applicant, and both believed her employment history to be unimportant.

[1] The "priority date" of a petition is the date the underlying labor certification is filed with the DOL. *See* 8 C.F.R. § 204.5(d). The Petitioner must establish that all eligibility requirements for the petition have been satisfied as of the priority date.

The Petitioner submitted another statement, with English translation, from the owner of [redacted] Dry Cleaners, listing the Beneficiary's dates of employment as an alteration tailor from March 5, 2010 to September 20, 2014. The Petitioner submitted two notarized statements, with English translations, titled "Verification of Facts." The verifications are from two individuals stating that they were former co-workers of the Beneficiary while she worked at [redacted] Dry Cleaners from March 5, 2010 to September 20, 2014. The Petitioner also provided a business registration certificate, with English translation, dated August 18, 2014, stating that [redacted] Dry Cleaners is a registered personal dry cleaning service in South Korea, incorporated on October 1, 2000.

The Director found that the statements did not constitute independent, objective and corroborative evidence. He concluded that the Petitioner did not submit secondary evidence of the Beneficiary's qualifying employment, such as pay statements, time sheets, bank statements, or other contemporaneous evidence verifying her claimed employment with [redacted] Dry Cleaners, or establish that this evidence was unavailable. He also noted that the Petitioner's response to the NOID did not explain how or why the Beneficiary omitted her employment history on Form G-325A, which was signed only three years after the claimed end date of her employment with [redacted] Dry Cleaners. The Director determined that the Beneficiary willfully made a false representation of her experience as an alteration tailor on the labor certification, and that the false representation is material to the requested benefit.

On appeal, the Petitioner submits a brief from counsel and no additional evidence in support of the Beneficiary's claimed experience. In its brief, the Petitioner asserts that the Director erred in refusing to give any weight and consideration to the secondary evidence it submitted, specifically the employment certificate and letters from [redacted] Dry Cleaners, and the statements from the Beneficiary's former co-workers.

The Petitioner's counsel states that the Director denied the petition "despite overwhelming genuine secondary evidence submitted in support of [the Beneficiary's] previous employment." We disagree.

In adjudicating immigration benefit requests, USCIS regularly reviews affidavits, testimonials, and letters from both laypersons and recognized experts. To be probative, a document must generally provide: (1) the nature of the affiant's relationship, if any, to the affected party; (2) the basis of the affiant's knowledge; and (3) a specific - rather than merely conclusory - statement of the asserted facts based on the affiant's personal knowledge. *Matter of Chin*, 14 I&N Dec. 150, 152 (BIA 1972); *see also* 8 C.F.R. § 103.2(b)(2)(i) (requiring affidavits in lieu of unavailable required evidence from "persons who are not parties to the petition who have direct personal knowledge of the event and circumstances"); *Matter of Kwan*, 14 I&N Dec. 175, 176-77 (BIA 1972); *Iyamba v. INS*, 244 F.3d 606, 608 (8th Cir. 2001); *Dabaase v. INS*, 627 F.2d 117, 119 (8th Cir. 1980). A petitioner may submit a letter or affidavit that contains hearsay or biased information, but such factors will affect the weight to be accorded the evidence in an administrative proceeding. *See Matter of D-R-*, 25 I&N Dec. 445, 461 (BIA 2011) (citations omitted). Probative evidence beyond a letter or affidavit may be considered when submitted to resolve inconsistencies or discrepancies in the record. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Ultimately, to determine whether a petitioner has established eligibility for a requested benefit by a preponderance of the evidence, USCIS must examine each piece of

evidence - both individually and within the context of the entire record - for relevance, probative value, and credibility. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Here, the Petitioner relies only on testimonial evidence from her former employer to establish the Beneficiary's claimed employment experience, without providing independent, objective evidence in support of this testimony. Neither letter from the former employer includes a description of the Beneficiary's job duties. Further, the statements from the Beneficiary's former co-workers do not describe the Beneficiary's duties, explain how the co-workers have knowledge of her employment, or include any documents, such as copies of national identification cards, to verify the identity of these individuals. Additionally, none of the documents in the record demonstrate that the Beneficiary's employment was full-time. Although the accompanying labor certification states that the Beneficiary was employed with [redacted] Cleaners as an alteration specialist for 40 hours per week, in response to the NOID counsel for the Petitioner states that the Beneficiary's salary was approximately $400 per week and not subject to reporting or income tax payments. This claim casts doubt about the full-time nature of the Beneficiary's employment.

Based on conflicting information from her nonimmigrant application and Form G-325A, further independent evidence is required. The record does not include the Beneficiary's income or payroll records to corroborate her claimed employment. Nor does the Petitioner assert that these records are unavailable for any reason. Although the Beneficiary asserts that her employment history was omitted on the visa application because she was not the primary applicant, the application was submitted on a date when the Beneficiary claims to be employed, casting further doubt on her assertion. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

As the inconsistencies in the record have not been resolved, the Petitioner has not established with independent, objective evidence that the Beneficiary possesses the required 24 months of experience in the offered position, as required by the labor certification. Therefore, we will dismiss the appeal.

III. WILFULL MISREPRESENTATION OF A MATERIAL FACT

To find a willful and material misrepresentation of fact an immigration officer must determine that (1) the petitioner or beneficiary made a false representation to an authorized official of the U.S. government, (2) the misrepresentation was willfully made, and (3) the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). A "material" misrepresentation is one that "tends to shut off a line of inquiry relevant to the alien's eligibility." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

Accordingly, for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, they must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully

made; and, 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Kai Hing Hui*, 15 I&N Dec. at 288.

Here, the Director found that the Beneficiary willfully misrepresented her qualifying experience on the labor certification.

As noted above, the Beneficiary stated on her nonimmigrant visa application completed in July 2014 that she was not currently or previously employed. However, on the labor certification filed on her behalf, she claimed employment experience as an alteration specialist until September 2014. She also listed no prior employment on Form G-325A signed in October 2017. The misrepresentation was material to whether she qualified for the labor certification. The information submitted does not resolve the inconsistency in her claimed experience. As such, substantial evidence supports the Beneficiary's willful misrepresentation of her experience on the labor certification. Therefore, we affirm the Director's finding of willful misrepresentation of a material fact against the Beneficiary.

IV. CONCLUSION

The Petitioner has not established that the Beneficiary meets the minimum experience requirements as set forth on the accompanying labor certification. The record includes unresolved inconsistencies with respect to the Beneficiary's claimed employment history. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). The Petitioner has not met that burden.

ORDER: The appeal is dismissed.