U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15796653

Date: APR. 27, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner seeks to employ the Beneficiary as a [redacted] mechanic. 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.

After the filing's initial grant, the Director of the Texas Service Center revoked the petition's approval. The Director concluded that the Petitioner did not provide sufficient evidence of the Beneficiary's qualifying experience for the offered position.

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. LAW

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.

At any time before a beneficiary obtains lawful permanent residence, however, USCIS may revoke a petition's approval for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. If supported by the record, a petition's erroneous approval may justify its revocation. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). 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. THE BENEFICIARY'S EXPERIENCE

The Petitioner here is an auto [redacted] repair business established in 1998 with four employees. The underlying labor certification was filed with DOL on February 23, 2001.[1] The labor certification states that the offered position requires no training or education and 24 months of experience in the offered job of [redacted] mechanic. No alternate experience is accepted.

On the labor certification, the Petitioner asserts that he gained experience as a [redacted] mechanic from October 1996 to March 1999 with [redacted] in [redacted] Turkey. No other employment is listed. The initial evidence submitted with the petition included a "certificate of merit/employer recommendation" from this employer, indicating that the Beneficiary was employed as a motor and [redacted] mechanic from November 10, 1996 to October 3, 1999.

Following the approval of the petition, in January 2012, the Beneficiary attended an immigrant visa interview at a U.S. Embassy. The Embassy refused the Beneficiary's immigrant visa and returned the petition to USCIS recommending revocation. The Embassy noted that the Beneficiary stated that he has no formal or specialized training in automobiles, and has only informal experience working in his father's mechanic shop and some part-time experience from 1989 to 1992 while he was a student. The Embassy also noted that the Beneficiary claimed on his immigrant visa application to live in [redacted] from 1996 to 1999, although he also claimed work experience during this period in [redacted], which is nearly 500 miles from [redacted]

The Director sent the Petitioner a NOIR, providing the details of the derogatory information in the U.S. Embassy's findings, and giving the Petitioner an opportunity to respond and establish that the Beneficiary met the requirement of 24 months of experience as a [redacted] mechanic as of the priority date.

The Director issued the NOIR for good and sufficient cause. The address history that the Beneficiary provided on the immigrant visa application contradicts the employment listed on the labor certification

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

and in the experience letter. The Beneficiary's statements during the immigrant visa interview present additional discrepancies regarding the nature of his experience. 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). Thus, the record lacked sufficient reliable evidence of the Beneficiary's qualifying experience for the offered position or the requested visa classification.

In response to the NOIR, the Petitioner submitted a statement from the Beneficiary clarifying statements made during his interview and on his immigrant visa application. The Beneficiary asserts that in describing his informal experience in his father's shop and part-time as a student, he was answering the interviewing officer's question of how his interest in automobiles began, and not describing his formal experience as a [redacted] mechanic. The Beneficiary also states that he did not list his residence in [redacted] from 1996 to 1999 on his application because he considered this to be a temporary residence, while his primary residence during this time was in [redacted] where his family resided.

The response also included a copy of the "certificate of merit/employer recommendation" submitted with the initial petition, evidence that the Beneficiary owns property in [redacted] and a letter dated August 11, 2018 on [redacted] letterhead, with English translation. The letter, signed by owner [redacted] states that the Beneficiary worked in the company between November 10, 1996 and October 3, 1999. The letter further states, "At that time, especially since we could not find qualified personnel for the gearboxes of imported automobiles, and at the same time because of his managerial qualities, we assigned him for 1.5 years for our branch located at [redacted] site."

The Director concluded that the Petitioner did not submit independent objective evidence to resolve the inconsistencies and verify the Beneficiary's qualifying employment and revoked the petition's approval.

In its timely filed appeal, the Petitioner submits no brief or additional evidence. In a statement titled "Reasons for this Appeal," the Petitioner asserts that the Director erred in not informing it of its appeal rights in the notice of revocation. It further asserts that the Director erred in not considering the evidence submitted in response to the NOIR, including the Beneficiary's "reasonable and plausible explanations."

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).

The record here includes multiple unresolved inconsistencies that cast doubt on the Beneficiary's claimed experience. The dates of employment claimed on the underlying labor certification (October 1996 to March 1999) are not consistent with the dates of employment in the employer letters (November 1996 to October 1999). The "certificate of merit/employer recommendation" includes a signature over the ink stamped name of [redacted] This signature differs significantly from the signature of [redacted] on the August 2018 letter from [redacted] Further, the August 2018 letter states that the Beneficiary was assigned to its branch in [redacted] but does not mention any assignment in [redacted] as the Beneficiary claimed on the labor certification and at his immigrant visa interview. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *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.*

Here, the Petitioner relies only on testimonial evidence from the Beneficiary and his former employer to establish the Beneficiary's claimed employment experience, without providing independent, objective evidence in support of this testimony. Based on inconsistencies in the Beneficiary's interview statements, conflicting information from his immigrant visa application, and unresolved inconsistencies in the experience documentation, further independent evidence is required. The record does not include the Beneficiary's income tax or payroll records to corroborate his claimed employment, or other records documenting his claimed temporary residence in [redacted] during his employment. Nor does the Petitioner assert that these records are unavailable for any reason. 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).

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. The Director properly revoked the approval of the petition on this basis and the appeal is dismissed on this basis.

III. THE PETITIONER AS EMPLOYER

Although not discussed by the Director in the decision, the record does not clearly identify the Petitioner as the Beneficiary's intending employer. An employer may petition for a foreign national if it is "desiring and intending to employ [him or her] within the United States." Section 204(a)(1)(F) of the Act. For labor certification purposes, the term "employer" also means a person or company "which proposes to employ a full-time worker at a place within in the United States." 20 C.F.R. § 656.3.

We note that the underlying labor certification was filed by [redacted] *Stars* [redacted] Service Corporation. The Petitioner lists its name on the petition as [redacted] *Star* [redacted] Corporation.

However, the cover letter accompanying the petition lists the Petitioner's business name as [redacted] Stars [redacted] Service Corporation d/b/a [redacted]. The record includes corporate income tax returns for 2001 through 2007. In 2001, and in 2005 to 2007, the tax returns list the business name as [redacted] Star [redacted] Service Corporation [redacted]. However, the tax returns for 2002 to 2004 do not include [redacted] in the business name.

A search of the New York State Department of State, Division of Corporations, website reveals that the Petitioner's business was registered in [redacted] 1998 under the name [redacted] Stars [redacted] Service Corporation and was dissolved on [redacted] 2012. *See* Office of the New York State Department of State available at https://appext20.dos.ny.gov/corp_public/corpsearch.entity_search_entry (last accessed April 6, 2021). No fictitious name is listed. The New York State Department of State, Division of Corporations, website also reveals that a business named [redacted] operating at the Petitioner's address, was registered in [redacted] 2009. This business also lists no fictitious name. Therefore, it appears that the Petitioner's registered business name differs from the name listed on the petition and its tax returns. Further, it appears that the Petitioner and [redacted] are two separate entities operating at the same address. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The Petitioner does not appear to be an operating business at this time. A labor certification is only valid for the particular job opportunity stated on the application form. 20 C.F.R. § 656.30(c). If the petitioner is a different entity than the labor certification employer, then it must establish that it is a successor-in interest to that entity. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986). With any further filings, the Petitioner must submit evidence to explain the inconsistencies in its name and to demonstrate its good standing and ongoing business operations.

Although the Petitioner has not asserted that another entity is its successor, if another entity claims to be a valid successor-in-interest to the Petitioner, we note that a valid successor-in-interest relationship exists if three conditions are satisfied. First, the successor must fully describe and document the transfer and assumption of the ownership of the predecessor by the successor. Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the successor must establish by a preponderance of the evidence that it is eligible for the immigrant visa in all respects. *Id.*

Because we cannot affirmatively find that the Petitioner and the labor certification employer are the same entity or that the Petitioner remains the intending employer of the Beneficiary, we will also dismiss the appeal on this basis.

IV. CONCLUSION

The Petitioner has not established that the Beneficiary meets the minimum experience requirements as set forth on the accompanying labor certification, or that it is eligible for the requested benefit in all respects. The record includes unresolved inconsistencies with respect to the Beneficiary's claimed employment history and the status of the Petitioner's business.

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.