U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13090924

DATE: DEC. 17, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for an Alien Worker

The Petitioner, an auto care and repair center, seeks to employ the Beneficiary as a mechanic. It requests classification for the Beneficiary as an "other worker" under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). This employment-based "EB-3" immigrant classification allows a U.S. employer to sponsor for lawful permanent resident status a foreign national who is capable of performing unskilled labor that requires less than two years of training or experience and is not of a temporary or seasonal nature.

The petition was initially approved, but the Director of the Texas Service Center subsequently revoked the approval. The Director determined that the Petitioner did not establish that the Beneficiary had the requisite experience to meet the terms of the labor certification and to qualify for other worker classification. The Director also determined that the Petitioner did not establish that the proffered position is a *bona fide* job offer open to U.S. workers.

On appeal the Petitioner asserts that the Director misinterpreted the evidence in the record. The Petitioner claims that its documentation establishes that the Beneficiary has the requisite experience to meet the terms of the labor certification and qualify for other worker classification, and that the record establishes the *bona fides* of the job offer for a mechanic that was open to U.S. workers.

In visa petition proceedings it is the Petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review we will dismiss the appeal on the ground that the Petitioner has not established that the Beneficiary has the requisite experience to meet the terms of the labor certification and therefore does not qualify for the requested visa classification. Since meeting the requirements of the labor certification is a fundamental element of eligibility which the Petitioner has not satisfied, we will reserve the remaining issue of whether the proffered position of mechanic is a *bona fide* job offer open to U.S. workers.

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) of the

Act, 8 U.S.C. § 1182(a)(5). 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).

II. ANALYSIS

A. Beneficiary's Qualifications

The first issue on appeal is whether the Beneficiary has the requisite experience to qualify for the proffered position and the requested visa classification. The Petitioner requests classification of the Beneficiary as an "other worker." The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(D) states that:

> If the petition is for an unskilled (other) worker, it must be accompanied by evidence that the alien meets any educational, training and experience, and other requirements of the labor certification.

All requirements must be met by the petition's priority date,[1] which in this case is August 10, 2015. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

In this case section H of the labor certification (Job Opportunity Information) specifies the following with respect to the requirements for the job of mechanic:

4.	Education: Minimum level required:	None
5.	Is training required for the job?	No
6.	Is experience in the job offered required?	Yes
6-A.	How long?	12 months
8.	Is an alternate combination of education and experience acceptable?	No
10.	Is experience in an alternate occupation acceptable?	No
14.	Specific skills or other requirements:	None

Thus, the labor certification requires that the Beneficiary have at least 12 months of experience as a mechanic. According to sections J and K or the labor certification the Beneficiary claims he met this requirement by virtue of his employment as a mechanic by [redacted]s in [redacted] Pakistan, from

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

January 2011 to March 2013. With its initial evidence the Petitioner submitted a letter dated December 18, 2014, from [redacted] on the letterhead of [redacted], stating that the Beneficiary was employed as a full-time auto mechanic from January 15, 2011, to March 25, 2013, and that "[h]is duties were to examine and inspect vehicles, diagnose problems, repair[] cars and compil[e] repair estimates."

As previously indicated, the petition was initially approved (on April 8, 2017). On February 19, 2020, however, the Director issued a notice of intent to revoke (NOIR) which alluded to the Beneficiary's immigrant interview overseas at which, according to the interviewer, the Beneficiary was unable to answer basic questions about the duties of an auto mechanic. The Director also referenced records available to USCIS indicating that on an application for a B1 visa in June 2014 the Beneficiary declared that he was currently employed as a senior civil engineer, listed previous employment as an engineer from February 2008 to February 2009, and indicated that he graduated from the [redacted] University of Engineering with a civil engineering degree in August 2009. The Director indicated that the above information conflicted with the Petitioner's claim that the Beneficiary met the experience requirement of the labor certification to qualify for the proffered position of mechanic and the requested visa classification.

In response to the NOIR the Petitioner submitted an affidavit from the Beneficiary who asserted that he worked as an auto mechanic with [redacted] from 2011 to 2013 and claimed that the Director mischaracterized the substance of his immigrant interview. According to the Beneficiary he was not unable to answer basic questions about the duties of an auto mechanic, was asked lots of questions about gas and diesel engines, and answered the questions well. The Beneficiary suggested that the interpreter may not have been very familiar with the terminology of auto mechanics and therefore given the interviewer a false impression of the Beneficiary's knowledge.

In his decision the Director indicated that the Petitioner's response to the NOIR did not resolve the conflicting evidence about the Beneficiary's alleged experience as an auto mechanic, and did not even address the information on his B1/B2 visa application about his prior employment and education as an engineer. The Director cited *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), which states that it is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence, and that attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho* at 591-92. The decision goes on to state that doubt cast on any aspect of the petitioner's evidence also reflects on the reliability of the petitioner's remaining evidence. *See id.* Since the Petitioner did not resolve the evidentiary inconsistencies regarding the Beneficiary's experience, the Director concluded that the Beneficiary did not meet the experience requirement of the labor certification and thus did not qualify for the requested visa classification.

On appeal the Petitioner reiterates its contention that the Beneficiary's overseas immigrant interview was misconstrued by USCIS with regard to the Beneficiary's knowledge of auto mechanics. The Petitioner points out that the Beneficiary's alleged employment as a mechanic by [redacted] in the years 2011-2013 does not overlap his time of alleged employment as an engineer in the years 2008-2009, and suggests that USCIS should not doubt the Beneficiary's claim to have worked as an auto mechanic after having worked as an engineer and earning a university degree in engineering. The Petitioner has not submitted any independent objective evidence, however, to overcome the doubts

raised by the asserted career progression from engineer to auto mechanic. No official documentation has been submitted to confirm that [redacted] is in the auto repair business and that the Beneficiary was actually employed as a mechanic, such as business registration and tax filings by [redacted] personnel records of [redacted] pay statements to and tax filings by the Beneficiary, social security records of the Beneficiary in Pakistan, or any other independent objective evidence. Thus, the Petitioner has not resolved the inconsistencies in the record concerning the Beneficiary's employment history and has not established that the Beneficiary gained any qualifying experience as a mechanic with [redacted]

In accord with the foregoing analysis we conclude that the Petitioner has not established that the Beneficiary gained at least 12 months of experience as a mechanic by the priority date of August 10, 2015. Therefore, the Petitioner has not established that the Beneficiary has the requisite experience to meet the terms of the labor certification and qualify for the requested visa classification. On this ground alone the appeal must be dismissed.

B. *Bona Fides* of the Job Offer

As previously indicated, we reserve the other issue on appeal of whether the proffered position of mechanic is a *bona fide* job offer open to U.S. workers.

III. CONCLUSION

The Petitioner has not established that the Beneficiary meets the experience requirement of the labor certification, without which he does not qualify for the requested classification as an "other worker." The appeal will be dismissed for the above stated reason.

ORDER: The appeal is dismissed.