U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-H.-G-, INC.

DATE: DEC. 27, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a grocery store, seeks to employ the Beneficiary as a store manager. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based 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. Subsequently, the Director revoked the approval of the petition, concluding that the record did not establish that the Beneficiary possessed the experience required by the labor certification as of the priority date. The Director noted unresolved inconsistencies in the record regarding the Beneficiary's prior work experience.

On appeal, the Petitioner asserts that the Beneficiary has the two years of experience in the offered job required by the labor certification. Upon *de novo* review, we will dismiss the appeal.

I. LAW

A. The Employment-Based Immigration Process

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).[1] *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

[1] The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is August 25, 2003. *See* 8 C.F.R. § 204.5(d). The current DOL regulations concerning labor certifications went into effect on March 28, 2005. The new regulations are referred to by the DOL by the acronym PERM, for Program Electronic Review Management. *See* 69 Fed. Reg. 77325, 77326 (Dec. 27, 2004). The PERM regulation was effective as of March 28, 2005, and applies to labor certification applications filed on or after that date. However, the labor certification application in this case was filed prior to March 28, 2005, and is governed by the prior regulations.

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 applies 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.

B. Revocation of a Petition's Approval

After granting a petition, USCIS may revoke the petition's approval "at any time" for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. If supported by the record, a director's realization that a petition was erroneously approved may justify revocation. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

Good and sufficient cause exists to issue a notice of intent to revoke (NOIR) where the record at the time of the notice's issuance, if unexplained or unrebutted, would have warranted the petition's denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). Similarly, revocation is proper if the record at the time of the decision, including any explanation or rebuttal evidence provided by a petitioner, warranted a petition's denial. *Id.* at 452.

II. THE BENEFICIARY'S EXPERIENCE

The Director revoked the petition's approval because the Petitioner did not establish that the Beneficiary possessed the experience required by the labor certification as of the priority date. A beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(l), (12); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

In this case, the labor certification requires 24 months of experience as a store manager. Regarding the experience requirement, the labor certification states that the Beneficiary qualifies for the offered position based on experience as a full-time store manager and supervisor with [redacted] located at 14 [redacted] India, from October 1998 to May 2001. His job duties were described as follows: "Managed store and oversaw operations, maintenance, planned and prepared work schedules, supervised cashier, balance and accounting for store income."

Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. *See* 8 C.F.R. § 204.5(l)(3). With the petition, the Petitioner submitted a letter dated October 15, 2005, from [redacted] managing director of [redacted], attesting to the Beneficiary's experience as a full-time store manager with [redacted] from October 1998 to May 2001. The letter stated his job duties as follows: "managed the store and oversaw operations

and maintenance. He also [sic] planed and prepared work schedules, supervised cashiers, balanced journals and accounting for the store income."[2] The letter lists the same address listed on the labor certification for in India.

In the NOIR, the Director stated that "on January 30, 2015, FDNS confirmed the employment letter signed by .. was a fraudulent employment letter." She further stated that the owner of is the Beneficiary's uncle; that the employment letter was written as a favor; that indicated that the Beneficiary only worked for him from August 1999 to June 2000 in a trainee capacity; and that the Beneficiary was on probation throughout his employment.[3] The Director had good and sufficient cause to issue the NOIR because the record at the time of the NOIR's issuance, if unexplained or unrebutted, would have warranted the petition's denial.

In response to the NOIR, the Petitioner stated that the reports from the overseas investigation were inconsistent; that the Beneficiary was engaged in "project work" related to his bachelor's degree from the fall of 1999 to the spring of 2000 and that he managed during school breaks, on weekends, and when not attending class;[4] and that the Director's allegation that the employment letter was written as a favor is unsupported by the record. In response to the NOIR, the Petitioner also provided an affidavit from the Beneficiary and referred to an affidavit from that was submitted in response to the Director's notice of intent to deny the Beneficiary's adjustment of status application.

In the notice of revocation (NOR), the Director stated that the Petitioner's response to the NOIR contained no evidence of the Beneficiary's prior employment. Thus, the Director determined that the Petitioner had not established that the Beneficiary had the required two years of experience as a store manager.[5]

On appeal, the Petitioner restates its assertions contained in its response to the NOIR. It also submits a copy of a statement from dated March 23, 2015; a statement from dated April 16, 2018; and copies of the Beneficiary's transcript certificate and transcripts from the India.

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[2] The job description provided in the letter is nearly identical to the job duties listed for the offered position on the labor certification, which casts doubt on the veracity of the Beneficiary's claimed employment. The Petitioner must resolve any inconsistencies with independent, objective evidence of the Beneficiary's prior employment. *See Matter of Ho*, 19 I&N Dec. at 591-92.

[3] Doubt cast on any aspect of the Petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See id.* at 591.

[4] We note that the Beneficiary attended college full-time in , India, from the fall of 1996 to the spring of 2000. is approximately 100 miles from India. The record does not show how the Beneficiary worked full-time and attended college full-time during the period from October 1998 to the spring of 2000. *See id.*

[5] The NOR did not include a formal finding of fraud or willful misrepresentation against the Petitioner or the Beneficiary.

The statement from dated March 23, 2015, confirms that the signature on the experience letter dated October 15, 2005, submitted with the petition "does not match [his] current signature." However, he states that the original experience letter was "handed over to [the Beneficiary] in regular course, once he left the company" and confirms that the Beneficiary was working "in our company at and He states that had two units, one in and one in ; that the Beneficiary worked in in the sales and retail department under the supervision of the unit general manager while he was attending college in ; that after graduation, he worked in [6] that the store in where the Beneficiary worked has moved since 2000; and that he does not retain payslips "from such a long time." In his statement dated April 16, 2018, restates the assertions made in his March 23, 2015, statement, and asserts that although he is the Beneficiary's uncle, he did not provide the original experience letter as a favor.

The Petitioner has not demonstrated that the employment history claimed on the labor certification is correct. The labor certification states that the Beneficiary worked as a full-time store manager and supervisor with located in India, from October 1998 to May 2001. The original experience letter submitted with the petition confirms the Beneficiary's experience as a full-time store manager with in India from October 1998 to May 2001. While the letter's signatory, confirmed that the signature on the letter does not match his current signature, he did not indicate who signed his name to the letter and under what authority. Thus, the letter submitted to the record regarding the Beneficiary's prior work experience is not credible.[7] Further, in his statements submitted on appeal, asserts that the Beneficiary worked in while he was in college and in after graduation. These statements conflict with the labor certification and original experience letter certifying the Beneficiary's employment in India. Additionally, the record contains no evidence establishing that ever had a location in , India. Further, has not explained his contradictory statement to FDNS that the Beneficiary only worked for him From August 1999 to June 2000 in a trainee capacity. The inconsistencies in the record have not been resolved with independent, objective evidence. *See Matter of Ho*, 19 I&N Dec. at 591-92.

The Beneficiary's transcripts show that he was engaged in "project work" related to his bachelor of engineering degree from the fall of 1999 to the spring of 2000. However, the transcripts do not indicate where he completed his project work or in what capacity. Further, the Petitioner claims on appeal that the Beneficiary completed his project work at , but it is not clear how project work as a store manager qualified for college credit in the Beneficiary's degree field of instrumentation engineering.[8] The Beneficiary's purported duties as a store manager at did not include any specific engineering duties.

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[6] The Beneficiary's Form G-325A, Biographic Information, in the record lists his last address abroad in India, from June 1994 to July 2001. It does not indicate that he ever lived in Further, the form does not indicate his last occupation abroad.

[7] The Petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

[8] The Petitioner asserts on appeal that was an "electrical appliance manufacturing and convenience store," but it provides no evidence to support that assertion. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner has not resolved the inconsistencies and ambiguities in the record with independent, objective evidence of the Beneficiary's prior employment, such as paystubs, payroll records, personnel records, and/or tax documents. *See Matter of Ho*, 19 I&N Dec. at 591-592. Thus, the Petitioner has not established that the Beneficiary possessed the experience required by the labor certification as of the priority date. We therefore affirm the Director's determination that the Beneficiary did not have the required two years of experience as a store manager.

III. CONCLUSION

The Petitioner has not demonstrated that the Beneficiary has the required experience for the offered job.

ORDER: The appeal is dismissed.

Cite as *Matter of B-H.-G-, Inc.*, ID# 1775599 (AAO Dec. 27, 2018)