U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6199189

Date: FEB. 7, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner seeks to employ the Beneficiary as an assistant manager of a gas station/retail store. The company requests her classification under the third-preference, immigrant classification for skilled workers. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i).

After initially granting the filing, the Director of the Texas Service Center revoked the petition's approval. The Director concluded that the Petitioner did not demonstrate the Beneficiary's possession of the minimum employment experience required for the offered position or the requested visa classification. The Director also found that the Beneficiary willfully misrepresented her qualifying experience on the accompanying certification from the U.S. Department of Labor (DOL).

The Petitioner bears the burden of establishing 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.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as a skilled worker 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 DOL certification. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for an offered position. *Id.* DOL certification also indicates that 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 labor certification 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 determines whether a beneficiary meets the requirements of a DOL-certified position and a requested visa classification. If USCIS grants a 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.

"[A]t 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, the erroneous nature of a petition's approval justifies its revocation. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

USCIS may issue a notice of intent to revoke (NOIR) a petition's approval if the unexplained and unrebutted record would have warranted the petition's denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (1987). The Agency properly revokes a petition if a petitioner's NOIR response does not overcome the stated revocation grounds. *Id.* at 451-52.

II. THE REQUIRED EXPERIENCE

A skilled worker must have at least two years of training or experience. Section 203(b)(3)(A)(i) of the Act. A petitioner must also demonstrate a beneficiary's possession of all DOL-certified job requirements of an offered position by a petition's priority date.[1] *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). When evaluating a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

Here, the labor certification states the minimum requirements of the offered position of assistant manager as a U.S. high school diploma, or an equivalent foreign educational credential, and two years of experience in the job offered. The Beneficiary's educational qualifications are not at issue.

On the labor certification, the Beneficiary attested that, by the petition's priority date, she gained more than three years of full-time, qualifying experience in Pakistan. She stated that, from September 2011 through October 2014, she worked as an assistant manager at a retail store. Pursuant to 8 C.F.R. § 204.5(l)(3)(ii)(A), the petition included a letter from the store's owner related to the Beneficiary's claimed, qualifying experience.

The Director's NOIR, however, noted discrepancies between the labor certification and the Beneficiary's application for a U.S. nonimmigrant visitor's visa in October 2014. Her visa application stated her "Primary Occupation" as "homemaker" and indicated that she had "No" prior employment. The NOIR also noted that the store's letter describes the Beneficiary's former job duties exactly as the labor certification states the duties of the offered position.

The Director issued the NOIR for good and sufficient cause. The employment information on the Beneficiary's visa application contradicts her listed employment on the labor certification and casts doubt on her claimed qualifying experience. A petitioner must resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591. Also, the verbatim job duties on the labor certification and in the store's letter suggest that the

[1] This petition's priority date is April 22, 2016, the date DOL accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

store owner copied the Beneficiary's duties from the certification, rather than stating them from personal knowledge or business records. Thus, as of the NOIR's issuance, the record lacked sufficient reliable evidence of the Beneficiary's possession of the minimum experience required for the offered position or the requested visa classification. The record therefore would have warranted the petition's denial.

The Petitioner's NOIR response included affidavits from the Beneficiary and her spouse. The Beneficiary reiterated her claimed employment at the store in Pakistan. She attested that the store paid her in cash and that, rather than deposit the money in a bank, she spent it on living expenses for her and her family. She stated that she did not have to pay taxes on the income. The Petitioner also submitted a letter from a Pakistani accountant explaining that, if employees' annual salaries fall below government-designated minimums, Pakistani workers need not pay taxes and their employers need not withhold money from their pay.

The couple also attested that, because they applied to visit the United States together, the Beneficiary's spouse completed the online, visa applications for both of them. The Beneficiary's spouse stated that he completed his application "in complete detail," but filled in the Beneficiary's form with "only the information wherein I was certain." He stated that, contrary to the form's instructions, he did not indicate the Beneficiary's high-school level education or her employment outside the home on her application. He stated that he "did not feel that it was vital information (due to the fact that we were applying for mere visit to U.S. and not any education or employment visa)." The couple attested that, at a later interview regarding their applications, a U.S. consular officer did not ask the Beneficiary about her education or employment. The couple described the visa application's "[n]on-mention" of the Beneficiary's education and employment as "an innocent and inadvertent mistake on our part."

The couple's explanation for concealing the Beneficiary's experience on her visa application is unconvincing. The Beneficiary's spouse attested that he completed her application only with information of which he was "certain." But if, as of the application's filing and for the three years immediately preceding it, the Beneficiary worked full-time and spent her pay on her family's living expenses, her spouse would have likely been "certain" of her employment. Also, as the website of the U.S. consulate in Pakistan indicates, applicants for visitor visas must demonstrate strong economic and social ties to Pakistan - such as the existence of family members, property, or employment – to show that they would likely return to the country after visiting the United States. *See* U.S. Dept. of State, "Apply For A U.S. Visa," Business/Tourist Visa, https://www.ustraveldocs.com/pk/pk-niv-typeb1b2.asp (last visited Dec. 12, 2019). Indeed, the Beneficiary's spouse submitted evidence that, before the couple received their visitor visas, U.S. consular officers visited his business and requested documentary evidence of its activities and his ownership of it. Thus, if the Beneficiary was truly working at the store in Pakistan, the couple would have likely disclosed her employment on the application to increase their chances of obtaining visas.

The NOIR response also contained additional, documentary evidence of the Beneficiary's claimed, qualifying experience. These materials, however, do not establish her claimed employment. An updated letter from the store's owner describes the Beneficiary's former duties in words other than those listed on the labor certification. But, without independent evidence corroborating the letter's

contents, it is insufficient. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring independent, objective evidence to resolve inconsistencies of record). Also, the updated letter does not explain why the store owner's prior letter described the Beneficiary's former job duties exactly as the labor certification stated the duties of the offered position.

The Petitioner also submitted a 2011 letter on store stationery offering employment to the Beneficiary. If the store issued an offer letter to the Beneficiary, however, the record does not explain why, more than seven years later, the store would have a duplicate, original, signed and stamped letter available to submit. The record therefore does not establish the authenticity of the 2011 letter. *See Matter of Ho*, 19 I&N Dec. at 591 (stating that doubts cast on any aspect of a petitioner's proof may lead to a reevaluation of the sufficiency and reliability of remaining evidence of record).

Copies of income tax receipts and invoices document the store's existence, address, and owner during the Beneficiary's claimed tenure there. But these materials do not demonstrate the store's employment of her in the offered position. The Petitioner also submitted copies of the store's purported "muster rolls" from September 2011 through October 2014. These monthly records, which the store's owner signed and stamped, purportedly list its employees, their dates of employment, and the amounts paid to them. The record, however, does not establish the store's preparation of these rolls at the time the Beneficiary worked there. The Petitioner also has not demonstrated that the store regularly prepared such rolls before and after the Beneficiary's claimed tenure at the store. The record therefore does not establish the reliability of the muster rolls.

On appeal, the Petitioner notes that the Beneficiary's visa application concealed not only her experience, but also her secondary-level education. Despite the omission of the Beneficiary's education on the application, USCIS found that she had the foreign equivalent of a U.S. high school diploma. The Petitioner therefore argues that, despite the application's concealment of the Beneficiary's employment, USCIS should similarly find that she meets the experience requirements of the offered position and requested visa classification.

USCIS treated the Beneficiary's educational and experience qualifications differently, however, based on the evidence of record. The Beneficiary's visa application indicates that she lacks secondary education. But the Petitioner provided a copy of a "higher secondary certificate" in her name from the Board of Intermediate Education in [redacted] Pakistan. The certificate constitutes independent, objective evidence from a government agency. USCIS therefore gives the certificate great evidentiary weight. In contrast, as proof of the Beneficiary's employment, the Petitioner submitted documentation from the store, her claimed former employer. The store's evidence is not as independent or objective in nature as documents from a government agency. We therefore give the store's evidence less weight.

Counsel also asserts that, because Pakistani culture identifies a wife's primary responsibility as her family's home, the Beneficiary's spouse truthfully identified her "Primary Occupation" on the visa application as "homemaker." Counsel's assertion, however, does not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). The record does not establish the role of women in Pakistan's culture, nor did the Beneficiary's spouse cite that role as a reason for his response on the application. The

Petitioner must substantiate counsel's statement with independent evidence, which may include affidavits and declarations.

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary's possession of the minimum experience required for the offered position or the requested visa classification. We will therefore affirm the petition's denial.

III. MISREPRESENTATION

Unless accompanied by an application for Schedule A designation or documentation of a beneficiary's qualifications for a shortage occupation, a petition for a skilled worker must include a valid, individual labor certification. 8 C.F.R. § 204.5(l)(3)(i). USCIS may invalidate a certification after its issuance upon a finding of "fraud or willful misrepresentation of a material fact involving the labor certification application." 20 C.F.R. § 656.30(d).

Misrepresentations are willful if they are "deliberately made with knowledge of their falsity." *Matters of Valdez*, 27 I&N Dec. 496, 498 (BIA 2018) (citations omitted). A misrepresentation is material when it has a "natural tendency to influence, or [be] capable of influencing, the decision of the decision-making body to which it was addressed." *Id.* (citation omitted).

Here, the Director found that the Beneficiary willfully misrepresented her qualifying experience on the labor certification application. Based on the misrepresentation, however, the Director did not invalidate the labor certification.

As noted above, the Beneficiary stated on her nonimmigrant visa application completed on October 21, 2014 that her primary occupation was "homemaker" and that she had "no" prior employment. Later on the ETA Form 9089 filed on her behalf on April 22, 2016, she claimed employment experience, signed, and attested to having worked from September 1, 2011 until October 30, 2014. On the date that her nonimmigrant visa form was submitted, she was purportedly employed. As she had no reason to misrepresent her experience on the visa application, and the two statements conflict, the later claim would misrepresent her true experience and close off a line of inquiry. 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 ETA Form 9089.

IV. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's possession of the minimum experience required for the offered position or the requested visa classification. Substantial evidence also supports the Director's finding that the Beneficiary willfully misrepresented her qualifying experience on the labor certification application. We will therefore affirm petition's revocation.[2]

[2] A copy of the Petitioner's federal income tax return for 2015 identifies one of the company's shareholders by the same

ORDER: The appeal is dismissed.

family name as the Beneficiary and her spouse. A copy of the Petitioner's federal tax return for 2016 indicates additional company owners, but omits the pages that would identify them. The Petitioner attested that, as of the filing of the labor certification application, the Beneficiary had no family relationships to the company's owners, officers, or incorporators. But the common family name of the Beneficiary, her spouse, and the 2015 shareholder and the company's addition of undisclosed owners in 2016 raise a question whether she might have shared a family relationship with a principal of the corporation as of the application's filing. Thus, in any future filings in this matter, the Petitioner must submit a complete copy of its federal income tax return for 2016 and disclose any family relationships between the Beneficiary and the company's owners, officers, or incorporators as of the application's filing. *See Matter of Modular Container Sys., Inc.*, 89-INA-228, slip op. at *9 (BALCA July 16, 1991) (*en banc*) (holding that a foreign national's relationship to a petitioning corporation's director, officer, or employee may indicate the unavailability of the offered job to U.S. workers).