U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF G-H-G-, INC.

DATE: FEB. 15, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a skincare service, seeks to employ the Beneficiary as an esthetician. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This category allows a U.S. business to sponsor a foreign national with at least two years of training or experience for lawful permanent resident status.

The Director of the Nebraska Service Center initially approved the petition, but subsequently revoked the approval after concluding that the record did not establish, as required, the Beneficiary's possession of the experience required for the offered position.

On appeal, the Petitioner submits additional evidence and asserts that it has now established the Beneficiary's qualifications for the offered position.

Upon *de novo* review, we will dismiss the appeal.

## I. LAW

Employment-based immigration is generally a three-step process. First, a U.S. employer must obtain an approved ETA Form 9089, Application for Permanent Employment Certification (labor certification), from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). Next, the employer must file a Form I-140, Immigrant Petition for Alien Worker, with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, if USCIS approves the immigrant visa petition, a 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.

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. 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.

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).

## II. ANALYSIS

The Director revoked the petition's approval because the record did not establish that the Beneficiary has the experience required by the terms of the labor certification. A petitioner must establish a beneficiary's possession of all the experience specified on an accompanying labor certification by a petition's priority date.[1] 8 C.F.R. § 103.2(b)(1), (12); *see also Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

In evaluating a beneficiary's qualifications, we must examine the job offer portion of a labor certification to determine the minimum requirements of an offered position. We may neither ignore a term of the labor certification, nor impose additional requirements. *See K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1, 3 (1st Cir. 1981).

Here, the labor certification states that 24 months of experience as an esthetician is the minimum experience requirement of the offered position. On the labor certification, the Beneficiary attested that she had at least 24 months of full-time, qualifying experience with a prior employer as follows:

| Job title | Employer name | Employer address | Start date | End date |
|---|---|---|---|---|
| Esthetician | | South Korea | April 1, 1990 | January 30, 1998 |

A petitioner must support a beneficiary's claimed qualifying experience with a letter from an employer. 8 C.F.R. § 204.5(g)(1). The letter must provide the name, address, and title of an employer, and a description of a beneficiary's experience. *Id.* Here, the Petitioner initially provided letters from individuals who claimed to have worked at with the Beneficiary and attested to her experience. stated that she was a former accounting manager at and that, based on the duration of her own employment there, she could confirm that the Beneficiary also worked there from March 1, 1993, to June 30, 1996. stated that she was the president of and attested that the Beneficiary worked there from April 1, 1990, to January 30, 1998.

However, as was noted by the Director in the NOIR, the Beneficiary's claims on the labor certification

[1] In this case, the petition's priority date is August 21, 2015. This is the date the DOL accepted the labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

and the information in the letters are inconsistent with other information in the record regarding the Beneficiary's work history. Specifically, USCIS records show that the Beneficiary is also the beneficiary of at least two prior Forms I-360, Special Immigrant Worker Petition, filed on her behalf by churches in the United States that sought to employ her as a religious worker. The most recent religious worker petition was filed on November 13, 2002, by C-P-K-P-C and contains information regarding the Beneficiary's employment history that contradicts the information in this petition.

A petitioning religious organization is required to demonstrate that the Beneficiary has at least two years of full-time experience as a religious worker. Section 101(a)(27)(C)(iii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(iii). Accordingly, in its I-360 petition, C-P-K-P-C- provided a statement from the pastor of in , South Korea, who claimed that the Beneficiary worked at as a church evangelist from January 1, 1993, to April 10, 1998. Moreover, in response to a request for evidence, C-P-K-P-C elaborated that the Beneficiary worked at as a church evangelist for 45 hours each week and paid was paid $680 each month. According to C-P-K-P-C-, the Beneficiary's duties at included preparation and preaching biblical messages at selected worship services, assisting the pastor in preparation for worship services, visiting and spiritually assisting church members who could not attend church, leading bible studies, planning church retreats, and maintaining communication with church-sponsored missionaries. The assertion that the Beneficiary was a full-time paid employee of a church from January 1993 to April 1998 appears to be inconsistent with the assertion in this petition that she was a full-time esthetician from 1990 to 1998.

On May 12, 2016, the Beneficiary filed a Form I-485, Application to Register Permanent Residence or Adjust Status, and included a Form G-325A, Biographic Information, on which she was asked to list her last occupation abroad. The Beneficiary only listed her claimed work as an esthetician at from April 1990 to January 1998, even though C-P-K-P-C- had stated that the Beneficiary worked for as a church evangelist during the same period.

In an interview conducted on April 17, 2017, the Beneficiary was questioned about her claimed employment at and According to the interview notes, the Beneficiary stated that she worked in skincare from April 1990 to January 1998, and that the business had one boss and one employee, the Beneficiary. This is not consistent with evidence in this I-140 petition which includes letters from both the purported president and the claimed account manager of During the interview, the Beneficiary also asserted that she was an unpaid choir member at from 1986 to 1998; however, this statement conflicts with C-P-K-P-C-'s claim that the Beneficiary worked at as a church evangelist and that the church paid her at least $680 each month. We also note that the list of duties that C-P-K-P-C- claimed the Beneficiary performed as a church evangelist did not include work in the church choir.

On appeal, the Petitioner claims that the Beneficiary worked concurrently for and because she was a full-time volunteer at during weekends, mornings, and evenings when she was not at The Petitioner asserts that since the Beneficiary was an unpaid volunteer in the church choir, she has no evidence of remuneration from the church. The Petitioner also states that the Beneficiary has no evidence of remuneration from

because her yearly wages were below the minimum amount required for filing tax returns. The Petitioner refers to documents it provided relating to the minimum income required for filing tax returns in South Korea during the relevant period.

The Petitioners assertions and evidence with respect to the Beneficiary's wages in South Korean are not sufficient to establish that she was exempt from filing taxes because they contradict other evidence in the record. Specifically, the Petitioner's assertion that the Beneficiary received no wages from for her volunteer work in the choir conflicts with C-P-K-P-C-'s claim that the Beneficiary was paid at least $680 each month for her work as a church evangelist. The Petitioner has not offered an explanation and evidence to resolve these contradictory claims. For example, the Petitioner has not provided evidence regarding the Beneficiary's annual wages in South Korea from any entity that would demonstrate her annual income was so low as to be exempt from taxation.

With regard to the contradictions between the Beneficiary's claim during her 2017 interview that had one "boss" and one employee (herself), and the letters from both the claimed president and an accounting manager, the Petitioner claims there is no such contradiction. Instead, the Petitioner asserts that the interviewing officer was not clear in his questioning and that the Beneficiary "was truthful in her response that there were two (2) persons" working at when the Beneficiary ceased to work there because the accounting manager had already left the company. The Petitioner does not provide a statement from the Beneficiary claiming that she was confused during her interview or clarifying that there were sometimes three employees and sometimes two. Nor does the Petitioner provide documentary evidence to support the claimed employment of both the president and accounting manager. Accordingly, the Petitioner's assertion is not supported by the record. Based on the contradictory evidence present in the record regarding the Beneficiary's claimed employment abroad and the lack of corroborating documentary evidence of her employment, the letters from the claimed co-workers at do not establish that she has the minimum qualifying experience as an esthetician as required on the labor certification.

Finally, the Petitioner contends on appeal that the officer who interviewed the Beneficiary in April 2017 did not make himself clear when questioning her about her work experience, particularly regarding her work at the church. The record does not support this claim. As discussed, the Beneficiary's work history on her Form G-325A is incomplete because she did not list her claimed employment abroad for The record relating to the Beneficiary's April 2017 interview reflects that the officer attempted to accurately and completely develop the Beneficiary's employment history; however, the Beneficiary's responses, such as her statement that she was an unpaid choir member at when C-P-K-P-C- had stated that she was a paid church evangelist, remained inconsistent with other evidence in the record.

Given the inconsistencies regarding the Beneficiary's claimed employment experience at and the Petitioner's appeal, unaccompanied by additional documentary evidence establishing the nature and duration of the Beneficiary's employment with her purported employer in South Korea, is insufficient to establish the claimed experience as an esthetician. A petitioner must resolve inconsistencies in the record with independent, objective evidence pointing

to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here the Petitioner has not done so.

## III. CONCLUSION

Based on the above conflicting information concerning the Beneficiary's employment history, we find that the Petitioner has not submitted sufficient evidence to establish that the Beneficiary has the qualifying experience required by the terms of the labor certification and to overcome the Director's decision revoking the petition's approval.[2]

**ORDER:** The appeal is dismissed.

Cite as *Matter of G-H-G-, Inc.*, ID# 9652568 (AAO Feb. 15, 2018)

[2] Although not specifically noted by the Director, the Petitioner has not demonstrated that the Beneficiary is eligible for classification as a skilled worker. A skilled worker must possess at least two years of training or experience. Section 203(b)(3)(A)(i) of the Act. Here, for the reasons discussed above, that the record does not establish the Beneficiary's claimed experience at [redacted] or otherwise demonstrate that she has two years of training or experience required for the classification requested.