U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-L-D- INC.

DATE: FEB. 23, 2018

CERTIFICATION 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 retail 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. However, the initial approval of the petition, as the Director later explained, was an inadvertent error that was not immediately noticed by U.S. Citizenship and Immigration Services (USCIS). Despite issuing the approval notice USCIS proceeded with a series of requests for evidence followed by a decision purporting to deny the petition and invalidate the labor certification with a finding of fraud or willful misrepresentation of a material fact. The Petitioner appealed that decision, and we remanded the case to the Director with an order to resolve the conflict between the previously issued approval notice and the denial decision, to issue a new decision, and if the petition was not approved to certify the case to us for further review.

Since the initial approval of the petition had never been revoked, the Director issued a notice of intent to revoke. Following receipt of the Petitioner's response, the Director issued another decision in which he found that the Petitioner did not establish that the proffered position was a *bona fide* job opportunity available to U.S. workers and also found that the Petitioner's owner and the Beneficiary willfully misrepresented a material fact in the labor certification application – specifically, their familial relationship. Accordingly, the Director revoked the approval of the petition[1] and invalidated

[1] 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 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.

the labor certification with a finding of fraud or willful misrepresentation of a material fact. The Director certified the case to us for review.

On certification, the Petitioner submits no additional evidence or arguments. Upon review, we find that the Director's decision is correct because the record does not demonstrate that the proffered position was a *bona fide* job opportunity available to U.S. workers and it also indicates that the Petitioner's owner and the Beneficiary willfully misrepresented a material fact in the labor certification application. Therefore, we will not disturb the Director's decision dated September 14, 2017, to revoke the approval of the petition and invalidate the labor certification.

ORDER: The approval of the decision is revoked.

Cite as *Matter of S-L-D- Inc.*, ID# 992964 (AAO Feb. 23, 2018)