U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-R-

DATE: JAN. 3, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an ice cream franchise, seeks to employ the Beneficiary as an administrative assistant. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. *See* Immigration and Nationality Act (the Act), section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This "EB-3" 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, but subsequently revoked approval of the petition after concluding that the Petitioner had not established that the Beneficiary possessed the minimum experience required on the labor certification for the proffered position. Specifically, the Director found that the employment history the Beneficiary claimed on the labor certification and within the context of the petition did not match the employment history that she had claimed when she first sought a nonimmigrant visa. The Director subsequently denied the Petitioner's motion and affirmed his decision to revoke approval of the petition.

On appeal, the Petitioner asserts that the Director's revocation was erroneous because he did not cite the factual basis for revocation in his notice of intent to revoke (NOIR) the approval of the petition.

Upon *de novo* review, we will remand the case for further proceedings.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer must obtain an approved labor certification from DOL. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, 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. Section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer may file 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.

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 an 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

In this case, the Director's revocation of approval was not based on the information cited in the NOIR. Accordingly, the Director's decision will be withdrawn. However, because the petition does not appear to be approvable, the matter is remanded for a new decision.

A. The Notice of Intent to Revoke

In his NOIR, the Director advised the Petitioner that the Beneficiary had provided information regarding the names of her employers and the dates of her employment in South Korea that contradicted the employment history listed on the labor certification and a Form G-325A, Biographic Information. However, after the Petitioner responded to the NOIR, the Director cited to previously undisclosed derogatory information and revoked approval of the petition, concluding that "[a] review of the record . . . shows that the beneficiary still claimed to be a social worker and not an administrative assistant at the time of filing for her non immigrant [*sic*] visa."

In this case, the Director's NOIR did not advise the Petitioner of the contradictory information regarding the Beneficiary's prior job title, although the Director ultimately cited to this discrepancy as the basis for revoking approval of the Petition. Therefore, the revocation was not based on derogatory information made available to the Petitioner in accordance with binding precedent. *See Estime*, 19 I&N Dec. at 452 (concluding that "where the petitioner is unaware and has not been advised of derogatory evidence, revocation of the visa petition cannot be sustained"). As a consequence, we will withdraw the decision of the Director and remand the matter. However, it remains that the petition does not appear to have been approvable based on the contradictory information in the record.

B. Contradictory Claims

As discussed in the Director's NOIR, USCIS records reflect contradictory information regarding the Beneficiary's employment history. According to the labor certification, the proffered position of administrative assistant requires a minimum of two years of experience as an administrative assistant. On the labor certification, which the Beneficiary signed on August 15, 2015, she claimed to have approximately nine years of qualifying experience as an administrative assistant as follows:

Job title	Employer name	Employer address	Start date	End date
Administrative assistant		First address: South Korea Second address: [sic] South Korean	3/2/1997	2/28/2006

With this petition, the Beneficiary concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status, and a supporting Form G-325A. On the Form G-325A, the Beneficiary claimed that she had worked as an administrative assistant for in South Korea from March 1997 to February 2006.

USCIS records reflect that the Beneficiary has previously claimed employment history that contradicts the above assertions. When the Beneficiary sought to obtain a nonimmigrant visa in April of 2008, she claimed the following employment history in South Korea:

Job title	Employer name	Employer address	Start date	End date
Social Welfare Worker	–		[no date given]	Listed under "present employer" in April 2008
Social Welfare Worker			Aug 2006	Dec 2007
Social Welfare Worker			Jun 2004	Jul 2006

The employers and dates of employment that the Beneficiary claimed in 2008 are inconsistent with the employment history she provided in 2015.

In response to the NOIR and on appeal, the Petitioner provided letters from one of the Beneficiary's claimed employers in South Korea: According to president, the center was established in 1997 as a community-based social welfare house, and existed under that name from 1997 through February 2006, at which time it closed. stated that he and the president of

established ' in August 2006, the organization was taken under the wing of the church in October 2007, and the South Korean government approved it to operate under its current name of in January 2008.

also stated that the Beneficiary worked for from 1997 through 2006, performing general administrative work, and at from August 2006 through December 2007. also claimed that the Beneficiary worked for as an intern from July 2003 and as an administrative worker from June 2004 through July 2006, while she was also working at However, did not claim to be affiliated with or explain the basis for asserting that the Beneficiary worked there from 2003 to 2006. Moreover, when she applied for her nonimmigrant visa in 2008, the Beneficiary herself did not claim to have worked for any entity other than from June 2004 to July 2006. Although stated that the Beneficiary worked at beginning in July 2003, the Beneficiary did not claim to have worked there before June 2004. Because the assertions in letters are contradicted by the Beneficiary's own claims in 2008, the letters do not resolve the contradictory information in the record regarding the Beneficiary's qualifying experience. Consequently, employment verification letters do not establish that the Beneficiary has qualifying experience gained at as claimed on the labor certification.

The Petitioner also submits the Beneficiary's Korean tax records for 2004 through 2008; however, the records do not reflect that the Beneficiary had any income for employment at between 2004 and 2006. Instead, the tax records reflect that the Beneficiary worked at in 2004, nursing center from 2004 through 2006, and in 2008.[1] Accordingly, the tax records do not establish that the Beneficiary has any of the qualifying experience as an administrative assistant gained at from March 2, 1997, to February 28, 2006, as she claimed on the labor certification.

The Petitioner includes letters from individuals in South Korea who claim to have worked with the Beneficiary and to have knowledge of her concurrent employment at and stated that she had worked at as a welfare worker since 2004, and had worked there with the Beneficiary between 2004 and 2006. claimed that she worked together with the Beneficiary at in 2004 and 2005, and that the Beneficiary was still working there when quit at the end of 2005. Neither nor claimed to have worked at nor did they claim to have visited with the Beneficiary at Song or provide any details establishing how they knew she worked there.

[1] The tax records also do not show that the Beneficiary worked at in 2006, the alleged successor to as she had claimed in 2008 when seeking a nonimmigrant visa.

The letter from is accompanied by tax records showing that worked for from 2005 to 2006, and as recently as 2015, but this does not support claim to have worked there with the Beneficiary in 2004. The letter from is accompanied by tax records showing that worked at from 2004 to 2006, but this contradicts claim to have quit in 2005. Moreover, the business registration number on both of their tax records is which does not match the number of recorded for on the Beneficiary's tax records. Accordingly, based on the contradictory information in the letters and tax records, these letters do not establish that the Beneficiary worked at the same employer with and during any period, and also are not sufficient to establish the Beneficiary's employment as an administrative assistant at between 2004 and 2006.

Finally, we note that although the Beneficiary claimed on the Form G-325A that her last address outside the United States was in South Korea from July 2008 to July 2009, the record contains a copy of her 2008 marriage certificate which shows she married her husband in Nevada on 2008, that they both claimed to be from California, and that they listed their shared address on in California. The information on the marriage certificate contradicts the Beneficiary's claim to have resided in South Korea from July 2008 to July 2009, and further undermines the reliability of the Beneficiary's claims. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

The above contradictory information regarding the names of the Beneficiary's claimed employers in South Korea, and the dates and duration of her claimed employment and residence in South Korea are not resolved. Based on the contradictory information regarding the Beneficiary's prior qualifying employment, the Petitioner has not established that the Beneficiary has the qualifying experience as an administrative assistant and, consequently, that the petition was approvable.

III. CONCLUSION

In view of the foregoing, the previous decision of the Director will be withdrawn. The petition is remanded to the Director. The Director may request any additional evidence considered pertinent. Similarly, the Petitioner may provide additional evidence within a reasonable period of time to be determined by the Director. Upon receipt of all the evidence, the Director will review the entire record and enter a new decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of B-R-*, ID# 583566 (AAO Jan. 3, 2018)