U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7051197

Date: JAN. 10, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner seeks to employ the Beneficiary as a store manager. 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 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 Texas Service Center revoked the petition's approval, concluding that the Petitioner did not establish that (a) the Beneficiary possessed the experience required by the labor certification as of the priority date; (b) the job offer was *bona fide*; and (c) it had the continuing ability to pay the proffered wage from the petition's priority date onward.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. 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 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.

[1] The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is October 3, 2016. *See* 8 C.F.R. § 204.5(d).

II. 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.

III. THE BENEFICIARY'S EXPERIENCE

The Director revoked the petition's approval, in part, 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)(1), (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 two years of experience in the job offered. The labor certification states that the Beneficiary qualifies for the offered position based on experience as a store manager with the Petitioner in Texas from July 1, 2006, onward;[2] as a manager with [redacted] in Texas from July 1, 2005, to June 30, 2006;[3] and as a store manager with [redacted] in [redacted] India, from January 1, 1999, to January 31, 2001.

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). The record contains a March 6, 2006, experience letter from [redacted], proprietor of [redacted] stating that it employed the Beneficiary as a store manager from January 1, 1999, to January 31, 2001.

In the NOIR, the Director stated that the Beneficiary did not claim any work experience in the United States or abroad on a Form G-325A, Biographic Information form, signed by her on May 29, 2005 (2005 Form G-325). Further, the Director stated that on a Form G-325A signed by the Beneficiary on June 30, 2007 (2007 Form G-325), she claimed no work experience abroad. She submitted the Forms G-325A with her adjustment of status applications, on which she certified that the information

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[2] A labor certification employer cannot rely on experience that a foreign national gained with it, unless the experience was in a job substantially different than the offered position or the employer demonstrates the impracticality of training a U.S. worker for the offered position. 20 C.F.R. § 656.17(i)(3). For these purposes, a job is substantially different from an offered position if it requires performance of the same job duties less than 50 percent of the time. 20 C.F.R. § 656.17(i)(5)(ii). On the labor certification, the Beneficiary attested that her job duties as store manager with the Petitioner are substantially similar to those of the offered position of store manager. The record therefore does not support the Petitioner's use of experience that the Beneficiary gained with it and does not establish her qualifications for the offered position.

[3] The record does not contain any evidence corroborating this employment.

provided with each application was true and correct. The Director indicated that the Petitioner must resolve the inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. at 591-92.

In response to the NOIR, the Petitioner submitted an affidavit from the Beneficiary stating that she did not list her employment with [redacted] on the 2007 Form G-325 because it requested employment for the last five years and her employment with [redacted] fell outside of the five-year window. She further stated that she inadvertently overlooked the omission of all of her experience on the 2005 Form G-325 and that she "should have paid more attention" to the forms she was signing. The Petitioner also submitted an affidavit dated September 22, 2017, from [redacted] ([redacted] affidavit) certifying that the Beneficiary worked for [redacted] as a store manager from January 1, 1999, to January 31, 2001.

The Director revoked the approval of the petition, finding that the record does not establish that the Beneficiary has the required two years of experience in the job offered. He indicated that the Petitioner must resolve the inconsistencies in the record with independent, objective evidence pointing to where the truth lies and determined that the Petitioner had not established eligibility for the requested benefit. *See Matter of Ho*, 19 I&N Dec. at 591-92.[4]

On appeal, the Petitioner states that the "lack of employment history on the G-325A was nothing more than a scriveners error." It further states that the Beneficiary miscalculated her "last 5 years employment" on the 2005 Form G-325 and "did not believe the [redacted] employment fit within this timeframe." It asserts that the purported employment history with [redacted] was unnecessary on the 2007 Form G-325 because it fell outside of the five-year requested window. It also resubmits copies of the Beneficiary's affidavit and the [redacted] affidavit.

We agree with the Director that the Petitioner has not established that the Beneficiary has the required experience for the offered job. The two Forms G-325A that were signed and certified by the Beneficiary conflict with the information provided on the labor certification and with the evidence submitted in this case. In one section, the 2005 Form G-325A instructed the Beneficiary to list her last five years of employment, and she stated "N/A," indicating that she had no applicable employment. However, she was required to list all of her employment from May 30, 2000, onward in that section, including the three employers listed on the labor certification. In a subsequent section, the Form also instructed her to list her "[l]ast occupation abroad if not shown above," and she left the box blank.

On the 2007 Form G-325, she listed her employment with the Petitioner and [redacted] but she left blank the box requiring her to list her last occupation abroad. While her purported employment with [redacted] fell outside the five-year timeframe, she failed to list her purported employment abroad in the subsequent section as instructed. These two Forms G-325A contradict the labor certification, the 2006 experience letter from [redacted] the [redacted] affidavit, and the Beneficiary's affidavit[5]

[4] Evidence that a petitioner creates after USCIS points out the deficiencies and inconsistencies in the petition will not generally be considered independent and objective evidence. Independent and objective evidence of the Beneficiary's prior employment would be contemporaneous with that employment.

[5] The Beneficiary's affidavit is not independent, objective evidence resolving the inconsistencies in the record relating to her prior work experience.

stating that she was employed as a manager by [redacted] in India from January 1, 1999, to January 31, 2001.

The Petitioner has not resolved the inconsistencies regarding the Beneficiary's experience with independent, objective evidence, such as paystubs, payroll records, personnel records, and/or employment agreements. Doubt cast on any aspect of the Petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. at 591-92. The Petitioner has not established by a preponderance of the evidence that the Beneficiary possessed the experience required by the labor certification as of the priority date.

IV. RESERVED ISSUES

The Director also revoked the petition's approval, in part, because the job offer was not *bona fide* and because the Petitioner did not establish its continuing ability to pay the proffered wage from the petition's priority date onward.[6] However, because the issue relating to the Beneficiary's qualifying experience is dispositive in this case, we need not reach the two remaining issues and therefore reserve them.

ORDER: The appeal is dismissed.

[6] Although mentioned by the Petitioner on appeal, the Director did not enter a finding of willful misrepresentation of a material fact against the Beneficiary.