U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF KHH-S-, INC.

DATE: JAN. 25, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a martial arts school, seeks to employ the Beneficiary as a hapkido instructor. 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 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. Subsequently, the Acting Director of the Nebraska Service Center revoked the approval of the petition, concluding that the record did not establish that the Beneficiary possessed the experience required by the labor certification as of the priority date. The Acting Director noted unresolved inconsistencies regarding the Beneficiary's prior work experience in the record and on his prior nonimmigrant visa application.

On appeal, the Petitioner submits additional evidence and asserts that since the Beneficiary was paid in cash by his former employer, he "cannot submit evidence to support his income during this time period." However, the Petitioner states that the evidence submitted to the record and on appeal overcomes the inconsistencies noted by the Acting Director and supports the Beneficiary's claims that he possessed the experience required by the labor certification as of the priority date.

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

I. LAW

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

[1] The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is August 18, 2014. *See* 8 C.F.R. § 204.5(d).

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.

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.

II. THE BENEFICIARY'S EXPERIENCE

The Acting Director revoked the petition's approval 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 a high school education[2] and 24 months of experience as a hapkido instructor.

Regarding the experience requirement, the labor certification states that the Beneficiary qualifies for the offered position based on experience as a full-time hapkido instructor at [redacted] in South Korea from April 4, 2005, to October 31, 2008.

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).

With the petition, the Petitioner submitted an experience certificate from [redacted], [redacted] of [redacted] stating that the Beneficiary was employed as a hapkido instructor from April 4, 2005, to October 31, 2008. Although the letter lists his duties, it does not list the address of the writer as required by 8 C.F.R. § 204.5(l)(3), and it does not indicate if the Beneficiary was employed full-time. Therefore, the certificate does not establish that the

[2] The record reflects that the Beneficiary has completed the required education.

Beneficiary possessed 24 months of experience as a hapkido instructor as required by the labor certification.

In his NOIR, the Director noted that the Beneficiary's nonimmigrant visa application from August 2009 indicates that he was a student at [redacted] from March 2005 to February 2007 and that he claimed no employment during that time, and that his only claimed employment in a section requesting information regarding his two previous employers was as a sports teacher at a high school in South Korea from 2008 to 2009. The Director indicated that the information provided on the Beneficiary's nonimmigrant visa application conflicts with the information provided in the petition and labor certification in this case and stated that the Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-592.

In response to the NOIR, the Petitioner claimed that the Beneficiary attended [redacted] from March 2005 to February 2007, during which time he attended classes during the day and worked full-time for [redacted] at night (Monday through Friday 3:00pm to10:00pm) and on weekends (Saturdays 9:00am to 2:00pm). It submitted an affidavit (first affidavit) from [redacted] Head Master at [redacted] stating that the Beneficiary was paid 410,000 won per month and did not have to pay taxes on his salary;[3] a letter from the tax office in South Korea stating that taxes are not due on wages less than 5,000,000 won per year; a statement from the Beneficiary's bank account showing cash deposits made between April 2005 and October 2008; and pictures of the Beneficiary at hapkido events. The Petitioner also asserted that the Beneficiary misunderstood the nonimmigrant visa application instructions and thought he only needed to indicate his most recent employment on that form.

In her notice of revocation (NOR), the Acting Director stated that although the Beneficiary claimed to have earned less than 5,000,000 won with [redacted] he also claimed to have been employed as a sports teacher at a high school in South Korea from 2008 to 2009. The record does not indicate how much he earned at the high school and whether the amounts, when coupled with the payments from [redacted] exceeded 5,000,000 won in 2008. Thus, the Acting Director determined that the bank statement was not credible evidence of the Beneficiary's wages. The Acting Director also noted that the bank statement does not show that the funds represent wages paid to the Beneficiary by [redacted] that the deposits were made at times when the Beneficiary was purportedly working or at school; that the bank statement does not clearly show the deposits from the Beneficiary's employment as a sports teacher at a high school in South Korea in 2008; and that the bank statement was not properly translated. *See* 8 C.F.R. § 103.2(b)(3).[4]

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[3] We note that this affidavit does not appear to be written by the individual who submitted the original experience certificate submitted with the petition, [redacted]

[4] Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.*

On appeal, the Petitioner asserts that since the Beneficiary was paid in cash by his former employer, he "cannot submit evidence to support his income during this time period." Further, the Petitioner asserts that the Beneficiary had varying daytime class schedules and did not work seven nights per week and, therefore, he was able to make the deposits listed on the bank statement. On appeal, the Petitioner submits another affidavit (second affidavit) from Head Master at listing all payments made to the Beneficiary; a business card for the Beneficiary; an appreciation plaque; statements, cards, and letters from former students of the Beneficiary; and additional pictures of the Beneficiary at hapkido events.

The Petitioner has not resolved the inconsistencies in the record with independent, objective evidence establishing that that the Beneficiary possessed the experience required by the labor certification as of the priority date. Specifically, the Petitioner has not established that the Beneficiary worked full-time as a hapkido instructor at in South Korea from April 4, 2005, to October 31, 2008, as claimed on the labor certification. Although the Petitioner asserts that the Beneficiary misunderstood the nonimmigrant visa form, the form in question distinctly required the Beneficiary to list his last two employers, not including his current employer. If the Beneficiary was employed by the as alleged, the Beneficiary was clearly required to record this employment on the nonimmigrant form, but he did not do so. The Petitioner has not provided a persuasive explanation as to why the Beneficiary omitted this claimed experience. Moreover, the affidavits submitted are inconsistent with one another. The second affidavit from lists payments purportedly made to the Beneficiary during his employment with However, this second affidavit from conflicts with his first affidavit submitted in response to the NOIR which stated that the Beneficiary was paid 410,000 won per month. The second affidavit shows monthly payments ranging from a low of 150,000 won on June 23, 2008, to a high of 700,000 won on March 21, 2008. Further, the first payment listed in the second affidavit shows that the Beneficiary was paid 400,000 won on April 18, 2005, which was two weeks after he purportedly started working there. This payment exceeds many of the monthly payments listed in the affidavit and appears to be almost double what he was supposed to be paid for a half month of work. The Beneficiary also claims to have been employed by through October 31, 2008; however, the last payment listed in the affidavit was made on October 1, 2008. The Petitioner has not resolved these inconsistencies in the record. *Matter of Ho*, 19 I&N Dec. at 591-592.

Additionally, as noted by the Acting Director, the bank deposits were made at times when the Beneficiary was purportedly working or at school.[5] The original bank statement shows that the

[5] The Petitioner asserts that the Beneficiary attended daytime classes at from March 2005 to February 2007. However, the Petitioner provided no evidence from confirming the Beneficiary's class schedule. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Also, the translation of the Beneficiary's bank statement submitted on appeal does not contain the time stamps contained in the original document.

majority of the deposits were made during times when the Beneficiary was purportedly working. Although the Petitioner asserts on appeal that the Beneficiary did not work seven nights per week, it has represented in the record that he worked Monday through Friday from 3:00pm to 10:00pm, and on Saturdays from 9:00am to 2:00pm. Most of the deposits were made on weekday evenings between the hours of 3:00pm and 10:00pm, when the Beneficiary was purportedly working.[6] The Petitioner has not resolved this inconsistency in the record. *Matter of Ho*, 19 I&N Dec. at 591-592.

In addition, the business card;[7] appreciation plaque; pictures; and statements, cards, and letters from former students of the Beneficiary do not confirm the Beneficiary's full-time employment as a hapkido instructor at in South Korea from April 4, 2005, to October 31, 2008. Specifically, the appreciation plaque is dated October 24, 2008, and thanks the Beneficiary for his teaching skills. It does not list his dates of employment or indicate his full-time status. A statement from states that he was enrolled in classes at from September 12, 2005, to September 11, 2007, three times a week, and learned hapkido from the Beneficiary and The statement does not, however, confirm the Beneficiary's actual dates of employment, indicate his full-time status, or indicate how the teaching was split between or shared by the Beneficiary and The remaining cards and letters appear to be written by children thanking the Beneficiary for teaching them martial arts. However, they do not list his dates of employment or indicate his full-time status.

Further, the Petitioner has not established that that the Beneficiary could have been concurrently employed as a full-time hapkido instructor at in South Korea, and as a sports teacher at a South Korean high school, in 2008. On appeal, the Petitioner did not address this inconsistency noted in the NOR. *Id.*

Because the Petitioner has not resolved the inconsistencies in the record with independent, objective evidence establishing that that the Beneficiary possessed the experience required by the labor certification, we will dismiss the appeal, and the petition's approval will remain revoked.

Finally, we note that the Petitioner listed on the labor certification that it was established in 1971. Its 2014 tax return indicates that it was established in 1999. Its Articles of Incorporation indicate that it was incorporated in Illinois in 2007, and there is a notice from the Internal Revenue Service addressed to the Petitioner in the file for tax year 2007 indicating that there is a discrepancy with its

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Therefore, it is not an accurate translation as certified by the translator. *See* 8 C.F.R. § 103.2(b)(3). If a petitioner does not submit a properly certified English language translation of a document, we cannot meaningfully determine whether the translated material is accurate and thus supports the petitioner's claims.

[6] For example, in 2005, deposits were made on Monday, April 18, 2005, at 5:01pm; Wednesday, May 4, 2005, at 3:18pm; Monday, June 20, 2005, at 8:13pm; Tuesday, July 12, 2005, at 3:36pm; Thursday, October 20, 2005, at 9:46pm; and Friday, November 18, 2005, at 7:15pm.

[7] We note that the business card includes a logo for in the top left-hand corner. The logo was not included in the English translation and therefore, it is not clear if the translation is accurate. *See* 8 C.F.R. § 103.2(b)(3). Further, it is not clear why a university logo is included on what is purportedly a business card for a martial arts studio. *See Matter of Ho*, 19 I&N Dec. at 591-592. The card does not indicate the Beneficiary's job title.

taxpayer identification number. In any future proceedings, the discrepancy in the Petitioner's identity and taxpayer identification number must be resolved with independent, objective evidence. *Id.*

III. CONCLUSION

The Petitioner has not resolved the inconsistencies in the record with independent, objective evidence establishing that that the Beneficiary possessed the experience required by the labor certification as of the priority date.

ORDER: The appeal is dismissed.

Cite as *Matter of KHH-S-, Inc.*, ID# 887141 (AAO Jan. 25, 2018)