U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-C- CORP.

DATE: JULY 3, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a cabinet retailer, seeks to employ the Beneficiary as a procurement specialist. 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 "EB-3" 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. The Director subsequently revoked the approval on the ground that the record did not show that the Beneficiary was employed by the business for whom the she claimed to work in the years 2004-2007, and thus did not establish that the Beneficiary had the requisite experience to be eligible for skilled worker classification.

On appeal, the Petitioner asserts that Director's revocation decision was improper because the documentation submitted by the Petitioner more than satisfied the evidentiary requirement in the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) to establish the Beneficiary's qualifying experience.

Upon *de novo* review, we will withdraw the Director's decision and remand the case for further consideration.

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). *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. 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 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.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[the Secretary of the Department of Homeland Security] may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204 [Procedure for Granting Immigrant Status]."

The regulation at 8 C.F.R. § 205.2(a) provides that "[any USCIS] officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner ... when the necessity for the revocation comes to the attention of [USCIS]." Revocation of the approval of a petition under 8 C.F.R. § 205.2(a) may only be made with notice of intent to revoke the approval (NOIR) to the petitioner and the petitioner must be given the opportunity to respond and offer rebuttal evidence. 8 C.F.R. § 205.2(b).

A NOIR "is not properly issued unless there is 'good and sufficient cause' and the notice includes a specific statement not only of the facts underlying the proposed action, but also of the supporting evidence." *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). When a NOIR is based on an unsupported statement or an unstated presumption, or when the petitioner is unaware and has not been advised of derogatory evidence, revocation of the visa petition cannot be sustained. *Id* at 452.

II. ANALYSIS

At issue in this case is whether the NOIR was properly issued. In order to qualify for skilled worker classification, a beneficiary must possess at least two years of training or experience and meet the "educational, training or experience, and any other requirements of the individual labor certification." 8 C.F.R. § 204.5(l)(3)(ii)(B). The labor certification in this case requires a high school education and two years of experience as a procurement specialist. The labor certification requirements must be met by the priority date of the petition.[1] *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

The initial evidence submitted with the petition included copies of school records showing that the Beneficiary earned a high school diploma in Poland and a "certificate of employment" from , a company in Poland, stating that the Beneficiary was employed as a procurement specialist from September 2004 to May 2007. Approximately 14 months after approving the petition, the Director issued an NOIR which stated that "[a]ccording to USCIS records" additional evidence was needed to prove that the Beneficiary was employed by in Poland. The Director requested that tax statements or tax payment records be submitted to document the Beneficiary's employment from September 2004 to May 2007. The Director stated that this evidence was essential to verify that the Beneficiary acquired the requisite experience as a procurement specialist. After considering the Petitioner's response to the NOIR, the Director found

[1] The priority date of a Form I-140 petition is the date the underlying labor certification was filed with the DOL. *See* 8 C.F.R. § 204.5(d). In this case the priority date is December 16, 2015.

that the record did not establish that the Beneficiary had the requisite experience for skilled worker classification. Accordingly, he revoked the approval of the petition.

On appeal, the Petitioner asserts that the Director's decision was faulty because the documentation it submitted relating to the Beneficiary's employment met the evidentiary requirements of 8 C.F.R. § 204.5(l)(3)(ii)(A). This regulation provides that experience requirements in support of a petition for a skilled worker must be supported by letters from employers describing the beneficiary's job experience. The evidentiary requirement has been met in this case, the Petitioner maintains, with the "certificate of employment" and a subsequent affidavit from the former owner of [redacted] Furthermore, since the Director did not indicate either in the NOIR or in the revocation decision that these documents lacked veracity, the Petitioner contends that there were no grounds for the Director to request additional evidence (tax records) of the Beneficiary's employment or to base his revocation decision on the non-production of such evidence.

In accord with the Petitioner's arguments on appeal, we find that the Director's NOIR did not articulate a proper ground for revoking the approval of the petition. The NOIR did not include a specific statement of the facts underlying the proposed action or identify any supporting evidence, as required by *Estime*. Rather, it simply stated that "according to USCIS records" additional evidence of the Beneficiary's employment by [redacted] would be needed. The NOIR did not indicate what USCIS records were involved or what facts they revealed. The NOIR did not advise the Petitioner of any derogatory information relating to the Beneficiary's alleged employment with [redacted] did not allege that the initial letter from the former owner of [redacted] lacked veracity, and did not explain why that letter no longer sufficed as proof of the Beneficiary's employment. Due to these procedural and substantive shortcomings of the NOIR, the revocation decision cannot be sustained. *See Matter of Estime*, 19 I&N Dec. at 452.

III. CONCLUSION

For the reasons discussed above, the NOIR was not properly issued. On remand, if the Director issues a new NOIR, it should include a specific discussion of the facts underlying the proposed action and provide notice of any derogatory information of which the Petitioner is unaware.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of A-C- Corp.*, ID# 1522965 (AAO July 3, 2018)