U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-E- LLC

DATE: JUL. 06, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a convenience store and gas station, seeks to employ the Beneficiary as a bookkeeper. 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 denied the petition on the ground that the Petitioner did not establish that the Beneficiary had two years of qualifying experience, as required by the terms of the labor certification and for classification as a skilled worker. The Director found that the Petitioner and the Beneficiary had not adequately explained evidentiary inconsistencies in the record, and that the Petitioner committed fraud or willfully misrepresented material facts concerning the Beneficiary's employment history.

On appeal the Petitioner asserts that the Director's findings were in error and that the evidence of record, including the additional documentation submitted in support of the appeal, establishes that the Beneficiary had the requisite two years of qualifying experience for skilled worker classification. The Petitioner also asserts that it did not commit fraud or willfully misrepresent any material fact in this proceeding.

Upon *de novo* review, we will dismiss the appeal, but withdraw the Director's finding of fraud or willful misrepresentation of a material fact.

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, 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 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.

To qualify for classification as a skilled worker a beneficiary must have at least two years of training or experience. 8 C.F.R. § 204.5(l)(3)(ii)(B). A beneficiary must also meet the specific educational, training, experience, or other requirements of the labor certification. *Id.* All requirements must be met by the petition's priority date.[1] *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

II. ANALYSIS

At issue in this case is whether the Beneficiary has two years of qualifying experience to meet the requirement of the labor certification and to qualify for skilled worker classification. The labor certification that accompanied the Petitioner's Form I-140, Immigrant Petition for Alien Worker, states that the minimum experience required for the proffered position of bookkeeper is 24 months in the job offered. According to the labor certification the Beneficiary met this requirement by working as a bookkeeper for , a general store in Pakistan, from March 1, 2009, to May 1, 2011. This is the only employment experience listed for the Beneficiary on the labor certification.

The record includes extensive, but inconsistent, evidence relating to the Beneficiary's asserted employment by . The first area of inconsistency, as discussed by the Director in his denial decision, is the conflicting employment information provided by the Beneficiary on various government forms in recent years. The Beneficiary's first filing with the U.S. government, an application for a B-2 visa (Form DS-160) in 2010, stated that she was a homemaker with no employment experience. The labor certification filed in 2013, however, stated that the Beneficiary was employed by from March 1, 2009, to May 1, 2011. Adding to the confusion, a Form G-325A, Biographic Information, signed by the Beneficiary in July 2015, which accompanied her application for adjustment of status (Form I-485), stated that the Beneficiary was employed by from March 2007 to May 2011. Thus, three different employment histories were provided on the three different forms.

Attempting to clarify her employment history, the Petitioner submitted a letter in response to the Director's request for evidence (RFE) and another in response to the notice of intent to deny (NOID) stating that she:

- traveled from her home country of Bahrain to Pakistan in December 2006,[2]
- started work at in Pakistan as a bookkeeper on March 1, 2007,

[1] The priority date of a petition, in this case December 9, 2013, is the date the underlying labor certification is filed with the DOL. See 8 C.F.R. § 204.5(d).

[2] The Beneficiary's passport contains a stamp confirming that she entered Pakistan on December 18, 2006.

- also got married in Pakistan in March 2007,[3]
- continued to work at until May 30, 2008,
- then went to Australia for six months where she earned an advanced diploma in marketing at the
- returned to Pakistan in February 2009,
- resumed her employment with on March 1, 2009,
- went to Bahrain with her son after a fight with her husband in March 2010,
- was granted a B-2 visa, along with other family members, in May 2010,
- but returned to Pakistan without visiting the United States and resumed her employment at until May 1, 2011.[4]

The Beneficiary asserts that the only break in her employment was the nine-month period between the end of May 2008 and the beginning of March 2009, during which time she went to Australia to study.[5] The Beneficiary claims that the time she spent in Bahrain during the spring of 2010[6] was treated as vacation time by when she returned to work. She also claims that the reason her application for a B-2 visa to the United States did not reveal her employment by is because her brother completed and submitted the applications for all family members (seven in all) during her stay in Bahrain and he did not know about her employment in Pakistan.[7] According to the Beneficiary, therefore, she had 15 months of employment during her first stint with and 26 months of employment during her second stint with thus exceeding the 24-month requirement to meet the terms of the labor certification and qualify for classification as a skilled worker.

In support of this alleged employment history, the Petitioner has submitted letters from the two co-owners of both of whom state that the Beneficiary was employed as a bookkeeper from March 1, 2007, to May 30, 2008, departed for "personal reasons," then resumed her position as a bookkeeper from March 1, 2009, to May 1, 2011. The Petitioner has also submitted monthly payroll figures for the Beneficiary and other employees of from March 2009 through April 2011. In addition, the Petitioner has submitted copies of six invoices of purchases by which bear the Beneficiary's signature and handwritten dates between July 2009 and January 2011, and a "daily

[3] The record includes a copy of the Beneficiary's marriage certificate showing that she was married on 2007.
[4] The record indicates that the Beneficiary entered the United States with her B-2 visa on , 2011.
[5] Passport stamps confirm that the Beneficiary entered Australia on 2008, and returned to on 2009. The record also includes page 2 (of 2) of the Beneficiary's academic transcript from the in Australia, indicating that she earned an "advanced diploma of business (marketing)" in a course that ran from September 22, 2008, to January 21, 2009.
[6] Passport stamps confirm that the Beneficiary entered Bahrain on 2010, and returned to on 2010.
[7] The record includes letters from the Beneficiary's brother and father confirming that his brother completed the visa application forms for all seven family members during the Beneficiary's stay in Bahrain in the spring of 2010. The record also includes copies of the nonimmigrant visa appointment confirmations (NIVACs) the family received from the Department of State which indicate that the appointments for all seven family members were set for May 3, 2010, and identified the telephone number and email address of the Beneficiary's brother on all seven NIVACs for contact purposes.

sheet" dated [redacted] 2010, which details [redacted] transactions that day and identifies the Beneficiary as an employee.

The Director found that the daily sheet and the payroll information discussed above was not reliable evidence of the Beneficiary's employment because the documents lacked important indicia of authenticity and may have been created for the sole purpose of satisfying the eligibility requirements of the visa classification sought in this proceeding. While not specifically addressed by the Director, the same shortcoming seems to apply to the invoices dating from 2009 to 2011. The payroll information for 2009-2011 is certainly a later created compilation, and there is no authoritative evidence on the daily sheet or the invoices that they were actually created on the dates alleged in the documents. The Director concluded that the foregoing documents were insufficient to resolve the conflicting information about the Beneficiary's prior employment as provided on her B-2 visa application, the biographic information form accompanying her adjustment application, and the labor certification in the current proceeding.

The Director also expressed skepticism that the Beneficiary's brother, as well as her father, would not have known about the Beneficiary's employment in Pakistan at the time the B-2 visa applications were completed in 2010 if she had actually been working at [redacted] for the length of time she claims. The Director was not persuaded that the Beneficiary's visa application was filled out by her brother, especially since the application indicated that no assistance had been obtained and the Beneficiary had not explained why, as an English-speaking adult, she could not have completed her own application.

Based on the entire record the Director found that the Petitioner had not established the Beneficiary's eligibility for the requested immigration classification, and coupled the denial of the petition with a finding of fraud or willful misrepresentation against the Petitioner.

On appeal, the Petitioner asserts that the documentation submitted, in particular the daily sheet and payroll information, is the best evidence the Beneficiary has of her employment by [redacted] The Petitioner states that the Beneficiary does not have any tax records because her annual income was always below the threshold amount that required the filing of a personal tax return in Pakistan. As described by the Petitioner, the Beneficiary was working in Pakistan's "informal sector" and thus was paid in cash. Consequently, she has no earnings statements from [redacted] that were contemporary with her employment. Accordingly, the Petitioner claims that the recapitulation of the Beneficiary's income and other documentation submitted in this proceeding, supplemented by the letters from her former employers at [redacted] is the best available evidence of the Beneficiary's employment by that store during the time periods alleged. As for the B-2 visa application, the Petitioner asserts that it is not unusual for one family member to complete applications for the entire family. Finally, the Petitioner contends that it had no reason to doubt the veracity of the documentary evidence generated by the Beneficiary in this proceeding, and that it did not willfully misrepresent any material fact about the Beneficiary's employment history.

A lingering weakness of the payroll information, invoices, and daily sheet submitted as evidence of the Beneficiary's employment by is that the Petitioner has not explained the source of these documents. Even if we accept that the Beneficiary may have been employed by for some period of time, and that the declaration on the B-2 visa application that the Beneficiary had never worked could plausibly be explained as a mistake by the Beneficiary's brother who filled out and submitted all of the family's visa applications, we find that the evidence of record still does not establish that the Beneficiary had two years of qualifying experience as a bookkeeper by the priority date of December 9, 2013. The reasons are as follows:

As previously noted, the labor certification (in section K) lists just one prior job experience for the Beneficiary – as a bookkeeper for from March 1, 2009, to May 1, 2011. While the Beneficiary claims to have worked for during a prior period of time as well – March 1, 2007, to May 31, 2008 – it is not listed on the labor certification. The Petitioner has provided no explanation for omitting this additional period of alleged employment for the Beneficiary, especially since section K specifically instructs the employer to list, in addition to jobs held by the alien during the past three years, "any other experience that qualifies the alien for the job opportunity." The fact that the DOL did not certify any experience by the Beneficiary with during the time period of March 1, 2007, to May 31, 2008, lessens the credibility of the Beneficiary's claim to have acquired any qualifying experience during those 15 months. See *Matter of Leung,* 16 I&N Dec. 2530 (BIA 1976).

Moreover, documentation in the record raises further questions about the Beneficiary's claim to have worked for in during the entire time period from March 1, 2007, to May 31, 2008. As stated on the Form I-140 petition, the Beneficiary has a son who was born in Bahrain on 2008. The Beneficiary's passport has stamps showing that she traveled from Pakistan to Bahrain on 2008, and returned to Pakistan on 2008. There is no evidence in the passport of any other travel between those two dates. Thus, it appears that the Beneficiary was not in Pakistan for a three and a half month period beginning in late February 2008, and could not have worked for until May 31, 2008, as alleged.

It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's evidence also reflects on the reliability of the petitioner's remaining evidence, such as the letters from co-owners. *See id.* The Petitioner has provided no explanation for the evidentiary discrepancy discussed above.

Finally, the Petitioner has submitted no specific documentation relating to the Beneficiary's alleged employment by during the years 2007 and 2008, in contrast to the later period of employment listed on the labor certification (2009-2011), for which the Petitioner submitted the aforementioned payroll information, a daily sheet, and invoices.

For the reasons discussed above, we find that the Petitioner has not established that the Beneficiary gained any qualifying experience as a bookkeeper with during the time period of March 1, 2007, to May 31, 2008.

With regard to the latter period of alleged employment with the Beneficiary claims that her employment ran from March 1, 2009, to May 1, 2011, a period of 26 months. The record shows, however, that there was an extensive break in the claimed employment midway through this time period when the Beneficiary went to Bahrain with her son in the spring of 2010 following a fight with her husband in Pakistan. The Beneficiary's passport has stamps showing that she entered Bahrain on 2010, and did not return to Pakistan until 2010, two and a half months later. During this time period the Beneficiary obtained a B-2 visa and states that she intended to travel with her family to the United States before being persuaded to return to Pakistan instead.

The Beneficiary claims that when she returned to Pakistan she explained her absence from work as a "vacation" and resumed her employment with In their letters to USCIS neither of co-owners mentioned this extended interruption in the Beneficiary's employment. However, the payroll information furnished in this proceeding – which lists the Beneficiary's hours worked and wages paid as less than a full month in March and June 2010, and "0" in April and May 2010 -- confirms that the Beneficiary did not work and was not paid during her time in Bahrain. The Petitioner describes the Beneficiary's employment by as work in the "informal sector" of the Pakistani economy. No formal records appear to have been kept, and the Beneficiary was paid in cash for work performed.

Based on the evidence of record, we find that the Petitioner has not established that the Beneficiary was employed by during the two and a half months from March 20, 2010, to June 6, 2010, when she was in Bahrain. Therefore, even if we found that may have employed the Beneficiary during some of the time period between March 1, 2009, and May 1, 2011, the interruption of at least two and a half months from March to June 2010 means that the Beneficiary did not gain a full 24 months of qualifying experience with as required by the terms of the labor certification and for the requested classification of skilled worker.

At the same time, we find that the evidence in the record does not support the Director's finding of fraud or willful misrepresentation of a material fact by the Petitioner. A finding of fraud requires a determination that the alien made a false representation of a material fact with knowledge of its falsity and with the intent to deceive an immigration officer. Furthermore, the false representation must have been believed and acted upon by the officer. *See Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). A misrepresentation is an assertion or manifestation that is not in accord with the true facts. For an immigration officer to find a willful and material misrepresentation of fact, he or she must determine that (1) the petitioner or beneficiary made a false representation to an authorized official of the U.S. government, (2) the misrepresentation was willfully made, and (3) the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See*

Matter of Healy and Goodchild, 17 I&N Dec. 22, 28 (BIA (1979). A "material" misrepresentation is one that "tends to shut off a line of inquiry relevant to the alien's eligibility." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

In his decision the Director stated that he was denying the petition with a finding of fraud or willful misrepresentation of a material fact against the Petitioner. However, he did not analyze the Petitioner's actions in accordance with the factors discussed in the above case law, did not distinguish whether fraud was found, or whether it was willful misrepresentation of a material fact, and provided no explanation for his finding aside from a reference to the Petitioner's certification on the Form I-140 that the evidence submitted in support of the petition was true and correct. Accordingly, we will withdraw the Director's finding of fraud or willful misrepresentation of a material fact against the Petitioner.

III. CONCLUSION

The Petitioner has not established that the Beneficiary gained at least two years of qualifying experience as a bookkeeper by the priority date of December 9, 2013. Accordingly, the Beneficiary does not meet the minimum experience requirement of the labor certification and does not qualify for classification as a skilled worker. Therefore, we affirm the Director's denial of the petition, but withdraw the Director's finding of fraud or willful misrepresentation of a material fact against the Petitioner.

ORDER: The appeal is dismissed.

Cite as *Matter of L-E- LLC*, ID# 1323572 (AAO Jul. 06, 2018)