U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-G-P-, INC.

DATE: JULY 11, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a health care service company, seeks to employ the Beneficiary as a registered nurse. 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 Texas Service Center revoked the approval of the petition, concluding that the record did not establish, as required, that there was a job offer available with the [redacted] at the time the Beneficiary was interviewed for an immigrant visa at the consulate. The Director also determined that the Petitioner fraudulently or willfully misrepresented the availability of the job offer on the Form I-140, Immigrant Petition for Alien Worker.

On appeal, the Petitioner submits additional evidence and requests that we withdraw the Director's finding of fraud or willful misrepresentation. The Petitioner asserts that the job offer to the Beneficiary was valid when the Petitioner signed the Form I-140. The Petitioner does not contest the Director's revocation of the approval of the petition, as it acknowledges that there is no longer a valid job offer available.

Upon *de novo* review, we will sustain the appeal on the issue of fraud or willful misrepresentation. However, the approval of the petition will remain revoked.

[1] Pursuant to an amendment to a staffing agency services agreement and a letter of engagement both dated December 29, 2005, between the Petitioner and [redacted] the Petitioner agreed to provide [redacted] with five registered nurses for full-time employment. We note that the staffing agency services agreement stated that the Petitioner would employ the nurses for one year, and thereafter [redacted] would commit to employ them. Thus, it does not appear that the Petitioner's job offer to the Beneficiary was for permanent employment. See 20 C.F.R. § 656.10(c)(10).

I. LAW AND ANALYSIS

A. Schedule A

This petition is for a Schedule A occupation. A Schedule A occupation is an occupation codified at 20 § C.F.R. 656.5(a) for which the U.S. Department of Labor (DOL) has determined that there are not sufficient U.S. workers who are able, willing, qualified and available and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of aliens in such occupations. The current list of Schedule A occupations includes professional nurses and physical therapists. *Id.*

Petitions for Schedule A occupations do not require a petitioner to test the labor market and obtain a certified ETA Form 9089, Application for Permanent Employment Certification, (labor certification) from the DOL prior to filing the petition with U.S. Citizenship and Immigration Services (USCIS). Instead, the petition is filed directly with USCIS with a duplicate uncertified ETA Form 9089. *See* 8 C.F.R. §§ 204.5(a)(2) and (l)(3)(i); *see also* 20 C.F.R. § 656.15.[2] The priority date of the petition is March 24, 2006. *See* 8 C.F.R. § 204.5(d).

If the Schedule A occupation is a professional nurse, a petitioner must establish that the beneficiary has a Certificate from the [redacted] a permanent, full and unrestricted license to practice professional nursing in the state of intended employment; or passed the [redacted] *See* 20 C.F.R. § 656.5(a)(2).[4]

B. Revocation of Petition's Approval

The Director initially approved the petition in 2006 based on the Petitioner's commitment to place the Beneficiary as a registered nurse at [redacted] The Director subsequently revoked the petition's approval, concluding that the record did not establish that there was a job offer available with [redacted] at the time the Beneficiary was interviewed at the consulate in 2012.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary,

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[2] To meet Schedule A eligibility, the petitioner must also submit with the petition a prevailing wage determination (PWD) in accordance with 20 C.F.R. §§ 656.40 and 656.41. *See* 20 C.F.R. § 656.15(b)(1). We note that the PWD submitted in this case indicated that the job requirements included a college degree in nursing, a New York State nursing license, no experience, and no training. The labor certification does not specify that a college degree in nursing is required, or that a New York State nursing license is required, as stated on the PWD. Instead, the labor certification requires a "nursing certificate" with no minimum level of education and no experience or training required for the proffered position. Thus, the actual minimum requirements for the position are not clear.

[3] The Beneficiary's [redacted] Certificate was issued on September 7, 2005.

[4] The posting notice for the proffered position listed the only requirements for the job as: '[redacted] Certificate or Valid [redacted] or Passage of [redacted] ' These job requirements do not match those listed on the PWD or the labor certification.

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." The Petitioner does not contest the Director's revocation of the approval of the petition, as it acknowledges that there is no longer a valid job offer available with [redacted] We affirm the Director's revocation of the approval of the petition. The petition's approval will therefore remain revoked.

C. Fraud or Willful Misrepresentation

The Director determined that the Petitioner fraudulently or willfully misrepresented the availability of the job offer on the Form I-140. On appeal, the Petitioner asserts that the job offer was valid when the Petitioner signed the Form I-140 and requests that we withdraw the Director's finding of fraud or willful misrepresentation.

On appeal, the Petitioner submits a letter from [redacted] the Petitioner's senior vice president and administrator, verifying the 2005 agreement between the Petitioner and [redacted] for the provision of five registered nurses. [redacted] states that while [redacted] need for nurses existed at the time the petition was filed, "the need no longer exists." We have verified the authenticity of [redacted] letter.

The Petitioner has established that its job offer to the Beneficiary was valid when the Petitioner signed and filed the Form I-140, and that circumstances had changed by the time of the Beneficiary's consular interview six years later. The Petitioner did not fraudulently or willfully misrepresent the availability of the job offer on the petition. We will therefore withdraw the Director's finding of fraud or willful misrepresentation.

II. CONCLUSION

The record on appeal establishes that the Petitioner did not fraudulently or willfully misrepresent the availability of the job offer on the Form I-140. We therefore withdraw the Director's finding of fraud or willful misrepresentation. We will sustain the appeal. However, the approval of the petition remains revoked.

ORDER: The appeal is sustained.

Cite as *Matter of W-G-P-, Inc.*, ID# 287420 (AAO July 11, 2017)