U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF 2- CORP.

DATE: JULY 17, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a restaurant, seeks to employ the Beneficiary as a tandoori cook. 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 initially approved and then later revoked the approval of the petition, concluding that the Beneficiary materially misrepresented his employment experience.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary possessed the claimed experience. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Employment-based immigration is generally a three-step process. First, an employer obtains an approved ETA Form 9089, Application for Permanent Employment Certification (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, 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. 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 date the labor certification is filed, in cases such as this one, is called the "priority date."

II. ANALYSIS

The record contains a Form ETA 750, Application for Alien Employment Certification (labor certification), approved by the DOL. The labor certification requires two years of experience as a tandoori cook.

The labor certification, signed on August 2002, describes the Beneficiary's qualifying employment experience as a tandoori cook for [redacted] in [redacted] India, from May 2000 to the "present."

After initially approving the petition in 2008, the Director revoked its approval in 2016 and made a finding that the Beneficiary willfully misrepresented a material fact.[2]

The Director found two reasons to support the conclusion that the Beneficiary had misrepresented his employment experience: first, the Beneficiary stated in an interview with the U.S. Department of State that he worked for [redacted] beginning in 2002 and later stated in another interview that he began working there in 2000; and second, that an employee of [redacted] told an investigative officer over the telephone that he had worked there for approximately 12 years and that no one with the Beneficiary's name worked there.

On appeal, the Petitioner submitted, among other things, an affidavit from a claimed kitchen helper, cook, and manager at [redacted] Each individual that signed these affidavits states that they have worked at [redacted] since 2000. These individuals did not state that the Beneficiary worked full-time for [redacted] In addition, the name of the manager on the affidavit who states having worked for [redacted] since 2000 is a different person than the manager who signed a letter dated January 20, 2003, attesting to the Beneficiary's employment experience.

It is unclear if and when the Beneficiary began working part-time at [redacted] and whether he has at least two years of full-time experience. We note that the Beneficiary's resume states that he took a break from working at [redacted] from October 2010 to November 2011, during which time he provided private catering services to homes. The Beneficiary's resume also states that he has been again working at [redacted] as a tandoori cook since January 2012. The affidavits submitted on appeal state that this is part-time employment.

The record also contains a letter from the owner of the Petitioner which states that he traveled to India and personally visited the owner of [redacted] and the Beneficiary in March 2001.

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[2] A finding of willful misrepresentation includes the following elements: the Beneficiary willfully made a false representation about a material fact to a U.S. Government official while seeking an immigration benefit. *See Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *see also Matter of Tijam*, 22 I&N Dec. 408, 424 (BIA 1998).

Finally, the record contains an affidavit from the Beneficiary stating that he gave inconsistent start dates for his employment at the hotel due to nervousness, but that he provided corroborating documents to the document collection center in [redacted] and that the consulate called him at the hotel and talked to him about his tandoori recipe. However, the officer's report states that the evidence submitted by the Beneficiary to the document collection center did not overcome the doubts about the Beneficiary's employment experience. There is no mention in the officer's report that he called the hotel and talked to the Beneficiary about his tandoori recipe.

The affidavits from the Beneficiary's claimed coworkers are not accompanied by independent documentation to corroborate that they were employees of the hotel during the period in question. Similarly, that owner of the Petitioner did not provide evidence establishing that he personally corroborated the Beneficiary's employment history on a visit to India. In addition, the Petitioner did not submit documentation establishing who was the manager at [redacted] that oversaw the Beneficiary's alleged employment as a tandoori cook from 2000 to 2002.

Finally, the evidence in the record does not establish how many hours per week that the Beneficiary has worked each year as a part-time employee. The Petitioner has not established if the Beneficiary worked full-time as a tandoori chef for the hotel.

In summary, given the history of this case, the unsupported affidavits on appeal do not overcome the Director's determination that the Beneficiary willfully mispresented his employment experience from 2000 to 2002. The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

III. CONCLUSION

The evidence submitted on appeal is not sufficient to overcome the Director's grounds for revoking the approval of the petition and making a finding of material misrepresentation.

ORDER: The appeal is dismissed.

Cite as *Matter of 2- Corp.*, ID# 399877 (AAO July 17, 2017)