U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-C-R-, INC.

DATE: JULY 19, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a church, seeks to employ the Beneficiary as an administrative assistant. It requests her classification as a skilled worker under the third-preference, immigrant category. *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, "EB-3" category allows a U.S. employer to sponsor a foreign national with at least two years of training or experience for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition. The Director concluded that the record did not establish the Beneficiary's possession of the minimum experience required for the offered position.

On appeal, the Petitioner submits additional evidence and asserts that it has established the Beneficiary's possession of the required experience.

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

I. LAW

Employment-based immigration usually follows a three-step process. First, an employer files a labor certification application with 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). DOL must certify that the United States lacks able, willing, qualified, and available workers for an offered position, and that employment of a foreign national will not hurt the wages and working conditions of U.S. workers with similar jobs. *Id.* If DOL approves the labor certification application, the employer then files an immigrant visa petition with USCIS. *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, if USCIS approves a 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.

A petitioner must establish a beneficiary's possession of all the job requirements on an accompanying labor certification by a petition's priority date.[1] 8 C.F.R. § 204.5(l)(3)(ii)(B). In

[1] If accompanied by a labor certification, a petition's priority date is the date the DOL received the labor certification

evaluating a beneficiary's qualifications, we must examine the job offer portion of a labor certification to determine the minimum requirements of an offered position. We may neither ignore a term of a labor certification, nor impose additional requirements. *See, e.g., Madany* v. *Smith,* 696 F.2d 1008, 1012-13 (D.C. Cir. 1983).

II. ANALYSIS

In this case, the labor certification states the minimum requirements of the offered position of church administrative assistant as 24 months of experience in the job offered. The Beneficiary attested on the labor certification to her possession, by the petition's priority date, of about 31 months of full-time, qualifying experience. The Beneficiary stated that a church in South Korea employed her in the offered position from 2000 to 2002.

In support of the Beneficiary's claimed experience, the Petitioner submitted a letter on the stationery of the South Korean church. The letter, signed by the church's purported head pastor, supports the information on the labor certification. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A) (requiring a letter from an employer as evidence of a beneficiary's claimed experience). The Petitioner also submitted affidavits from two of the Beneficiary's purported, former co-workers at the South Korean church, attesting to her experience.

However, as indicated in our notice of intent to dismiss (NOID)[2], the Beneficiary's statements on a prior application for a U.S. visitor's visa cast doubt on her claimed experience. On her 2006 visa application, the Beneficiary identified her occupation as "[h]ousewife." Instructed to list her last two employers on a supplement to the application, she stated "[n]one."

Also, with her 2016 application for adjustment of status, the Beneficiary submitted a Form G-325A, Biographic Information, listing her last occupation abroad as administrative assistant at an automotive company in South Korea from 2003 to 2006.[3] Thus, the Beneficiary has indicated employment with two employers in South Korea during the six years immediately preceding her visitor's visa application (the automotive company listed on the Form G-325A and the church listed on the labor certification), but the application states that she had no current or prior employers. The

---

application for processing. 8 C.F.R. § 204.5(d).

[2] The Petitioner asserts that, contrary to regulations, we did not afford it an opportunity to inspect derogatory information of record. *See* 8 C.F.R. § 103.2(b)(16) (requiring USCIS to permit a petitioner to inspect a record of proceeding). The Petitioner contends that we should have sent it a copy of the Beneficiary's visa application form. The regulations, however, do not require us to provide a petitioner with copies of documents containing derogatory information. Rather, the regulations require us only to advise a petitioner of the adverse information and to offer it an opportunity to respond. 8 C.F.R. § 103.2(b)(16)(i); *see, e.g., Ogbolumani v. Napolitano*, 557 F.3d 729, 735 (7th Cir. 2009) (holding that a NOID satisfies the regulations if it provides enough information to allow a petitioner "to rebut the evidence"). Here, our NOID sufficiently advised the Petitioner of the derogatory information in the Beneficiary's visa application and invited it to respond.

[3] The Petitioner states that the Beneficiary omitted her employment at the automotive company from the labor certification because she did not gain experience there in the offered position of church administrative assistant.

discrepancies in the Beneficiary's employment history cast doubts on her claimed, qualifying experience. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence pointing to where the truth lies).

In addition, the 2016 affidavits from the Beneficiary's purported, former co-workers indicate that the South Korean church closed sometime after a co-worker's departure in 2004. The church's closure before the issuance of the head pastor's letter in 2015 casts additional doubt on the letter's authenticity and reliability.

In response to our NOID, the Beneficiary asserts that she disclosed her employment at the church and the automotive company to a travel agent who prepared her visitor's visa application. But the Beneficiary indicates that the agent omitted the information from the visa application. More than 10 years later, the Beneficiary states that she cannot locate the travel agency and does not remember the agent's name. The Petitioner also submits new affidavits from the Beneficiary's purported, former co-workers at the South Korean church. The co-workers state that they went to the church's last known site and discovered a different church operating there. They state that they were unable to learn when the prior church closed or the whereabouts of its former head pastor.

The Petitioner's NOID response does not resolve the inconsistencies in the Beneficiary's claimed, qualifying experience. The Beneficiary blames the travel agent for omitting her employment history on the visa application form. But the record indicates that the Beneficiary signed the form, certifying the truth and accuracy of its answers to the best of her knowledge. She also does not explain why she did not correct her employment history on the form at her following visa interview with a U.S. consulate officer.

The Beneficiary's purported, former co-workers state that they could not learn when the South Korean church closed or locate its former head pastor. But the record lacks evidence of further attempts by the Beneficiary, or the Petitioner to obtain information about the church's closing, such as requesting records from the government or the church now using the property. The Petitioner also did not sufficiently explain why it could not comply with the RFE's request for tax records of the Beneficiary's claimed employment. The Petitioner stated only that such records "cannot be obtained by [the Beneficiary] at this time."

Citing federal court and Board of Immigration Appeals decisions, the Petitioner asserts that our doubts about the authenticity and reliability of the letter from the South Korean church stem from "speculation and conjecture." The Petitioner notes that the record does not establish the church's closure before the letter's issuance in 2015. The Petitioner argues that the church could have closed during the eight-month period after the letter's issuance and before the submission of the affidavits from the Beneficiary's former co-workers.

Contrary to the Petitioner's assertion and its cited cases, however, substantial and probative evidence supports our questioning of the authenticity and reliability of the church's letter. The Beneficiary's former co-workers state that the church closed sometime after 2004. We logically infer from that

evidence that the church may have closed before the letter's issuance in 2015. *See Matter of D-R-*, 25 I&N Dec. 445, 454 (BIA 2011) (citation omitted) (explaining that an "inference is not a suspicion or a guess. It is a reasoned, logical decision to conclude that a disputed fact exists on the basis of another fact that is known to exist"). Thus, unexplained and unrebutted, the possibility of the church's closure before the letter's issuance casts substantial doubts on the letter's authenticity and the reliability of its contents. The record therefore supports our doubts about the letter's authenticity and reliability.

For the foregoing reasons, the record does not establish the Beneficiary's claimed, qualifying experience for the offered position. We will therefore affirm the Director's decision.

III. CONCLUSION

The record does not establish the Beneficiary's possession of the minimum experience required for the offered position.

ORDER: The appeal is dismissed.

Cite as *Matter of P-C-R-, Inc.*, ID# 445855 (AAO JULY 19, 2017)