U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-D-N-A-S- INC.

DATE: JUNE 6, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a beauty salon, seeks to employ the Beneficiary as a salon manager. 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 Nebraska Service Center initially approved the petition, but subsequently revoked the approval. In the revocation decision the Director found that the evidence of record did not establish that the Beneficiary had the two years of experience required by the labor certification to qualify for the job offered.

On appeal, the Petitioner submits additional documentation and requests that the petition be re-approved.

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

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer must obtain an approved 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, 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 may file an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C.

[1] The date the labor certification is filed, in cases such as this one, is called the "priority date." *See* 8 C.F.R. § 204.5(d). The Petitioner must establish that all eligibility requirements for the petition have been satisfied from the priority date onward.

§ 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.

A petition for a skilled worker must be for a position that requires at least two years of training or experience. 8 C.F.R. § 204.5(l)(2). Moreover, the beneficiary must have all of the education, training and experience specified on the labor certification as of the petition's priority date. *See* 8 C.F.R. § 204.5(l)(3)(ii)(B); *see also Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Act. Reg'l Comm'r 1977).

II. ANALYSIS

The Petitioner's Form I-140, Immigrant Petition for Alien Worker, was accompanied by a certified ETA Form 9089, Application for Permanent Employment Certification (labor certification) with a priority date of February 24, 2015. Section H of the labor certification specified that 24 months of experience in the job offered was required to qualify for the position of salon manager, and that experience in an alternate occupation was not acceptable. Section K of the labor certification, which set forth the Beneficiary's work experience, listed two prior jobs for the Beneficiary – as a salon manager of two beauty salons in [redacted] South Korea from June 2010 through July 2012. As evidence of the Beneficiary's employment with the two salons the Petitioner submitted "certificates of employment" from the respective businesses stating that the Beneficiary was employed as a manager by [redacted] from June 1, 2010, to November 30, 2011, and by [redacted] from December 1, 2011, to July 31, 2012.

The petition was originally approved in October 2015. On August 1, 2016, the Director issued a notice of intent to revoke (NOIR) the approval. The NOIR advised the Petitioner that USCIS had contacted the owner of [redacted] salon, who confirmed that the Beneficiary worked at the salon but, according to the owner, not as the manager. The NOIR also advised that the Beneficiary's claimed employment with the salon contradicted the employment history provided by the Beneficiary in her application for an F-2 nonimmigrant visa on August 22, 2012.

In response to the NOIR the Petitioner submitted an affidavit from the Beneficiary restating her claim to have worked as salon manager at [redacted] in [redacted] South Korea, from December 1, 2011, to July 31, 2012. According to the Beneficiary, she did not mention her work at [redacted] in her F-2 visa application because she did not believe it was relevant. The Petitioner also submitted affidavits from two South Korean nationals who stated, in virtually identical language, that they had been regular customers of [redacted] salon since February 2010 and March 2012, respectively, and remembered that the Beneficiary was the salon manager from December 2011 to July 2012.

On November 8, 2016, the Director revoked the approval of the petition. The Director found that the three affidavits above lacked credibility because the Beneficiary's affidavit was self-serving and the two affidavits from salon clients are contradicted by the owner's statement that the Beneficiary's work at the salon was not in the role of manager. The Director concluded, therefore, that evidence

of record did not establish that the Beneficiary met the minimum experience requirement of the labor certification to qualify for the position of salon manager.

On appeal the Petitioner submits another statement from the Beneficiary reiterating her claim to have worked at in the capacity of a manager, notwithstanding the contradictory assertion of the salon's owner when visited by USCIS officials. The Beneficiary refers to the "certificates of employment" submitted with the petition as credible evidence of her job title with both and since the documents have official seals and were received from the owners. The other evidence submitted on appeal, which includes documentation from the Petitioner's co-owner and a church official in is not relevant to the issue of whether the Beneficiary was employed as a salon manager by

In reviewing the contradictory evidence before us, we do not find the "certificate of employment" from that was submitted with the petition to be more credible than the statement from the owner obtained directly by USCIS in South Korea. The owner of stated to USCIS that the Beneficiary, though she worked at was not the manager. While the "certificate of employment" states that the Beneficiary was employed by the salon as a manager from December 1, 2011, to July 31, 2012, the Korean-language original does not include a signature of the individual identified as president, Accordingly, it is not clear that the "certificate of employment" was executed by the president of

The same applies to the "certificate of employment" from which was prepared in the same form as that from While stating that the Beneficiary was employed by the salon as a manager from June 1, 2010, to November 30, 2011, the Korean-language original does not include a signature of the individual identified as president,

Furthermore, the Petitioner has not satisfactorily addressed why the employment history given on the Beneficiary's F-2 visa application did not mention her claimed employment as a salon manager, which was raised by the Director in the NOIR. In her affidavit in response to the NOIR the Beneficiary attests that she did not mention her work for in that application because she though it was irrelevant. But she did not provide any information about the employment history she actually provided on the F-2 visa application.

It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Petitioner has not done so in this case.

III. CONCLUSION

The Petitioner has not established that the Beneficiary had at least two years of qualifying experience as a salon manager as of the priority date. Therefore, the Beneficiary does meet the minimum experience requirement of the labor certification to qualify for the job offered, and is not eligible for classification as a skilled worker. Accordingly, we will dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of N-D-N-A-S- Inc*, ID# 424875 (AAO June 6, 2017)