U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-S-B- INC.

DATE: JUNE 14, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a general contractor, seeks to employ the Beneficiary as a cost estimator. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. Immigration and Nationality Act (the Act), section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary possessed the experience required for the offered job as of the priority date. The Director noted inconsistencies between the Beneficiary's experience listed on the labor certification and her prior representations on a nonimmigrant visa application.[1]

On appeal, the Petitioner submits additional evidence and asserts that the Director failed to consider the independent, objective evidence of the Beneficiary's prior employment that it submitted in response to the Director's notice of intent to deny (NOID). The Petitioner states that the Beneficiary has the required qualifications for the offered job.

Upon *de novo* review, we will remand the matter to the Director for further consideration and entry of a new decision.

I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS

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).[2] *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

[1] The Director's decision does not make a finding of fraud or willful misrepresentation of a material fact against the Petitioner or the Beneficiary. Further, the Director's decision does not find that the Petitioner failed to establish its ability to pay the proffered wage. If such findings were intended, the Director should clarify these issues on remand.

[2] The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is May 23, 2017. *See* 8 C.F.R. § 204.5(d).

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 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.

II. THE BENEFICIARY'S EXPERIENCE

The Director determined that the Petitioner has not established that the Beneficiary possessed the experience required for the offered job as of the priority date. A beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(l), (12); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

The labor certification requires a bachelor's degree in business administration or accounting; and 24 months of experience in the job offered or as an administrative manager or budget accountant. No alternate combination of education and experience is acceptable. On the labor certification, the Beneficiary indicated that she worked full-time as an administrative manager for [redacted] in [redacted] Venezuela, from July 1, 2009, to July 29, 2011.

Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. *See* 8 C.F.R. § 204.5(l)(3). With the petition, the Petitioner submitted a letter dated April 3, 2017, from the general manager of [redacted] It states that the Beneficiary worked as an administrative manager for [redacted] from July 1, 2009, to July 29, 2011, and lists her duties.

In the NOID, the Director indicated that the Beneficiary had filed a nonimmigrant visa petition in 2014 on which the Beneficiary claimed to be a housewife without any prior employment experience. The Director stated that the Petitioner must resolve the inconsistencies between the representations on the labor certification and the nonimmigrant visa application with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).[3]

In response to the NOID, the Petitioner provided several documents relating to the Beneficiary's work experience with [redacted] including:

[3] In his decision, the Director asserted that the Petitioner improperly omitted the Beneficiary's employment with it on the labor certification. The Petitioner asserts on appeal that it began employing the Beneficiary after the labor certification was filed on May 23, 2017. However, it checked yes at Part J.23. of the labor certification application, affirming that the Beneficiary was currently employed by the Petitioner at the time the labor certification was filed. The Beneficiary also indicated on her Form I-485, Application to Register Permanent Residence or Adjust Status, that she began working for the Petitioner on May 1, 2017, before the labor certification was filed. Thus, the Beneficiary's start date with the Petitioner is not clear from the record. The inconsistencies must be resolved on remand. *Matter of Ho*, 19 I&N Dec. at 591-92.

- Proof of Worker's Earnings, pursuant to which the legal representative of [redacted] certified that the Beneficiary was employed there from July 1, 2009, to July 29, 2011, and earned 324.92 Bs. per week.
- Form 14-100, Proof of Employment with IVSS, which indicates the monthly salaries earned by the Beneficiary as an administrator with [redacted] from July 1, 2009, to July 29, 2011;[4]
- Form 14-03, Worker's Retirement Participation, which indicates that [redacted] employed the Beneficiary as an administrative manager from July 1, 2009, to July 29, 2011, at a monthly salary of 324.92.[5]
- Single Record of Fiscal Information (RIF), which confirms the registration of [redacted] in [redacted] Venezuela in 1996.

In his decision, although the Director listed the documents submitted by the Petitioner in response to the NOID, he did not analyze them or indicate why they failed to resolve the inconsistencies in the Beneficiary's work experience. Thus, we will withdraw the Director's decision and remand the matter to the Director for entry of a new decision addressing the Beneficiary's qualifications for the offered job.

III. CONCLUSION

As the Director's decision did not evaluate the evidence of the Beneficiary's employment in Venezuela submitted in response to the NOID, we will remand the matter to the Director for further consideration of the Beneficiary's qualifications for the offered job. The Director may request any additional evidence considered pertinent. Similarly, the Petitioner may provide additional evidence within a reasonable period of time to be determined by the Director. Upon receipt of all the evidence, the Director will review the entire record and enter a new decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of R-S-B-, Inc.*, ID# 3998340 (AAO June 14, 2019)

[4] The salaries shown are between 1,224 and 1,408 per month.

[5] We note that the Proof of Worker's Earnings indicates that she earned 324.92 Bs. per week. The Petitioner must resolve this inconsistency on remand.