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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-R-, P.C.

DATE: MAR. 1, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner seeks to privately employ the Beneficiary as a nanny.[1] He 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 2 years of training or experience.

The Director, Texas Service Center, approved the petition, but following receipt of information from a consular interview, the Director issued a notice of intent to revoke after further consideration and concluded that the Petitioner had not established that the Beneficiary was eligible for the requested benefit. The Director also invalidated the labor certification and revoked the approval of the petition.

The matter is now before us on appeal. The Petitioner asserts that the Director's notice of intent to revoke was not supported by sufficient detail. The Petitioner further asserts that the Director did not fully consider its response to the notice of intent to revoke.

Upon *de novo* review, we will withdraw the Director's decision and remand the case for further proceedings as outlined below.

I. BACKGROUND AND LEGAL FRAMEWORK

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

[1] We note the following conflict in the evidence. 20 C.F.R. § 656.3 describes an employer as "[a] person, association, firm, or a corporation that currently has a location within the United States . . . that proposes to employ a full-time employee." Here, both the petition and the labor certification identify the employer as [redacted] at [redacted] which is a physician's office. However, both the petition and the labor certification state that the Beneficiary will be employed as a nanny at a separate worksite, which appears to be a private residence, and it does not appear that she will be employed by the entity that filed the petition with Federal Employer Identification Number [redacted]

the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho,* 19 I&N Dec. 582, 590 (BIA 1988).

The petitioner must establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

In the instant case, the labor certification states that the offered position requires a high school diploma, 24 months experience in the offered job of nanny, a driver's license, and car insurance.[2] The Petitioner described the job duties on the labor certification as, "General childcare duties, including driving to and from preschool and playdates, cooking, cleaning and laundry."

The Beneficiary claimed employment experience as a baby-sitter for three different employers in the Philippines for a total of 52 months from 1979 until 1984. The Petitioner submitted employment letters from the three claimed former employers, and one additional employer who was not claimed on the labor certification.

The Director issued a notice of intent to revoke (NOIR) on October 15, 2015. The Director stated that he intended to revoke the approval of the petition because the Petitioner had not established that the Beneficiary satisfied all of the requirements stated in the labor certification. The Director stated that this determination was based on a consular interview where:

> It was determined that the beneficiary could not articulate the requirements of the job nor could the beneficiary discuss the basic duties of what being a nanny entails, when asked by the adjudicating consular officer. Specifically, the beneficiary stated that her work experience was a housekeeper. The beneficiary has never held a job that required her to drive. The beneficiary indicated that she was uninsured and did not hold a valid driver's license.

The Director notified the Petitioner in the NOIR that the labor certification is subject to invalidation pursuant to 20 C.F.R. § 656.30(d) upon a determination of fraud or willful misrepresentation of a material fact involving the labor certification application.

In response to the NOIR, the Petitioner stated that he first met the Beneficiary during a vacation to the Philippines in 2006 and noted that he was seeking to employ a nanny to care for his own children. The Petitioner stated that during his vacation he personally spoke with numerous individuals in the province who affirmed that the Beneficiary drives, and that she had worked as a helper and babysitter there since the 1970s. The Petitioner submitted a statement from the Beneficiary, who contested the statements attributed to her in the NOIR. Specifically, the Beneficiary stated that she did "not use the

[2] When the employer lists specific skills and other requirements for the job opportunity in Section H, Question 14, the employer must also demonstrate on the ETA Form 9089 that the foreign worker possesses those skills and requirements. *See Matter of SmartZip Analytics,* 2016-PER-00695 (BALCA Nov. 9, 2016).

word 'nanny' but I used the word baby-sitter," and named three individuals for whom she claimed to have provided childcare from 1979 until 1984. The Beneficiary explained that she "took care of my Employer's children all day every day that I was at work." The Petitioner submitted a copy of the Beneficiary's current driver's license issued by the Republic of the Philippines, and a certification from the Republic of the Philippines that the Beneficiary had held a driver's license since October 13, 2006.[3]

The Director revoked the approval of the petition on February 25, 2016, and invalidated the labor certification after a determination of fraud or willful misrepresentation of a material fact involving the labor certification application. The Director's notice of revocation (NOR) cites the same information stated in the NOIR; however, the NOR does not fully address the evidence that the Petitioner submitted in response to the NOIR.

II. ANALYSIS

We find that the Petitioner's response to the NOIR does not appear to have been fully considered by the Director and it is unclear from the record on what specific basis the Director determined that the labor certification involved fraud or willful misrepresentation and whether the fraud was solely against the Beneficiary based on claimed experience or in relation to the question of a *bona fide* job offer. The Director on remand should fully consider the Petitioner's response to the NOIR and articulate more fully what aspect the Petitioner or the Beneficiary misrepresented to allow the Petitioner an opportunity to fully address these issues.

Additionally, on remand the Petitioner should be allowed to address the following: as the Beneficiary stated in her interview that she did not drive and the driver's license submitted is dated October 13, 2006, the same day as the priority date, we attempted to verify this document and the accompanying certification with the Republic of the Philippines The issued a letter certifying that the Beneficiary's name "with driver's license number does not exist in our current file of licensed drivers." On February 23, 2017, the issued a letter certifying that "driver's license number was not issued by this office," and they had no record of a license issued to the Beneficiary. As the Petitioner has not had an opportunity to address this derogatory information as it relates to whether the Petitioner can establish that the Beneficiary had the required skills in H.14 of the labor certification by the priority date, we will remand the case to the Director for further action.

III. CONCLUSION

In view of the foregoing, the Director's notice of revocation is withdrawn. The petition is remanded to the Director.

[3] We note that October 13, 2006, is also the priority date in the current matter.

On remand, the Director may request additional evidence. 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, Texas Service Center, is withdrawn. The matter is remanded to the Director, Texas Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of A-R-, P.C.*, ID# 78203 (AAO Mar. 1, 2017)