U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-I-, INC.

DATE: MAR. 23, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a retail market and convenience store, seeks to employ the Beneficiary as an assistant retail manager. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This category allows a U.S. business to sponsor a foreign national with at least two years of training or experience for lawful permanent resident status.

The Director of the Vermont Service Center initially approved the petition. The Director of the Texas Service Center subsequently revoked approval of the petition after concluding that the record did not establish, as required, the Beneficiary's possession of the experience required for the offered position and the requested classification.

On appeal, the Petitioner submits a brief and additional evidence. We subsequently issued two Notices of Intent to Dismiss (NOID) the appeal, and the Petitioner responded to each.

Upon *de novo* review, we will dismiss the appeal. We will also enter a finding of willful misrepresentation of a material fact.

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] 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 may file an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). Section 204 of the Act, 8 U.S.C. § 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. Section 245 of the Act, 8 U.S.C. § 1255.

[1] The date the labor certification is filed is called the "priority date." 8 C.F.R. § 204.5(d).

Section 205 of the Act, 8 U.S.C. § 1155, provides that the Secretary of Homeland Security may "for good and sufficient cause, revoke the approval of any petition." The realization by 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).

II. ANALYSIS

A. Beneficiary's Experience

A petitioner must establish a beneficiary's possession of all the experience specified on an accompanying labor certification by a petition's priority date. 8 C.F.R. § 103.2(b)(l), (12); *see also Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). As previously noted, a skilled worker must also possess at least two years of training or experience. Section 203(b)(3)(A)(i) of the Act.

In 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 the labor certification, nor impose additional requirements. *See K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1, 3 (1st Cir. 1981).

In support of its petition, the Petitioner submitted a certified Form ETA 750, Application for Alien Employment Certification (labor certification), filed on August 23, 2001. The labor certification states that the minimum experience required for the offered position of assistant retail manager is two years of experience in the occupation. The Beneficiary attested on the labor certification to having more than four years of full-time qualifying experience as a retail manager at [redacted] in India from February 1995 to June 1999.

A petitioner must support a beneficiary's claimed qualifying experience with a letter from a former employer that provides the name, address, and title of the employer, and a description of the beneficiary's experience. 8 C.F.R. § 204.5(l)(3)(ii)(A). The Petitioner initially provided copies of two letters on the stationery of [redacted] one letter dated March 22, 2001, and the other dated January 31, 2013. Both letters were purportedly signed in English by [redacted] who claimed to be the former store proprietor and attested that the Beneficiary worked there as a retail manager from February 1995, to June 1999.

On November 20, 2014, USCIS officials at the U.S. Embassy, in [redacted], India visited [redacted] in [redacted] India and spoke to an individual who identified himself as [redacted] one of the store's owners. He told them that he and his brother, [redacted] run the business and that his father, [redacted] founded the enterprise. After reviewing copies of the 2001 and 2013 experience letters, [redacted] signed a November 2014 sworn statement indicating that the letters are false. He provided specific explanations as to why the information in

the two letters is untrue and we outlined this derogatory information to the Petitioner in a February 8, 2016, NOID.

In response, the Petitioner provided a statement from dated March 4, 2016, in which sought to take responsibility for information attributed to in the November 2014 sworn statement. attested that he had managed since 2008 "with the periodic assistance of the three brothers who own the store," whom he identified as and claimed that he had made the statement to USCIS officials in November 2014, and that they appeared to have mistakenly attributed it to stated that he had been with the store only since 2008, a period that post-dates the employment period the Beneficiary claimed on the labor certification, and as a consequence told the USCIS officials that he did not know the Beneficiary and did not think the Beneficiary had worked at the store. also asserted that he incorrectly assumed that could not speak English and could not have written the letters attributed to him. claimed that he had never used the pre-printed store letterhead, and therefore told the USCIS officials that the store does not have it.

In response to our 2016 NOID, the Petitioner also submitted written statements dated March 2016, purportedly from and in which each one claimed that the Beneficiary worked at as a manager from February 1995, to June 1999. However, we need not examine the specific claims outlined within those four attestations because, as will be discussed, they are fraudulent and therefore not probative evidence of the Beneficiary's qualifications for the proffered position.

On August 17, 2017, USCIS officials at the U.S. Embassy in India traveled to for a second time and met with and First the USCIS officials met with and at place of business. Both men stated that their brother, is the proprietor of and confirmed that the Beneficiary worked at however, they denied that the Beneficiary ever worked at the store in a managerial capacity and for the periods that the Petitioner claims.

specified that the Beneficiary worked at for only one or two years as a helper/cleaner, and that the store never employed the Beneficiary as a manager because it is small and has no need for one. also denied having prepared or signed the March 2016 affidavit that the Petitioner provided on his behalf. He asserted that is not his, that the March 2016 affidavit is fake, and that someone else must have used his voter registration card to prepare it.

also denied having prepared the March 2016 affidavit that the Petitioner provided on his behalf. Specifically, he stated that he did not know anything about the contents of the affidavit and that someone misused his letter. After denying any association with the March

2016 affidavit, took the USCIS officials to his home to meet with who was there recuperating from surgery.

provided the USCIS officials with evidence that he owns stated that the Beneficiary worked at his store from approximately 1991 to 1993, and denied that he ever provided employment documents to the Beneficiary. stated that he does not know the contents of the March 2016 affidavit that the Petitioner submitted on his behalf, and confirmed that it is a fake. then escorted the USCIS officials to another location to meet his father.

reviewed the March 2016 affidavit that the Petitioner provided on his behalf, stated that he does not speak or read English, and attested that he has never signed a document in English script. He explained that he was never an owner of his son owns the business, and "whatever is written in the three documents" that the Petitioner provided on his behalf is fake. The family members affirmed their oral statements in writing on August 17, 2017.

Accordingly, the information that the Petitioner provided in response to our 2016 NOID includes four new fraudulent statements, none of which establishes that the Beneficiary worked at as an assistant retail manager at any time. Moreover, the actual owner of provided information about the nature and dates of the Beneficiary's actual employment that contradicts and therefore undermines the probative value of the statement from Consequently, affidavit is not persuasive evidence of the Beneficiary's qualifying employment experience. We advised the Petitioner of this additional derogatory information in a second NOID dated October 19, 2017.

In response, the Petitioner maintains that the Beneficiary worked as a retail manager at in India from February 1995 to June 1999. The Petitioner contends that the 2016 statements that the Beneficiary provided are similar to the 2017 statements that the USCIS officials secured in that they included evidence of the signatory's identity; however, the Petitioner asks that we give more weight to the 2016 statements and find that they are sufficient to establish that the Beneficiary has the qualifying experience that he claimed on the labor certification.

The Petitioner includes a statement from the Beneficiary, who states that he believes his own statements and evidence to be true and contends that he does not know why his former employer, and family members, and advised USCIS that the employment verification documents provided by the Beneficiary are fraudulent. However, this statement is not sufficient to establish the reliability and probative value of the Beneficiary's evidence. The affidavits that the USCIS officials obtained in the two overseas investigations contain specific, substantial, and material information about the Beneficiary's overseas employment that contradicts his claims. Moreover, the Beneficiary's former employer and the signatories of his employment verification letters have made unequivocal, written refutations of the validity of the documents the Beneficiary provided that cast doubt on his claims and the evidence of

his prior qualifying experience. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* The Beneficiary's assertion that his evidence is true is not sufficient to resolve the contradictory information.

As discussed, the Petitioner requests that we rely on the Beneficiary's evidence rather than the statements that USCIS officials obtained from and his family members. However, the Petitioner has not established that the evidence secured by the USCIS officials is deficient. Records made by public officials in the ordinary course of their duties generally are deemed to evince "strong indicia of reliability." *See Felzcerek v. I.N.S.*, 75 F.3d 112, 116 (2d Cir. 1996). In this case, the USCIS officials personally met with and various family members, confirmed and documented their identities, and obtained written, signed statements establishing that the employment verification evidence that the Beneficiary had provided is false, and that the Beneficiary does not have the qualifying work experience that he claimed on the labor certification. Absent evidence to the contrary, we must presume that the USCIS officials properly discharged their duties in making the contested reports. The Petitioner has not otherwise demonstrated the reliability of the Beneficiary's own claims and evidence. Consequently, based on the derogatory information obtained during the two overseas investigations and the contradictions between that evidence and the Beneficiary's evidence and claims, the Petitioner has not established that the Beneficiary has at least two years of qualifying experience as a retail manager in India, as required on the labor certification.

B. Eligibility for Classification as a Skilled Worker

The record also does not establish the Beneficiary's eligibility for classification as a skilled worker. Section 203(b)(3)(A)(i) of the Act allows for classification as a skilled worker if a beneficiary has at least two years of training or experience. As discussed above, the Petitioner has not established that employed the Beneficiary for any period of time and, consequently, has not demonstrated that he has two years of training or experience. As such, the record does not demonstrate his eligibility for the classification requested.

C. *Bona Fide* Job Offer

On the labor certification, the Petitioner indicated that it intends to employ the Beneficiary as an assistant retail manager. From the date it filed the petition on October 7, 2002, to the present, the Petitioner has maintained that the Beneficiary has been and will be employed at its convenience store. In support of the petition, the Petitioner provided Internal Revenue Service Forms W-2, Wage and Tax Statement, from 2003 to 2015 to show that the Beneficiary has been its full-time employee and that it has the ability to pay the proffered wage. However, publicly available records are not consistent with the Petitioner's claim about the Beneficiary's current employment.

The Petitioner's business address on [redacted] Massachusetts appears to be the business location for at least two other active businesses. Specifically, the Massachusetts Corporations Division business entity database shows that the Beneficiary is currently the president, treasurer, secretary, and director of two convenience stores, [redacted] and [redacted] and that he holds or has held various additional corporate positions with other businesses in [redacted] Massachusetts, including: (1) [redacted], a convenience store; (2) [redacted] a convenience store; (3) [redacted] a smoke shop; and (4) [redacted] a grocery store. (http://corp.sec.state.ma.us/corpweb/CorpSearch/CorpSearch.aspx, last visited on October 4, 2017.) With respect to [redacted] and [redacted] recent corporate filings reflect their physical location is the same store premises on [redacted] that the Petitioner claims. Because the Beneficiary is president of at least two convenience stores that are listed as being located at the Petitioner's place of business, the Petitioner's own evidence is not sufficient to establish that the Beneficiary has been and will be its full-time retail manager, or that the Petitioner is the convenience store for which he will be employed, as it has claimed on the labor certification, the petition, and its supporting statements.

We advised the Petitioner of this contradictory information in our second NOID. In its response, the Petitioner stated that the Forms W-2 it issued to the Beneficiary are irrefutable evidence that it has employed the Beneficiary, and that it is a convenience store that rents mailboxes to other businesses, including the Beneficiary's two active businesses referenced in the NOID. The Petitioner provides a copy of a PS Form 1583, U.S. Postal Service Application for Delivery of Mail Through Agent, dated February 8, 2005, showing that the Beneficiary requested that the Petitioner be authorized to serve as his agent for delivery of mail at the business address on [redacted] However, rather than resolve the issues regarding the Beneficiary's additional businesses, this statement appears to confirm that the Beneficiary has at least two active businesses of his own.

The Petitioner claims that the Beneficiary is only using its address as a mailing address for his two businesses, and the supporting statement from the Beneficiary reiterates this assertion. However, the Beneficiary's state filings list the Petitioner's address as the *physical* address for his two businesses, and neither the Petitioner nor the Beneficiary list any other physical address for the Beneficiary's two businesses. The Petitioner and Beneficiary do not discuss the Beneficiary's role and time commitments to his two business enterprises. The Petitioner does not include documentation to show how much time the Beneficiary is devoting to his other two businesses, such as, for example, detailed payroll records or payroll reports showing how many hours he worked for the Petitioner during a given period of time and how many hours he dedicated to his own businesses during the same time. Accordingly, the Petitioner's response is not sufficient to overcome the derogatory information cited in our NOIDs. Without additional evidence showing that the Beneficiary has been and will be working for the Petitioner, as the Petitioner has claimed, rather than his own businesses, the Petitioner has not established that its offer of employment to the Beneficiary for a position as an assistant retail manager is *bona fide*.

D. Willful Misrepresentation of a Material Fact

As a separate matter, we will address whether the assertions and evidence submitted with respect to the Beneficiary's claimed experience with [redacted] in India rises to the level of willful misrepresentation of a material fact.

USCIS will deny a visa petition if the petitioner submits evidence which contains false information. In general, a few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir. 2003). However, if a petition includes serious errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after an officer provides an opportunity to rebut or explain, then the inconsistencies will lead USCIS to conclude that the claims stated in the petition are not true. *See Ho*, 19 I&N Dec. at 591.

In this case, the information from the two overseas investigations described above constitutes substantial and probative evidence, which leads us to conclude that the claims that the Beneficiary has at least two years of qualifying experience as a retail manager are neither true nor credible. This evidence is material to the statutory requirement at section 203(b)(3)(A)(i) of the Act, and the regulatory criterion at 8 C.F.R. § 204.5(l)(3)(ii)(A). When given an opportunity to respond to these findings, the Petitioner offered no rebuttal or explanation for the inconsistencies and instead asserted that the foreign employer's statements that the Beneficiary did not work for it as a retail manager are untrue. We conclude that the Petitioner submitted false documentation, including fraudulent experience letters and employment documents. The record contains no credible evidence that the Beneficiary worked for [redacted] in India as a retail manager for any period of time.

Beyond the adjudication of the visa petition, a misrepresentation may lead USCIS to enter a finding that an individual alien sought to procure a visa or other documentation by willful misrepresentation of a material fact. This finding of fact may lead USCIS to determine, in a future proceeding, that the alien is inadmissible to the United States based on the past misrepresentation.

Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), provides:

> Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

As outlined by the Board of Immigration Appeals, a material misrepresentation requires that the alien willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation

must be one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he be excluded." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

Accordingly, for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, he or she must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and, 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Kai Hing Hui*, 15 I&N Dec. at 288.

First, as previously discussed, the Petitioner provided USCIS with false documents intended to establish that the Beneficiary has at least two years of qualifying experience as a retail manager at [redacted] in India. The two years of experience is required for the classification, and also a requirement for the proffered position on the labor certification. A misrepresentation can be made to a government official in an oral interview, on the face of a written application or petition, or by submitting evidence containing false information. INS Genco Op. No. 91-39, 1991 WL 1185150 (April 30, 1991). Here, the submission of employment documents containing false experience attestations and certifications to support this immigrant petition constitutes a false representation to a government official. In addition, because the claims regarding the Beneficiary's qualifying foreign employment are on the signed labor certification that the Petitioner submitted to support the immigrant visa petition, they constitute false representation on the face of a written application or petition.

Second, we find that the Petitioner willfully made the misrepresentation. When given the opportunity to address the derogatory information that resulted from the first overseas investigation in response to our first NOID, the Petitioner did not claim to have submitted the evidence accidentally or inadvertently. Instead, the Petitioner reaffirmed its claims regarding the Beneficiary's foreign employment and provided new evidence; however, a second overseas investigation revealed the additional evidence is also fraudulent. In response to our second NOID, the Petitioner maintains that all of its evidence is true and that the foreign employer is making false statements against the Beneficiary for unknown reasons.

With respect to the Beneficiary's participation in this matter, he signed the labor certification attesting to the veracity of the claims on the labor certification, and provided additional statements in which he falsely asserted that he has more than two years of qualifying experience as a retail manager for [redacted] in India. In this way, the Beneficiary directly participated in the preparation and submission of documents that exist for no discernible purpose except to convey the false impression that he has at least two years of qualifying experience, as required on the labor certification and for the requested immigrant classification. Because the foreign employment documents that the Petitioner provided on behalf of the Beneficiary are not authentic, we conclude that the Petitioner and the Beneficiary provided them specifically for the purpose of supporting the petition and, thereby, procuring immigration benefits for the Beneficiary.

Third, the evidence is material to the Beneficiary's eligibility. To be considered material, a false statement must be shown to have been predictably capable of affecting the decision of the decision-making body. *Kungys v. U.S.*, 485 U.S. 759 (1988). In the context of a visa petition, a misrepresented fact is material if the misrepresentation cut off a line of inquiry which is relevant to the eligibility criteria and that inquiry might well have resulted in the denial of the visa petition. *See Ng*, 17 I&N Dec. at 537. The misrepresentations regarding the Beneficiary's foreign work history cut off a potential line of inquiry regarding his claimed qualifying experience as a retail manager. The Petitioner submitted evidence purporting to resolve derogatory evidence uncovered through one overseas investigation; however, a second overseas investigation revealed that the additional evidence is also fraudulent. These assertions and evidence are directly material to the Beneficiary's eligibility under the statutory requirement that he have at least two years of experience or training for the classification. Section 203(b)(3)(A)(i) of the Act. Furthermore, if he did not have the claimed employment history, then the Beneficiary would not satisfy the experience requirements for the proffered position, as described on the labor certification.

Based on the information referenced above, it is reasonable to question whether the Petitioner and the Beneficiary willfully misrepresented material facts regarding the Beneficiary's previous employment with [redacted] in India. We advised the Petitioner in our NOIDs that the discrepancies, if unresolved, could lead us to conclude that the evidence concerning the Beneficiary's experience, which is material to his eligibility under section 203(b)(3)(A)(i) of the Act, is not credible. In light of the contradictory evidence and information we described above, we conclude that the Petitioner's and the Beneficiary's misrepresentations were material to the Beneficiary's eligibility.

In response to our second NOID, the Petitioner states that even if we do not find that "the evidence of the Beneficiary's experience [is] compelling in view of his employer's contradictory statements, there is no clear basis . . . to find that the Beneficiary is inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting a material fact." The Petitioner has not established that the statements that the Beneficiary's former employer provided in two separate overseas investigations are contradictory. Rather, [redacted] and his family members have consistently asserted to USCIS officials that the Beneficiary's evidence of his employment at [redacted] is fake. Consequently, it is the Beneficiary's own evidence that contradicts the Petitioner's statements.

Regardless, we need not make a finding of inadmissibility against the Beneficiary within this petition proceeding, as the visa petition procedure is not the forum for determining substantive questions of admissibility under the immigration laws. *Matter of O*, 8 I&N Dec. 295 (BIA 1959). Instead, whether or not the Beneficiary is inadmissible based on his submission of fraudulent documents is a determination that may be made within the context of any other petition or application for which he must establish his admissibility.

It remains, however, that by filing the instant petition and falsely claiming that the Beneficiary was employed as a retail manager at [redacted] in India, the Petitioner has sought to procure

a benefit provided under the Act through the willful misrepresentation of material facts. By signing the labor certification and making additional false claims in his supporting statements, the Beneficiary himself sought to procure a benefit provided under the Act through the willful misrepresentation of a material fact. Accordingly, we will enter a finding that the Petitioner and the Beneficiary made willful misrepresentations of material fact. This finding of willful material misrepresentation shall be considered in any future proceeding where the Beneficiary's admissibility is an issue.

III. CONCLUSION

The Petitioner has not established that the Beneficiary has at least two years of qualifying experience as a retail manager. Accordingly, the Beneficiary does not meet the minimum experience requirement of the labor certification, and does not qualify for classification as a skilled worker. Moreover, the Petitioner has not established that its offer of employment to the Beneficiary is *bona fide*. We also find that the Petitioner and the Beneficiary have sought to procure immigration benefits on behalf of the Beneficiary through willful misrepresentation of a material fact.

ORDER: The appeal is dismissed..

Cite as *Matter of S-I-, Inc.*, ID# 123421 (AAO Mar. 23, 2018)