U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-, INC.

DATE: MAR. 27, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a liquor store, seeks to employ the Beneficiary as a "marketing and display manager/cashier" and requests classification of her as a skilled worker. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i); 8 U.S.C. § 1153(b)(3)(A)(i). The skilled worker 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 Texas Service Center denied the petition, concluding that the Petitioner has not established that the Beneficiary met the experience requirements stated on the labor certification.

The matter is now before us on appeal.

Upon *de novo* review, we will remand the matter to the Director in accordance with the following.

I. BACKGROUND

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, 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). *See* 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. *See* section 245 of the Act, 8 U.S.C. § 1255.

[1] The date the labor certification is filed, in cases such as this one, is called the "priority date."

II. LAW AND ANALYSIS

A. Beneficiary's Experience

Section 203(b)(3)(A)(i) of the Act provides for the granting of preference classification to qualified immigrants who are capable of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. *See also* 8 C.F.R. § 204.5(l)(2).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) states:

> If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the [labor certification]. The minimum requirements for this classification are at least two years of training or experience.

The determination of whether a petition may be approved for a skilled worker is based on the requirements of the job offered as set forth on the labor certification. *See* 8 C.F.R. § 204.5(l)(4). The labor certification must require at least two years of training and/or experience. Relevant post-secondary education may be considered as training. *See* 8 C.F.R. § 204.5(l)(2).

Accordingly, a petition for a skilled worker must establish that the job offer portion of the labor certification requires at least two years of training and/or experience, and the beneficiary meets all of the requirements of the offered position set forth on the labor certification.

In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983).

The priority date in this matter is June 5, 2015. Here, Part H.6 of the ETA Form 9089, Application for Permanent Employment Certification (labor certification), states that the Beneficiary must have 36 months of experience in the job offered, which as indicated in Part H.3 is a marketing and display manager; cashier.

The assigned O*Net code[2] for the position is 41-1011, First Line Supervisors of Retail workers. Part H.11 states the job duties as follows:

[2] O*NET is the current occupational classification system in use by DOL. *See* O*Net Online, http://online.onetcenter.org. (accessed on March 27, 2017).

> Developing promotions and marketing strategies for store and for individual products; organizing displays of products and promotional materials in store; sampling of product; ordering product in accordance with inventory needs; storage and organization of inventory; and separation and collection of empty containers for redemption. Duties will include some cashier work;[3] including assisting customers with questions about merchandise, operating cash register and bagging and packing customer purchases.

Part K of the labor certification indicates that the Beneficiary worked 25 hours per week as a liquor store clerk for [redacted] at [redacted] in [redacted] Massachusetts from June 1, 2013 until June 5, 2015, and that she worked 30 hours per week as a liquor store associate for [redacted] at [redacted] in [redacted] Massachusetts from April 1, 2001 until June 5, 2015.

The Director noted discrepancies in the experience letters from [redacted] and [redacted] because the job titles, duties, wording and the format of the letters are the same. The Director also indicated that these job titles and duties differ from what is stated on the labor certification. The Director issued the Petitioner a request for evidence (RFE) to provide an opportunity to resolve these discrepancies. In response to the RFE, the Petitioner submitted a letter from [redacted] and a letter from [redacted] which each provided additional details of the Beneficiary's work experience.[4] The Petitioner submitted Forms W-2 issued to the Beneficiary for [redacted] from 2001 to 2015 and for [redacted] from 2012 to 2015.[5] The Director noted that the labor certification and the experience letters stated that the Beneficiary began working at [redacted] on June 1, 2013. In denying the petition, the Director held that the Petitioner had not resolved the discrepancies in the record regarding the Beneficiary's experience.

On appeal, the Petitioner has submitted a letter from the president of [redacted] indicating that the start date listed in the experience letter was an unintentional error and that the Beneficiary had been working there from September 2012 to March 2016. We note that a comparison of the two experience letters from [redacted] indicates that nearly all of the

---

[3] Duties as a cashier would appear to fall under a separate O*Net code, of 41-2011, Cashiers.

[4] We note that the author of the letter from [redacted] has the same surname as the Beneficiary. We acknowledge that this is a common surname in India; however, because of the other inconsistencies regarding the Beneficiary's experience noted herein, the Petitioner must provide independent, objective evidence to establish whether the Beneficiary is related to the president or other corporate officers of [redacted] *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) (inconsistencies in the record must be resolved by independent objective evidence).

[5] Similarly, we note that the author of the letter from [redacted] has the same surname as the Beneficiary. We acknowledge that this is a common surname in India; however, because of the other inconsistencies regarding the Beneficiary's experience noted herein, the Petitioner must provide independent, objective evidence to establish whether the Beneficiary is related to the president or other corporate officers of [redacted] *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) (inconsistencies in the record must be resolved by independent objective evidence).

job duties stated on the May 23, 2016 letter corresponds with the duties stated on the March 28, 2016 letter.

However, we note the following discrepancies regarding the Beneficiary's employment experience that were not raised by the Director. The record contains three different Forms G-325 completed by the Beneficiary on different dates. On a Form G-325A filed with the Beneficiary's Form I-485, Application to Register Permanent Residence or Adjust Status, in 2004 containing the Beneficiary's biographic information, she states that she worked as a bookkeeper for [redacted] from 2001 until the date of the Beneficiary's signature in 2004 and as a cashier for [redacted] in 2000 but does not specify which months. The two other Forms G-325A that the Beneficiary signed in 2005 in 2006 state that she worked as a cashier for [redacted] from 2001 until the date of her signature and as a cashier for [redacted] from October 2000 to December 2000. The 2005 Form G-325A states that the Beneficiary was living in Florida from April through December 2001 when she was allegedly working for [redacted] in Massachusetts. The experience letter from the president of [redacted] states that the Beneficiary worked there as a merchandising and promotion assistant working 25 to 30 hours per week. The labor certification indicates that the Beneficiary worked as a "liquor store associate 30 hours per week, where she was involved in "marketing and display, tastings of products, ordering product, stocking inventory, redemption of containers and helping at the counter."

In addition, the record contains the prior experience letter from the president of [redacted] stating that the Beneficiary worked there as a merchandiser for 30 hours per week from July 2013 until at least the date of the letter in March 2016. This conflicts with the information contained in the labor certification, which states that she was employed for 25 hours as a "liquor store clerk," where she did "bookkeeping, ordering of product, and setting up marketing displays." The individual tax returns submitted for the Beneficiary do not clarify her position title with either company as page two of the Forms 1040 lists her position as "job."

We also note that the Forms W-2 conflict with evidence in the Beneficiary's tax returns, which contain Schedule C Forms that list income from her own businesses operated from her home address for 2011, 2012, 2013, and 2014. At least one tax return notes that the income is "management income." A search of corporate records for the state of Massachusetts reveals that the Beneficiary is the Director of three companies, [redacted] and [redacted] which were formed in 2001, 2006, and 2011, respectively.[6]

All of the above inconsistencies cast doubt on the prior and newly submitted letters. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). As the Petitioner has not had an opportunity to address these deficiencies, we will remand the petition to the Director. 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.

[6] We further note that the Beneficiary's address as stated on the labor certification and her personal tax returns, [redacted] in [redacted] Massachusetts is the same address as advertised online for [redacted]

B. Bona Fide Job Offer

Under 20 C.F.R. §§ 626.10(c)(8) and 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. *See Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." *See Matter of Sunmart 374*, 00-INA-93 (BALCA May 15, 2000). The Beneficiary's individual tax returns state her address as [redacted] in [redacted] Massachusetts. We note that the Petitioner's owner has at least one other business affiliation with an individual who uses this same address. Specifically, the Petitioner's owner is registered as the Director of [redacted] with another individual who is registered as the President of this this company and who reports the same address at [redacted] Massachusetts. This calls into question whether the Petitioner's president had a pre-existing relationship with the Beneficiary. Therefore, the Petitioner must clarify the nature of the Beneficiary's relationship, whether she is personally related, and/or the extent of any prior financial relationship with the Petitioner's owner. Accordingly, the Director may address this issue and whether a *bona fide* job offer exists on remand.

III. CONCLUSION

For the reasons stated above, the matter will be remanded to the Director for consideration of whether the Beneficiary meets the experience requirements of the position offered and whether there is a *bona fide* job offer.

ORDER: The decision of the Director of the Texas Service Center is withdrawn. The matter is remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of P-, Inc.*, ID# 143363 (AAO Mar. 27, 2017)