U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF C-C-&A- LLC

DATE: MAR. 29, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a construction company, seeks to employ the Beneficiary as an administrative support worker. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. 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 Texas Service Center initially approved the petition, but subsequently revoked approval of the petition after concluding that the Petitioner had not established that the Beneficiary possessed the minimum experience required on the labor certification for the proffered position.[1] The Petitioner filed a motion to reopen and reconsider, and the Director determined that approval of the petition should remain revoked.

On appeal, the Petitioner submits a brief and additional evidence. The Petitioner asserts that the evidence establishes the Beneficiary's qualifying experience.

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).[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, 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

[1] 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).

[2] The date the labor certification is filed is called the "priority date."

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.

## II. ANALYSIS

The Director revoked the petition's approval because the record did not establish that the Beneficiary has the experience required by the terms of the labor certification. A petitioner must establish a beneficiary's possession of all the experience specified on an accompanying labor certification by a petition's priority date.[3] 8 C.F.R. § 103.2(b)(1), (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).

Here, the labor certification states that 24 months of experience as an administrative assistant is the minimum experience requirement of the offered position. On the labor certification, the Beneficiary attested that she had at least 24 months of full-time, qualifying experience with a prior employer as follows:

| Job title | Employer name | Employer address | Start date | End date |
|---|---|---|---|---|
| Administrative assistant | | Hungary | January 10, 2003 | February 1, 2006 |

A petitioner must support a beneficiary's claimed qualifying experience with a letter from an employer. 8 C.F.R. § 204.5(g)(1). The letter must provide the name, address, and title of an employer, and a description of a beneficiary's experience. *Id.* Here, the Petitioner initially provided a letter from the the manager of who claimed that the Beneficiary worked at the company on a full-time basis as an administrative assistant from January 10, 2003, to February 1, 2006.

However, as discussed by the Director in the notice of intent to revoke (NOIR), the Beneficiary's experience as described on the labor certification and in the supporting letters is inconsistent with other records showing that she was in the United States during the periods of time that she claimed to have been working in Hungary. Specifically, USCIS records show that the Beneficiary entered the United

[3] In this case, the petition's priority date is March 12, 2007.

States under the J-1 nonimmigrant exchange visitor program on August 13, 2001, and filed at least two applications to extend or change her status before departing the United States in September 2004. The Beneficiary appears to have reentered the United States as a B-2 nonimmigrant visitor in October 2004, and filed at least one application to extend or change her status before departing the United States on June 16, 2005. After this, the Beneficiary appears to have reentered the United States on January 8, 2006. Consequently, the Petitioner has not established that the Beneficiary gained at least 24 months of full-time qualifying experience in Hungary working for [redacted] between January 2003 and February 2006 because she was present in the United States during much of that same period.

In response to the NOIR, the Petitioner confirmed that the experience claimed on the labor certification is not correct but claimed that this is an "innocuous error." The Petitioner submitted additional evidence that it claimed establishes that the Beneficiary gained at least 24 months of experience as an administrative assistant during a different period of time than that listed on the labor certification. The new evidence includes a statement from [redacted] the managing director of [redacted] who stated that the Beneficiary worked at the company as an administrative assistant from October 19, 1998, to July 31, 2001.[4] The Petitioner also provided a copy of the Beneficiary's original employment contract, related pay stubs, ledger extracts, and bank statements from the Beneficiary. The Petitioner asserted that [redacted] was unable to explain why [redacted] letter reflected that the Beneficiary worked there from January 2003 to February 2006 rather than October 1998 to July 2001, but concluded that because [redacted] letter was sent to the Petitioner's former attorney, the Beneficiary "would have been left unaware of the error." Finally, the Petitioner claimed for the first time that the Beneficiary gained additional qualifying experience as an administrative assistant working for [redacted] in Hungary from August 1, 2004, until February 24, 2006. The Director found that the response to the NOIR did not resolve the contradictory information regarding the Beneficiary's claimed employment in Hungary and revoked approval of the petition, subsequently affirming his decision on motion to reopen and reconsider.

On appeal, the Petitioner contends that the Director did not fully address all of its evidence and maintains that the record, as a whole, establishes that the Beneficiary worked at [redacted] from October 19, 1998, to July 31, 2001. For example, the Petitioner references bank statements, pay stubs, general ledger pages, and the Beneficiary's employment contract from [redacted] and states that these documents establish that the Beneficiary was employed at [redacted] as an administrative assistant from October 1998 to July 2001. The Director discussed these documents and concluded that although they show that [redacted] intended to hire the Beneficiary to work as an administrative assistant and that it appears to have paid her between October 1998 and July 2001, the documents do not contain sufficient information to show that she was in fact employed fulltime as an administrative assistant and also do not resolve the Petitioner's prior, contradictory evidence. Consequently, the Director appears to have fully considered the Petitioner's new claims and related evidence individually and as a whole, but found that they were insufficient to reviewed them in the context of the prior contradictory evidence.

[4] According to an employment letter from [redacted] is also the Beneficiary's mother.

On appeal, the Petitioner maintains that the Beneficiary was unaware of the incorrect employment information provided on and in support of the labor certification. For example, in response to the NOIR, the Petitioner stated that the Beneficiary did not know of [redacted] claims that she had worked at [redacted] from January 2003 to February 2006 because his letter went to the Petitioner. On appeal, the Petitioner claims that the Beneficiary was not cognizant of representations on the labor certification because it was prepared and filed by an immigration consultant, and asks that we disregard the prior contradictory evidence about the Beneficiary's claimed experience, which would include the labor certification. However, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Moreover, we may neither ignore a term of the labor certification, nor impose additional requirements. *See, e.g., Madany,* 696 F.2d at 1015 (stating that the "DOL bears the authority for setting the content of the labor certification"). Consequently, we cannot disregard the information on the Petitioner's labor certification.

Having attributed the contradictory information on the labor certification to the work of an immigration consultant, the Petitioner submits documents to show that it reported the consultant to the state of New York; however, the record does not show that the consultant prepared the labor certification and supporting documents. Instead, the record contains a Form G-28, Notice of Appearance as Attorney or Representative, showing that the Petitioner was represented by an unrelated immigration attorney in filing the petition. We consider complaints based upon ineffective assistance against attorneys and accredited representatives, but the Petitioner has not claimed to have filed a complaint against the attorney whose signature is on the petition, and the related Form G-28. *Cf Matter of Lozad*a, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988) (requiring an appellant to meet certain criteria when filing an appeal based-on ineffective assistance of counsel). However, even if an immigration consultant was responsible for preparation of the initial evidence, there is no remedy available for a petitioner that assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on its behalf. *See* 8 C.F.R. § 292.1; *see also Hernandez v. Mukasey*, 524 F.3d 1014 (9th Cir. 2008) ("non-attorney immigration consultants simply lack the expertise and legal and professional duties to their clients that are the necessary preconditions for ineffective assistance of counsel claims").

Regardless, the record does not show that the Beneficiary was unaware of prior representations about her alleged experience from 2003 to 2006. Rather, the Beneficiary signed the labor certification at Part L under penalty of perjury, attesting that the representation of her work history, as described on the labor certification, was true and correct. In addition, on October 12, 2007, the Beneficiary filed a Form I-485, Application to Register Permanent Residence or Adjust Status, and included a Form G-325A, Biographic Information, on which she was asked to list her last occupation abroad. The Beneficiary listed only her work as an administrative assistant at [redacted] from January 2003 to February 2006, and signed this document under penalty of perjury. An individual who signs a request or any document submitted to USCIS affirms that the individual has authority to sign the document, has knowledge of the facts being represented in the document, and attests to the veracity of the facts and claims made in the document. USCIS Policy Memorandum PM-602-0134.1, *Signatures on Paper Applications, Petitions, Requests, and Other Documents Filed with U.S. Citizenship and*

*Immigration Services*, 6 (Feb. 18, 2018), http://www.uscis.gov/laws/policy-memoranda. Therefore, the Petitioner's claim that the Beneficiary lacked knowledge of the information in letter and the labor certification is contradicted by her participation in those same assertions on the labor certification and on her own Form G-325A, as evidenced by her signature on both documents. Consequently, the Petitioner has not resolved the inconsistencies between those documents and the claims made on the labor certification. Unresolved material inconsistencies raise doubt about the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. See *Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988).*

We uphold the Director's finding that the evidence does not resolve the contradictions in the record. The claims on the labor certification are contradicted by records showing that the Beneficiary was in the United States when she claimed to have been working in Hungary. The Petitioner's new claim that the Beneficiary gained qualifying experience as an administrative assistant at from October 19, 1998, to July 31, 2001, is not sufficiently supported by the record. We note that this employment was not listed on the labor certification. The omission of the Beneficiary's claimed experience from the labor certification application casts doubt on the experience's validity. *See Matter of Leung*, 16 I&N Dec. 12, 14-15 (Distr. Dir. 1976), *disapproved of on another ground by Matter of Lam*, 16 I&N Dec. 432 (BIA 1978) (finding a foreign national's claim of qualifying experience to lack credibility where he omitted the experience from a labor certification application). Although the Petitioner has submitted documentation concerning this claimed employment, we find it insufficient to support the claimed experience for the following reasons.

The letter from which attests to the Beneficiary's experience at from October, 19, 1998, to July 31, 2001, was prepared by the Beneficiary's own mother. Rather than support her letter with independent evidence of the Beneficiary's claimed qualifying employment, claims that has only the employment contract to document the Beneficiary's claimed work there because the company is "required to retain and store for 10 years the Employee's data, tax records, as well as other documents." After this period, claimed that the documents "must be discarded and destroyed." does not specify why the company is required to retain and destroy employment records on this schedule. Moreover, does not explain why the company retained the employment contract if was in fact required to destroy employee documents after 10 years. The employment contract dated October 16, 1998, shows intent to employ the Beneficiary as an administrative assistant three days later, but do not establish that the Beneficiary engaged in full-time work for the stated period, it is not sufficient to show that she actually worked there from October 19, 1998, to July 31, 2001. Finally, the supporting pay stubs that the Petitioner included show that transferred money to the Beneficiary's account, but these do not specify the nature of the work or services for which she was compensated. Consequently, aside from the fact that these documents are for a period of employment not listed on the labor certification, they are not sufficient to establish that the Beneficiary has at least two years of full-time qualifying experience as an administrative assistant at between October 19, 1998, and July 31, 2001.

For all of the reasons stated above, rather than resolve prior inconsistencies in the record, the Petitioner's new claims regarding the dates of the Beneficiary's alleged qualifying experience with [redacted] serve as additional contradictory evidence.

With respect to the Petitioner's claim that the Beneficiary has alternate qualifying experience with [redacted] in Hungary, we note that this employment was not listed on the labor certification. As noted, the omission of the Beneficiary's claimed experience from the labor certification application casts doubt on the experience's validity. *See Matter of Leung*, 16 I&N Dec. at 14-15. Moreover, the claimed dates of employment with [redacted] from August 1, 2005, until February 24, 2006, are inconsistent with the dates the Beneficiary initially claimed on the labor certification and Form G-325A to have been employed with [redacted] The Petitioner submitted bank statements to corroborate this claimed employment with [redacted] These bank statements show that [redacted] transferred money into the Beneficiary's "investment account" on a monthly basis, but do not reflect that the money was provided in exchange for her work as an administrative assistant. The deposits are for varying amounts ranging between 250 to 158,546 Forint from September 2005 to April 2006. However, because the deposits are of varying amounts they could not be considered to establish full-time, qualifying employment. Moreover, several deposits were made after the Beneficiary entered the United States in January of 2008. Consequently, they do not show that [redacted] paid her for full-time qualifying employment in Hungary. Further, the Petitioner has not otherwise explained how the Beneficiary gained the alleged experience with [redacted] while USCIS records show the Beneficiary was in the United States for a significant period of this time. Consequently, the new claim is not sufficient to establish that the Beneficiary has at least 24 months of qualifying experience as an administrative assistant.

Accordingly, based on the above conflicting information about the Beneficiary's employment history, the Petitioner has not submitted sufficient evidence to establish that she has at least 24 months of qualifying experience required for the position of administrative assistant on the labor certification or for classification as a skilled worker.

## III. CONCLUSION

The record does not establish the Beneficiary's possession of the experience required for the offered position and the requested classification.

**ORDER:** The appeal is dismissed.

Cite as *Matter of C-C-&A- LLC*, ID# 1045539 (AAO Mar. 29, 2018)