U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-M-A-, LLC

DATE: MAR. 30, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a fashion model agency, seeks to classify the Beneficiary, a model, as a foreign national of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i). This O-1 classification makes nonimmigrant visas available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation.

The instant petition was approved on March 13, 2015. However, the Director of the Vermont Service Center subsequently revoked the petition concluding, after issuing a notice of intent to revoke (NOIR), that the petition was not approvable due to the Petitioner's submission of a falsified document. The Director did not address the merits of the Beneficiary's eligibility as a foreign national of extraordinary ability in the arts.

On appeal, the Petitioner seeks to reverse the Director's finding and submits additional evidence and a brief.

The appeal will be dismissed.

I. LAW

As relevant here, section 101(a)(15)(O)(i) of the Act establishes O-1 classification for an individual who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. Department of Homeland Security (DHS) regulations define "extraordinary ability in the field of arts" as "distinction," and "distinction" as "a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts." 8 C.F.R. § 214.2(o)(3)(ii).

Further, the regulation at 8 C.F.R. § 214.2(o)(2)(ii)(C) provides that petitions for O foreign nationals shall be accompanied by an explanation of the nature of the events or activities, the beginning and end dates for the events or activities, and a copy of any itinerary for the events or activities.

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.

II. ANALYSIS

A. Background

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on behalf of the Beneficiary, a fashion model. As one of the testimonial letters supporting the petition, the Petitioner provided a letter dated August 20, 2014, containing the signature of [redacted] Italy, attesting to the Beneficiary's extraordinary ability as a fashion model. The Petition was approved on March 13, 2015.

The Director subsequently issued a notice of intent to revoke (NOIR) the approved petition, informing the Petitioner of derogatory information and providing it an opportunity to rebut the information. The NOIR informed the Petitioner that when U.S. Citizenship and Immigration Services (USCIS) attempted to verify [redacted] letter, he and other representatives of [redacted] confirmed that he had not worked for [redacted] since July 2012 and, therefore, did not authorize the letter. Based on this information, the Director concluded that the Petitioner had submitted a "falsified document," and requested evidence to establish the veracity of other testimonial letters affirming the Beneficiary's extraordinary ability as a fashion model, including letters from [redacted] France, and [redacted] China.[1] In addition, the Director requested documentation to show the authenticity of contracts regarding the Beneficiary's proposed employment as a model in the United States. Finally, the Director requested additional evidence establishing that a peer consultation provided by [redacted] was authentic.[2]

In the Petitioner's response to the NOIR, it submitted a letter from its Director, describing the practice by which the Petitioner obtained recommendation letters from [redacted] on behalf of beneficiaries through a vetting system whereby the Petitioner stamped cleared letters with the signature of a [redacted]

[1] On appeal, the Petitioner does not address the authenticity of either [redacted] letters.

[2] On appeal, the Petitioner offers a letter from [redacted] program director of [redacted] confirming the authenticity of the company's prior peer group consultation.

employee.[3] The Petitioner explained that its representatives contacted for authorization to issue the letter and mistakenly stamped the letter signed by rather than the current employee at Joy who has the same first name as and is authorized to issue letters on behalf.

The Petitioner also provided a copy of a June 2015 letter from and noted that the "original signed letter was submitted to USCIS pursuant to a Notice of Intent to Deny for a petition filed by the Petitioner for another beneficiary, [B-R-]." The Petitioner stated that the signed letter from confirms support of the letters written on behalf of the Petitioner's models and explains the relationship between the agencies. The Petitioner further averred that the error in signatures did not amount to material misrepresentation as the reference letter is not material to the Beneficiary's eligibility. The Petitioner did not provide any additional evidence confirming the authenticity of the letters from as requested.

After considering the response, the Director revoked the petition, finding that the Petitioner did not provide independent and objective evidence to overcome the determination that the Petitioner willfully misrepresented the facts and submitted a falsified document. The Director further noted that the Petitioner is required to provide a complete itinerary of events which includes the dates of the claimed events and that specifies the names, addresses of employers and venues where events will be performed. She noted that the signatures on contracts for three prospective employers identified on the itinerary appear to exactly match the signatures of these individuals on other petitions filed on behalf of other beneficiaries, raising questions as to whether the contracts had been mass produced or altered.[4]

On appeal, the Petitioner challenges the Director's finding and files a brief and additional material. As discussed below, we find that the Petitioner has not provided sufficient evidence to satisfy the Director's concerns. As such, we will dismiss the appeal.

B. Discussion

First, we find that the Petitioner has not offered sufficient evidence resolving the Director's concerns regarding the submission of a falsified letter, and overcoming the Director's finding of willful misrepresentation of a material fact. A misrepresentation is an affirmation or manifestation that is not in accord with the true facts of the case and can be made to a government official in an oral

[3] Specifically, the Petitioner's director, stated that the company has a long-standing relationship with and she instructed her staff to obtain qualification letters from them when a model is seeking a visa. She describes a process for obtaining the letters by which she instructed her staff to "notify when we had a model seeking a visa, and, upon his authorization, we would issue and stamp a qualification letter." She explains that when left and was replaced by she was unaware of the change and continued to stamp the reference letters with name in error. On appeal, she also states that she suffers from a traumatic brain injury that has compromised her memory and cognitive functions.

[4] In adjudicating this petition, USCIS contacted who stated that while he did not actually sign the document in question, he "likely authorized someone to sign on his behalf."

interview, on the face of a written application or petition, or by offering evidence containing false information. *See* INS Genco Op. No. 91-39, 1991 WL 1185150 (April 30, 1991). The law provides for a wide range of potential consequences for material misrepresentation, including the denial of the visa petition, a finding of fact that may render an individual foreign national inadmissible to the United States, or criminal prosecution. *See* 18 U.S.C. §§ 1001, 1546; *see also, U.S. v. O'Connor*, 158 F.Supp.2d 697 (E.D. Va. 2001).

As outlined by the Board of Immigration Appeals, a material misrepresentation requires someone to 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 knowingly 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.

In revoking the petition, the Director pointed to conflicting information in the record of proceedings including the fact that [redacted] letter was stamped with his name on a date when he no longer worked for [redacted] On appeal, the Petitioner again states that the letter in question bore the signature stamp of an individual no longer employed at [redacted] but maintains that the discrepancy resulted from the Petitioner's accidental use of the wrong signature stamp due to confusion over who had authorized the letter, [redacted] rather than [redacted] The Petitioner provides a copy of a July 2015 letter from [redacted] in which he describes a particular group of letters that were "rubber stamped" by the Petitioner in [redacted] name, and states that his firm stands behind those letters, including the letter on behalf of beneficiary B-R. However, we note that the record does not include the original letter signed by [redacted] such that we can confirm its veracity.

Further, the letter indicates that it was submitted in response to USCIS's notice of intent to deny a visa petition filed on behalf of B-R-, and it does not reference the petition filed on behalf of this Beneficiary.[5] The Director concluded that the letter fails to resolve the Petitioner's apparent willful

[5] The Petitioner also provides a copy of a previous AAO decision *Matter of F-M-A-, LLC*, ID# 16597 (AAO May 25, 2016) relating to the petition filed by the Petitioner on behalf of B-R-. In that case, the Petitioner also provided a copy of a letter purportedly signed by [redacted] after he left [redacted] In our decision, we found an original letter from [redacted], provided on appeal, stating specifically that he had authorized the letter of support from [redacted] on behalf of the relevant beneficiary was sufficient to withdraw the finding of willful misrepresentation and remand the matter for further consideration. We note that the current record does not include such a letter relating to the instant Beneficiary. Regardless the submitted AAO decision was not published as a precedent and therefore does not bind USCIS officers in

submission of manufactured documents in support of the visa petition and we agree with that determination. The appeal will be dismissed on this basis.

Because we conclude that the Petitioner did not overcome the Director's findings of willful material misrepresentation, we need not fully address other issues evident in the record. That said, we will briefly identify an additional ground of ineligibility not raised by the Director to inform the Petitioner that this issue should be addressed in future proceedings. Specifically, we note that public records indicate that one of the companies listed on the Petitioner's itinerary, is listed as inactive by the New York Department of State as it was dissolved on July 29, 2009. Based on the evidence provided, the Petitioner has not established that the Beneficiary can complete the itinerary. The Petitioner must resolve this inconsistency 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.* For this additional reason, the petition will remain revoked.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not overcome the grounds for revocation or established eligibility for the benefit sought.

ORDER: The appeal is dismissed.

Cite as *Matter of F-M-A-, LLC*, ID# 927787 (AAO Mar. 30, 2018)

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future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.