U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-C-A-R-

DATE: MAY 9, 2019

APPEAL OF ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a construction and remodeling business, seeks to employ the Beneficiary as an administrative assistant. 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 employment-based "EB-3" 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 the approval[1] on the ground that the Petitioner did not establish that the Beneficiary had two years of qualifying experience in the job offered, as required by the terms of the labor certification. The Petitioner filed an appeal, which we dismissed on the same ground.

The case is now before us on a motion to reopen. Upon review we will deny the motion.

I MOTION REQUIREMENTS

As stated in the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts and be supported by documentary evidence. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit

II. ANALYSIS

At issue here is whether the evidence submitted with the motion to reopen is sufficient to overcome our appellate decision and demonstrate eligibility. As noted, in our prior decision we found that the Beneficiary did not possess the experience required by the terms of the labor certification. A beneficiary must meet the specific educational, training, experience, or other requirements of the labor certification to qualify for the job offered by the petitioner. See 8 C.F.R. § 204.5(l)(3)(ii)(B).

[1] At any time before a beneficiary obtains lawful permanent residence U.S. Citizenship and Immigrations Services may revoke a petition's approval for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. A petition's erroneous approval may in and of itself justify its revocation. *Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988).

All labor certification requirements must be met by the petition's priority date.[2] *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

The labor certification that accompanied the Petitioner's Form I-140, Immigrant Petition for Alien Worker, states that the minimum experience required for the proffered position of administrative assistant is 24 months in the job offered, and that experience in an alternate occupation is not acceptable. The labor certification describes the job duties (in box H.11) as follows:

- Coordinate office services, duties of personnel and records control.
- Provide administrative support by conducting research, preparing statistical reports, handling information request, scheduling meetings.
- Create new systems / revise established procedures.
- Review and answer correspondence.
- Communicate in Polish.

According to the labor certification the Beneficiary exceeded the 24-month experience requirement by working as an administrative assistant for [redacted] (PR-B), a construction business in [redacted] Poland, from March 4, 2002, to June 18, 2004. This is the only employment experience listed for the Beneficiary on the labor certification.

With its initial evidence the Petitioner submitted a letter from [redacted] stating that his construction and remodeling company, identified as [redacted], employed the Beneficiary full-time in its office/administrative division from March 4, 2002, to June 18, 2004, where she performed the following duties:

- Administered the office, answering and receiving telephone calls, faxes, and emails, scheduling services.
- Filed and administered contracts entered with clients.
- Provided support to the accountant, bookkeeping, issued invoices.

In response to the Director's notice of intent to revoke (NOIR), an additional statement was submitted from [redacted], who identified himself as PR-B's owner.

In his revocation decision the Director discussed a phone interview of [redacted] with the U.S. Embassy in [redacted] in which [redacted] acknowledged that the Beneficiary is his niece, stated that the Beneficiary's mother (his sister) asked him to write the experience letter, and indicated that the Beneficiary "never officially worked for him" at PR-B. The Director concluded that the employment verification letter submitted with the petition was not credible and that the evidence did not establish the Beneficiary's qualification for the proffered position under the terms of the labor certification, which requires two years of experience in the job offered.

[2] The priority date of a petition is the date the underlying labor certification is filed with the Department of Labor, which in this case was May 14, 2014. *See* 8 C.F.R. § 204.5(d).

On appeal the Petitioner claimed that [redacted] never stated that the Beneficiary did not work for him at PR-B. According to the Petitioner, the Beneficiary worked for PR-B in an unofficial capacity. The Petitioner referred to [redacted] previously submitted statement in which he indicated that the Beneficiary performed administrative assistant tasks as an intern without compensation, and on weekends studied administration in [redacted] The record already contained a copy of the Beneficiary's diploma from [redacted] University in [redacted] dated January 17, 2005, confirming that the Beneficiary completed a two –year master's degree majoring in administration during the years 2002-2004. The Petitioner alternatively contended that the two years of education at the University of [redacted] should qualify the Beneficiary for skilled worker classification under 8 C.F.R. § 204.5(l)(2), which provides that "[r]elevant post-secondary education may be considered as training" in determining whether a beneficiary has the requisite two years of training or experience to qualify for the classification.

We dismissed the appeal on multiple grounds. In view of the family relationship between the [redacted] and the Beneficiary and the fact that [redacted] business address in [redacted] is also identified as his residential address, we expressed doubt about the company's existence and concluded that the record did not establish that PR-B was an operational business or that the Beneficiary gained any work experience there. We also compared the list of job duties in box H.11 of the labor certification with the shorter list in [redacted] initial letter of duties allegedly performed by the Beneficiary at PR-B and concluded that the record did not establish the Beneficiary's requisite experience in the job offered. Finally, we found that the Beneficiary's education in the field of administration at the University of [redacted] regardless of whether it qualified her for skilled worker classification, did not constitute experience in the job offered, as required to meet the terms of the labor certification.

In support of its motion to reopen the Petitioner submits copies of two documents from business and administrative entities in Poland which confirm the existence of [redacted] renovation and construction company, where the Beneficiary claims to have worked for two years in an unofficial capacity. Accordingly, the record demonstrates that PR-B is, or was, an operating business.

No further evidence has been submitted, however, to address the other grounds for our dismissal of the appeal. The Petitioner reiterates previous claims that the Beneficiary worked for two years in an unofficial and unpaid capacity for PR-B performing the tasks of an administrative assistant, and references [redacted] statement in response to the NOIR that these facts were conveyed to U.S. Embassy officials in a phone conversation. But no additional documentation has been submitted to supplement the above-mentioned statement and [redacted] earlier letter submitted with the petition, which could bolster the claim that the Beneficiary actually worked for PR-B. We find that the Petitioner has not resolved the conflicting evidence of the claimed experience. U.S. Citizenship and Immigration Services (USCIS) may assign less weight to testimonial evidence when it is contradicted by other evidence in the record of proceeding. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190, 194 (Reg'l Comm'r 1972)). As previously discussed, the Director noted in his revocation decision the family relationship between [redacted] and the Beneficiary, [redacted] acknowledgement that his initial letter was written at the request of the Beneficiary's

mother, and [redacted] admission that the Beneficiary never "officially worked" for PR-B. Absent independent objective documentation to show that the Beneficiary actually worked for PR-B in the years 2002-2004, and that the duties she performed closely matched the job duties described in box H.11 of the labor certification, we have no basis to alter our previous finding that the record does not establish two years of qualifying experience for the Beneficiary.

The Petitioner also refers to its previous claim that relevant post-secondary education may be considered as training for purposes of meeting the two-year training or experience requirement for skilled worker classification. As we pointed out in dismissing the appeal, however, the Beneficiary's qualifications for the requested classification of skilled worker are not at issue in this proceeding. The issue on motion is whether the Beneficiary meets the experience requirement of the labor certification – which is 24 months performing the duties of an administrative assistant – to qualify for the job offered by the Petitioner. The Beneficiary's educational credentials cannot satisfy the experience requirement for the proffered position.

III. CONCLUSION

The Petitioner has not shown proper cause for the reopening of our prior decision, nor established eligibility for the immigration benefit sought in this proceeding. The burden of proof to establish eligibility for the benefit sought remains with the petitioner in revocation proceedings. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); and *Matter of Estime*, 19 I&N Dec. 450, 452, n.1 (BIA 1987). The Petitioner has not met that burden.

ORDER: The motion to reopen is denied.

Cite as *Matter of S-C-A-R-,* ID# 4422529 (AAO May 9, 2019)