U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-, INC.

DATE: MAY 31, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a supermarket, seeks to employ the Beneficiary as a cashiers' supervisor. 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 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 Nebraska Service Center initially approved the petition, but subsequently revoked the approval after concluding that the Petitioner and the Beneficiary had not adequately explained evidentiary inconsistencies concerning the Beneficiary's past employment and had willfully misrepresented the Beneficiary's work history. As a result, the Director concluded that the Petitioner had not established that the Beneficiary had a minimum of two years of experience as a cashier, as required by the underlying labor certification, and had willfully misrepresented a material fact. We dismissed the subsequent appeal and also found that the Petitioner had not established that the Beneficiary was eligible for the requested classification.

The matter is now before us on motion to reconsider. The Petitioner submits additional evidence and asserts that the record is sufficient to establish that the Beneficiary has the two years of experience in the proffered position, as required on the labor certification.

Upon review, we will deny the motion.

I. LAW

A motion to reconsider must establish that, based on the record at that time, our prior decision misapplied law or policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must also be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of United States Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy. We may grant a motion that satisfies these requirements and demonstrate eligibility for the requested immigration benefit.

II. MOTION TO RECONSIDER

A. Beneficiary's Experience

A beneficiary must meet all of the education, training, experience, and other requirements of the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977). In this case, the petition was accompanied by a labor certification, with a priority date of April 30, 2001. The labor certification stated that the minimum experience required to perform the duties of the proffered position was two years as a cashiers' supervisor or as a cashier/clerk. The Beneficiary stated on the labor certification that she met this requirement by virtue of her work as a cashier for an auto parts and accessories retailer named South Korea, from January 1983 to May 1985. The Director found that because the evidence of the Beneficiary's claimed qualifying experience was contradictory, it was not sufficient to establish that she had a minimum of two years of qualifying experience as a cashier, as required on the labor certification. Our prior decision, incorporated by reference, upheld the Director's decision on this issue, citing to numerous instances where the evidence of the Beneficiary's claimed qualifying experience was inconsistent and contradicted other information in the record.

On motion to reconsider, the Petitioner submits new evidence that it states is sufficient to demonstrate that the Beneficiary has at least two years of qualifying experience as a cashier, as required on the labor certification. However, the Petitioner's new filing does not meet the requirements of a motion to reconsider because it does not establish that, based on the record at the time, our prior decision misapplied law or policy. The Petitioner does not submit any pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy to demonstrate that our prior decision was incorrect. We will therefore deny the motion to reconsider.

The Petitioner did not file a motion to reopen, which is the proper venue in which to address new facts or evidence. However, even if the Petitioner had submitted its new evidence in a motion to reopen, the newly provided information would be insufficient to establish the Beneficiary has the required qualifying experience as a cashier. For example, on motion the Petitioner provides a letter from who states that he worked as a general manager at from 1982 until the end of 1991, and that the Beneficiary worked for the company as a full-time bookkeeper from January 1983 until May 1985.[1] However, does not describe the Beneficiary's duties as a bookkeeper or provide sufficient information to show that her experience as a bookkeeper involved cashier duties. adds that he was attaching a picture of himself with the Beneficiary at a company picnic in 1984; however, the picture is not contained within the record; therefore, we are unable to assess it.

The information in the new letter from is also inconsistent with previously submitted letters in the record from the president of In his 2006 letter,

[1] included evidence of his employment at in the form of a certificate from the in South Korea indicating that he worked at from January 1, 1988, to December 7, 1991. The Petitioner asserts that the national pension coverage did not exist prior to 1988 and, as a consequence, claims there is no evidence of employment for prior to 1988.

stated that the Beneficiary worked as a cashier at for 40 hours per week from January 1983 to May 1985. described the Beneficiary's duties as follows: "operated cash register to itemize and total customer's purchase[,] . . . . collected cash, check or charge payments, stocked shelves and marked prices on items[, and] . . . . weighted items and bagged merchandise." In his May 20, 2013, again asserted that the Beneficiary worked as a full-time cashier from January 1983 through May 1985. Neither letter from states that the Beneficiary performed any duties as a bookkeeper; whereas the new letter from reflects only that the Beneficiary worked as a bookkeeper. Because the new letter from is inconsistent with prior employment experience letters in the record, it is not sufficient to establish that the Beneficiary has qualifying experience at

On motion, the Petitioner also provides a statement from the Beneficiary's sister, who indicates that the Beneficiary operated bookstore from the early 1980s until it closed in November 1984. The Beneficiary's sister claims to have worked at the bookstore on weekdays while the Beneficiary worked at She also states that the Beneficiary returned to the bookstore after her day work at and was there until closing. The Beneficiary's sister attests that the bookstore was small, that there were no additional employees, and that duties involved arranging books on shelves after receiving them from publishers, finding books for customers, and bookkeeping of sales. However, the Beneficiary's sister does not assert that the Beneficiary performed work as a cashier at bookstore, nor does she claim to have any first-hand knowledge of the duties that the Beneficiary performed at in order to establish that she performed duties as a cashier at that company. Consequently, the letter from the Beneficiary's sister does not support the Petitioner's claim that the Beneficiary gained qualifying experience as a cashier or clerk at either as claimed on the labor certification, or at Soorang bookstore.

The Petitioner includes an article indicating that the Beneficiary was the owner of bookstore in November 1980; however, the article provides only her job title and does not discuss her duties or the length of her experience with the bookstore with any specificity. Moreover, the date in 1980 that the Beneficiary is described as having been at the bookstore conflicts with the dates that she had previously claimed to be working there. Specifically, in a statement dated March 5, 2016, the Beneficiary claimed to have opened and operated bookstore in from 1981 to November 1984. Moreover, as discussed in our prior decision, the Beneficiary indicated on a State Department Form DS-158 that she worked at Book Store from October 1981, to November 1984. As a consequence, the article raises additional contradictory information about the Beneficiary's claimed experience at the bookstore and otherwise contains insufficient information to establish that the Beneficiary gained at least two years of qualifying experience as a cashier, as required by the labor certification.

On motion, the Petitioner also provided an evaluation of the Beneficiary's experience at bookstore. In his evaluation, professor of accounting at the College of Business at University, asserts that he finds it extremely unlikely that the Beneficiary would not have had to perform cash management duties as part of her work at bookstore and that, in his opinion, the Beneficiary would have had to be proficient in those duties. However, confirmed that he had not observed the Beneficiary working at the bookstore and therefore he did not claim to have based his statement on first-hand knowledge of her actual duties. also proffered his opinion that the Beneficiary "would not have presented any cash management experience from another company as an alternative of her bookstore experience" unless

her experience at the bookstore was significant. The basis for assertion about the Beneficiary's state of mind when she claimed only to have qualifying experience employment at on the labor certification rather than bookstore, is not apparent. USCIS may treat a credentials evaluation as an advisory opinion. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). If an evaluation is inconsistent with other evidence or "is in any way questionable," however, USCIS may reject it or give it lesser evidentiary weight. *Id.* In this case, for the reasons discussed in our appellate decision and here on motion, the record has been and remains contradictory and inconsistent with respect to the Beneficiary's employment at and bookstore. Consequently, opinion letter is not sufficient to establish that the Beneficiary has qualifying experience as a cashier, or a bookkeeper with cashier duties, at either company.

Accordingly, the Petitioner has not established on motion that our prior decision was based on an incorrect application of law or policy, and is denied for this reason. In the alternate, based on the prior and new inconsistencies and omissions in the documentation of record discussed in our prior opinion and above, the Petitioner has not established that the Beneficiary was employed by either or the bookstore, and has not established that she gained at least two years of qualifying experience at either business. Since the evidence does not establish that the Beneficiary has two years of qualifying employment as a cashier, she does not meet the experience requirement of the labor certification.

B. Eligibility for Classification as a Skilled Worker

In our prior appellate decision, we also had concluded that the record did not establish the Beneficiary's eligibility for classification as a skilled worker because the Petitioner had not establish that she has a least two years of training or experience. 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. On motion, the Petitioner has not overcome this finding and, as discussed above, provides additional contradictory evidence regarding the nature and timing of the Beneficiary's claimed job at and bookstore in Korea. Consequently, the Petitioner has not established that the Beneficiary was employed in any position at either or the bookstore for any period of time. As such, the record does not demonstrate she has two years of training or experience, as required to establish her eligibility for the classification requested.

C. *Bona Fide* Job Opportunity and Ability to Pay

As an additional matter, the Petitioner appears to have ceased operations in 2017, and its authorization to transact business was terminated by the state of Virginia as of , 2017.[2] Accordingly, in any additional proceeding the Petitioner must establish that it has not in fact ceased

operations, that the claimed job opportunity has remained *bona fide*, that it still intends to employ the Beneficiary in the capacity claimed on the labor certification, and that it has had the continuing ability to pay the Beneficiary the proffered wage from the April 30, 2001, priority date onward.

III. CONCLUSION

The Petitioner has not shown proper cause for reconsideration of our prior decision, nor has the Petitioner demonstrated eligibility for the benefit sought.

ORDER: The motion to reconsider is denied.

Cite as *Matter of F-, Inc.*, ID# 01372371 (AAO May 31, 2018)