U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-L-F- PC

DATE: NOV. 9, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a law firm, seeks to classify the Beneficiary as an individual of exceptional ability or an advanced degree professional. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This second preference classification makes immigrant visas available to foreign nationals with a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business or who are professionals with a degree above a baccalaureate. 8 C.F.R. § 204.5(k)(2). It also seeks Schedule A, Group II designation, which requires that a petitioner submit evidence of the beneficiary's exceptional ability in the sciences or arts[1] as demonstrated by widespread acclaim and international recognition from recognized experts in the field. 20 C.F.R. § 656.15(d)(1).[2]

The Director of the Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary meets the Schedule A, Group II designation requirements, that the Petitioner has the ability to pay the proffered wage, and that a bona fide job offer exits.

On appeal, the Petitioner submits additional evidence and asserts that it has demonstrated all eligibility requirements. We subsequently issued a notice of intent to dismiss (NOID) advising that the Beneficiary is no longer authorized to practice law and, as such, does not meet the job requirements. The Petitioner did not respond.

Upon *de novo* review, we will dismiss the appeal as abandoned.

I. LAW

Second preference immigrant visas are available for qualified individuals who are advanced-degree professionals or who, because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare

[1] For purposes of the Schedule A, Group II designation, "science or art" means any field of knowledge or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge or skill. 20 C.F.R. § 656.5(b)(1).

[2] To request this designation, a petitioner files an ETA Form 9089, Application for Permanent Employment Certification, directly with U.S. Citizenship and Immigration Services.

of the United States. Section 203(b)(2) of the Act. Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2).

Every petition under this classification must include one of the following three items: (1) an individual labor certification from the Department of Labor, (2) an application for Schedule A designation, or (3) documentation to establish that the beneficiary qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program. 8 C.F.R. § 204.5(k)(4)(i).

Schedule A Group II designation requires that a petitioner document the beneficiary's exceptional ability in the sciences or arts as demonstrated by widespread acclaim and international recognition from recognized experts in the field. 20 C.F.R. § 656.15(d)(1). In addition, the petitioner must provide evidence meeting at least two of seven criteria (for example awards, memberships, and contributions). 20 C.F.R. § 656.15(d)(1)((i)-(vii).[3] In addition to verifying widespread acclaim and international recognition, the materials presented must show that the beneficiary worked for the past year in a position that requires an individual of exceptional ability and that the beneficiary's services are sought for a position that requires an individual of exceptional ability. *Id.* As with any filing for an employment-based immigrant that requires an offer of employment, this petition must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. 8 C.F.R. § 204.5(g)(2).

II. ANALYSIS

U.S. Citizenship and Immigration Services exercises jurisdiction over whether the Beneficiary qualifies for the job offered. *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9th Cir. 1983). The ETA Form 9089, Application for Permanent Employment Certification, in this matter requires that the Beneficiary have a Juris Doctor degree, 10 years of experience as an attorney, and a "Texas Law License" as well as "Texas Board Certification in Personal Injury Trial Law." The Petitioner submitted the Beneficiary's Certificate of Good Standing for the United States District Court for the Western District of Texas, indicating that he was in good standing as a member of the bar of that court.

In our NOID, we advised that in [redacted] 2016, the Beneficiary pled guilty to one count of Making False Statements, in violation of 18 U.S.C. § 1001(a)(2).[4] A United States District Court in [redacted]

[3] In *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), we held that, "truth is to be determined not by the quantity of evidence alone but by its quality." That decision explains that, pursuant to the preponderance of the evidence standard, we "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Id.*

[4] Petition for Compulsory Discipline, http://txboda.org/cases/matter-[redacted] (accessed on August 24, 2017); *see also* [redacted] Lawyer Admits Making False Statements to Federal Authorities, https://www.justice.gov/usao-wdtx/pr/[redacted]-lawyer-admits-making-false-statement-federal-authorities (accessed on August 24, 2017).

[redacted] Texas, entered the judgment against him in [redacted] 2017.[5] The State Bar of Texas currently lists his status as "Not Eligible to Practice in Texas."[6] We noted that the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

Our NOID afforded the Petitioner 33 days in which to respond to our concerns. 77 days have passed and we have not received a response. We may thus dismiss the appeal as abandoned on that basis alone, or we may make a decision based on the record, or both. 8 C.F.R. § 103.2(b)(13). In this case, we do both as the Petitioner has not responded to our NOID and failed to establish that the Beneficiary meets all of the requirements set forth on the ETA Form 9089.

III. CONCLUSION

The Petitioner has abandoned the petition and has not demonstrated that the Beneficiary currently qualifies for the job offered.

ORDER: The appeal is dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13).

Cite as *Matter of H-L-F- PC*, ID# 551411 (AAO Nov. 9, 2017)

[5] *Id.*

[6] State Bar of Texas | Find a Lawyer, https://www.texasbar.com/AM/Template.cfm?Section=Find_A_Lawyer&template=/Customsource/MemberDirectory/MemberDirectoryDetail.cfm&ContactID=[redacted] (accessed August on 24, 2017).