U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-S-S- INC.

DATE: NOV. 28. 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a food and supermarket, seeks to employ the Beneficiary as a Korean specialty chef. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. *See* 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 Form I-140, Immigrant Petition for Alien Worker, was initially approved. The Director of the Nebraska Service Center subsequently revoked the approval, finding that the Petitioner and the Beneficiary had not adequately explained evidentiary inconsistencies concerning the Beneficiary's past employment. The Director concluded that the evidence of record did not establish that the Beneficiary had two years of experience as a Korean specialty chef, as required by the underlying labor certification to qualify for the proffered position.

On appeal the Petitioner submits statements from its president and from the Beneficiary. The Petitioner asserts that the evidentiary issues cited by the Director have been resolved, that the Beneficiary did not intentionally misrepresent her employment history, and that the evidence establishes the Beneficiary's qualifying experience for the proffered position.

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

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the 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. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and 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.

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." By regulation this revocation authority is delegated to any officer of USCIS authorized to approve an immigrant visa petition "when the necessity for the revocation comes to the attention of [USCIS]." 8 C.F.R. § 205.2(a). USCIS must give the petitioner notice of its intent to revoke the prior approval of the petition and the opportunity to submit evidence in opposition thereto, before proceeding with written notice of revocation. *See* 8 C.F.R. § 205.2(b) and (c).

II. ANALYSIS

At issue in this case is whether the Beneficiary meets the terms of the labor certification. A beneficiary must meet all of the education, training, experience, and other requirements of the labor certification as of the petition's priority date.[1] *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

In this case, the Form I-140 petition was accompanied by a labor certification with a priority date of July 30, 2015. The labor certification stated that the minimum experience required for the job offered was 24 months as a Korean specialty chef. According to the labor certification the Beneficiary met this requirement by virtue of her work as a Korean specialty chef for [redacted] in [redacted] South Korea, from February 2005 to April 2007. As evidence of the Beneficiary's employment at [redacted] the Petitioner submitted a "work experience certificate" from the restaurant's president, [redacted] dated May 11, 2015.

The petition was initially approved, but the Director issued a notice of intent to revoke (NOIR) the approval in July 2016. The Director indicated that the Beneficiary's claim on the labor certification to have worked as a Korean specialty chef at [redacted] from February 2005 to April 2007 conflicted with information on the Beneficiary's nonimmigrant visa application, dated June 24, 2008, which stated that the Beneficiary was currently employed as a cook by [redacted] in [redacted] South Korea, and made no mention of any prior employers. Based on this inconsistent documentation the Director stated that it appeared the Beneficiary had misrepresented her qualifying experience for the proffered position.

In response to the NOIR the Petitioner submitted a letter from the Beneficiary reiterating her claim to have worked for [redacted] as a Korean specialty chef from February 2005 to April 2007. Accompanying the Beneficiary's letter was another "certificate of employment confirmation" from [redacted] stating that the Beneficiary was employed during the above time period,

[1] The "priority date" of a petition is the date the underlying labor certification was filed with the DOL. *See* 8 C.F.R. § 204.5(d).

and a "certificate of business records & cessation" indicating that the restaurant opened in 2003 and closed in 2015. In addition, a "national skill certificate" was submitted which stated that the Beneficiary passed a test and was certified as a Korean food cooking technician in October 2006.

After receiving the Petitioner's response to the NOIR, the Director issued a decision revoking the approval of the petition. The Director acknowledged the documents submitted in response to the NOIR, but indicated that the Beneficiary had not explained the different employment histories she provided on her nonimmigrant visa application (Forms DS-156 and DS-157) filed in June 2008 (asserting that she was currently employed as a cook by [redacted] and had no prior employment) and the labor certification filed in July 2015 (which asserted that her only prior employment was as a Korean specialty chef with [redacted] from February 2005 to April 2007). The Director noted that no objective documentary evidence had been submitted to demonstrate the Beneficiary's qualifying experience, such as certificates of income from the National Tax Service of Korea (NTSK), the government agency to which all employment in South Korea is required to be reported. The Director concluded that the Petitioner had not resolved the inconsistencies in the record concerning the Beneficiary's employment history, had not established the reliability and validity of the documentation submitted, and had not established that the Beneficiary met the minimum experience requirement of the labor certification.

On appeal the Petitioner characterizes the Beneficiary's non-inclusion of her alleged employment with [redacted] on her nonimmigrant visa application in 2008 as an "omission in good faith" rather than an intentional misrepresentation of her employment history. In her statement accompanying the appeal the Beneficiary claims that she did not provide information about her employment at [redacted] during her nonimmigrant visa interview in June 2008 because it was embarrassing in Korean culture to acknowledge being a restaurant worker. According to the Petitioner, the record is sufficient to establish that the Beneficiary had more than two years of experience as a Korean specialty chef before being hired by the Petitioner.

We do not agree. The Beneficiary has not provided a persuasive explanation for the inconsistent employment histories she entered on the nonimmigrant visa application (Forms DS-156 and DS-157) she completed for the Department of State in 2008 and the labor certification filed with the DOL in 2015. While asserting on Form DS-156 that she was presently (June 2008) employed as a cook by [redacted] on Form DS-157 the Beneficiary entered "None" at the place where she was asked to list her last two employers. Thus, the Beneficiary did not identify [redacted] as a former employer on Form DS-157, which conflicts with her claim on the labor certification in the current proceeding to have worked at that restaurant as a Korean specialty chef in the years 2005-2007. The Beneficiary's claim that she omitted her job experience as a chef with the [redacted] restaurant from her nonimmigrant visa application because of the cultural stigma associated with such work in Korea is contradicted by the fact that elsewhere in the same application the Beneficiary stated that she was currently employed as a cook by [redacted] We note as well that the Beneficiary did not list [redacted] as a previous employer on the labor

certification despite being directed on the form to list any employment that qualified her for the proffered position.[2] Adding further confusion to the Beneficiary's employment history, the cover letter from the Petitioner's president that was submitted with the Form I-140 petition stated that the Beneficiary satisfied the minimum experience requirements for the job of Korean specialty chef because she "had worked as an Alteration Tailor for over 2 years."

It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's evidence also reflects on the reliability of the petitioner's remaining evidence. *See id.* For the reasons discussed above, we find that the Beneficiary has not resolved the myriad evidentiary discrepancies in the record.

Finally, there is no primary evidence of the Beneficiary's employment by [redacted] in the years 2005-2007, such as pay statements, tax records, or other employment-related documents from those years, or certificates of income from NTSK as discussed by the Director in his decision. Based on the foregoing analysis, we find that the Petitioner has not established that the Beneficiary was employed by [redacted] as a Korean specialty chef from February 2005 to April 2007, which was the only qualifying experience claimed on the labor certification.

Although not specifically mentioned by the Director, the record also does not establish the Beneficiary's eligibility for classification as a skilled worker. A petition requesting skilled worker classification "must be accompanied by evidence that the [beneficiary] meets the . . . requirements of the labor certification. . . . The minimum requirements for this classification are at least two years of training or experience." 8 C.F.R. § 204.5(l)(3)(ii)(B). As discussed above, the evidence of record does not establish that the Beneficiary has two years of experience or training. Therefore, the Beneficiary does not meet the minimum experience requirement to be eligible for classification as a skilled worker.

III. CONCLUSION

The Petitioner has not established that the Beneficiary has at least two years of qualifying experience as a Korean specialty chef. Accordingly, the Beneficiary does not meet the minimum experience requirement of the labor certification and does not qualify for classification as a skilled worker.

[2] Since the alleged experience at [redacted] was not listed on the labor certification, USCIS would look with disfavor on any attempt by the Beneficiary to rely on such experience as fulfilling the experience requirement of the labor certification. Even if the Beneficiary were to assert the [redacted] experience in this proceeding, the fact that no such experience was certified by DOL on the labor certification would lessen the credibility of the Beneficiary's claim. See *Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976).

ORDER: The appeal is dismissed.

Cite as *Matter of F-S-S Inc.*, ID# 446267 (AAO Nov. 28, 2017)