U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-G- LLC

DATE: NOV. 30, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an owner and operator of home furnishing stores, seeks to employ the Beneficiary as an "antique carpet weav[er] and repair[er]." It requests his classification as a skilled worker under the third-preference, immigrant category. *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, "EB-3" category allows a U.S. business to sponsor a foreign national with at least two years of training or experience for lawful permanent resident status.

The Acting Director of the Nebraska Service Center denied the petition. The Acting Director concluded that the Petitioner did not establish the Beneficiary's possession of the minimum experience required for the offered position.

On appeal, the Petitioner submits additional evidence. It asserts that the Acting Director erred in discounting qualifying experience that the Beneficiary gained, but did not list on the accompanying labor certification originally submitted to the U.S. Department of Labor (DOL).

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

I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS

Employment-based immigration generally follows a three-step process. First, an employer applies for labor certification from the DOL. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). DOL must determine whether the United States has able, willing, qualified, and available workers for an offered position, and whether employment of a foreign national would hurt the wages and working conditions of U.S. workers with similar jobs. *Id.* If DOL certifies a foreign national to permanently fill an offered position, an employer must next submit the certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. If USCIS approves the petition, a foreign national may finally 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.

II. THE REQUIRED EXPERIENCE

A petitioner must establish a beneficiary's possession, by a petition's priority date, of all DOL-certified job requirements of an offered position. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977).[1] In evaluating a beneficiary's qualifications, USCIS must examine the job offer portion of an accompanying labor certification to determine a position's minimum requirements. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that the "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

Here, the labor certification states the minimum requirements of the offered position as two years of training in antique carpet weaving and repair, and two years of experience in the job offered. Also, under "[s]pecific skills or other requirements," the certification states: "Must know how to weave and repair by hand vintage and rare carpets."

On the labor certification, the Beneficiary attested to his possession of sufficient amounts of qualifying employment experience, indicating more than five years of full-time employment experience as a weaver for a fabric business in the United States, from January 2010 until the petition's priority date in June 2015. The labor certification does not list the Beneficiary's possession of any other qualifying experience. The Petitioner, however, submitted copies of letters from two purported former employers of the Beneficiary in Iran, [redacted] and [redacted] *See* 8 C.F.R. § 204.5(l)(3)(ii)(A) (requiring a petitioner to support a beneficiary's claimed, qualifying experience with letters from employers). The letters state that the Beneficiary worked six years for each employer, weaving and restoring antique carpets. The Petitioner did not submit a letter from the Beneficiary's U.S. employer listed on the certification.

In a notice of intent to deny (NOID) the petition the Acting Director noted the omission from the labor certification of the Beneficiary's claimed qualifying experience with the Iranian businesses that provided experience letters and notified the Petitioner that the record did not demonstrate the Beneficiary's qualifications for the offered positon.

In response to the NOID, the Petitioner submitted an affidavit from [redacted] one of the Beneficiary's purported former employers in Iran. The affidavit indicates that in 1983 the Beneficiary began an apprenticeship with [redacted] in repairing and restoring antique Persian carpets. The Petitioner also submitted a copy of a "certificate of completion," signed by the employer, as evidence of the Beneficiary's completion of the three-year training program. In addition, the affidavit from [redacted] states that, upon completion of the apprenticeship, the Beneficiary repaired carpets for the employer on a full-time basis for an additional three years. The Petitioner asserts that the affidavit and completion certificate, in conjunction with the previously

[1] This petition's priority date is June 2, 2015, the date the DOL received the accompanying labor certification application. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

submitted letters, demonstrate the Beneficiary's possession of the requisite experience for the offered position. We disagree.

The omissions of the Beneficiary's purported former Iranian employers from the labor certification cast doubts on his claimed, qualifying experience with those businesses. The certification form required the listing of all jobs the Beneficiary held during the three years immediately preceding the certification's filing and "any other experience that qualifies the alien for the job opportunity for which the employer is seeking certification." ETA Form 9089, Application for Permanent Employment Certification, Part K. Both the Petitioner and the Beneficiary signed the application, declaring under penalty of perjury that its contents were true and accurate. Thus, the employment verification documents from Iran conflict with the Beneficiary's attestation that he gained qualifying experience for the offered position only in the United States. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence pointing to where the truth lies).

As the Petitioner asserts on appeal, the omission from the labor certification of the Beneficiary's claimed experience in Iran does not bar the Petitioner from establishing the Beneficiary's qualifications based on that experience. DOL's certification does not determine a foreign national's qualifications for an offered position. Instead, as the Petitioner argues, USCIS has final say over whether a beneficiary meets the certified requirements of an offered position. *See, e.g., Tongatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984) (holding that the immigration service "may make a *de novo* determination of whether the alien is in fact qualified to fill the certified job offer"). But the Petitioner must explain the absence of the Iranian employers from the labor certification and establish the Beneficiary's claimed experience by independent, objective evidence. *See Matter of Leung*, 16 I&N Dec. 12, 14-15 (BIA 1976) (noting, in *dicta*, that omission of a beneficiary's claimed qualifying experience from a labor certification lessens the claim's credibility).

Here, the submitted letters and affidavit are not sufficient to establish that the Beneficiary has the required experience. Although both letters from [redacted] and [redacted] claim that the Beneficiary worked for the employers for six years, neither letter provides dates of employment. Moreover, the letter from [redacted] states that the Beneficiary was employed for six years, while the affidavit he later submitted divided that time into three years of training and three years of employment. Also, the letters both state that a "carpet company named [redacted] has been extremely happy" with the Beneficiary's work. These statements suggest that the Beneficiary worked for [redacted] rather than the employers who issued the letters. The letters are also virtually identical, suggesting that the purported employers did not draft the documents based on personal knowledge of the Beneficiary's experience.

The Petitioner has not explained the omissions of the Beneficiary's claimed former employers from the labor certification, the lack of employment dates, the uniformity of the employers' letters, or their references to another company. The Petitioner also has not submitted sufficient independent, objective evidence of the Beneficiary's claimed experience in Iran, such as business, tax, or

government records. *See Matter of Ho*, 19 I&N Dec. at 591. Therefore, we find that the record does not support the Beneficiary's alleged experience in Iran.

In addition, the Beneficiary may not rely on his claimed experience in the United States to qualify for the position. First, as noted above, no employment experience letter has been submitted to corroborate this claimed employment. Second, contrary to the Beneficiary's attestation on the labor certification, evidence of record suggests that he was not working in the United States from January 2010 until June 2015. Both the certification, filed on June 2, 2015, and the Form I-140, Immigrant Petition for Alien Worker, filed on September 12, 2016, state the Beneficiary's residence in Iran. Also, an Iranian government-issued training certificate states the Beneficiary's passage of a vocational skills evaluation on October 12, 2011. These materials suggest that the Beneficiary lived in Iran from 2011 to 2016, casting doubt on his claimed qualifying experience in the United States for most of that period. As such, the record does not demonstrate that the Beneficiary gained the claimed experience in the United States.

The record therefore does not establish the Beneficiary's possession of the minimum experience required for the offered position.

III. THE REQUIRED TRAINING

Although not addressed by the Acting Director in the denial, the record on appeal also does not establish the Beneficiary's possession of the minimum training required for the offered position. As previously indicated, the labor certification states the minimum training requirement of the offered position as two years in antique carpet weaving and repair. In the NOID, the Acting Director acknowledged the copy of an Iranian government certificate indicating the Beneficiary's passage of 500 hours of training in weaving but noted that the Petitioner had not established that 500 hours of training would satisfy the offered position's two-year training requirement. In response to the NOID, the Petitioner submitted an affidavit and training certificate from [redacted] of [redacted] indicating the Beneficiary's completion of a three-year apprenticeship in antique carpet weaving and repair.

On appeal, however, the Petitioner submits another copy of the training certificate. This certificate, dated April 13, 2017, states its original issuance in 1984. The prior copy, dated April 18, 2017, states the certificate's original issuance in 1987. The certificate copy submitted on appeal conflicts with the former employer's statement that the Beneficiary began the apprenticeship in 1983. If the former employer originally issued the certificate in 1984, the record does not explain how the Beneficiary completed a three-year training program in one year. The record on appeal therefore does not establish the Beneficiary's qualifying training for the offered position. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence).

IV. ABILITY TO PAY THE PROFFERED WAGE

The record on appeal also does not establish the Petitioner's ability to pay the proffered wage. A petitioner must demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. *Id.*

Here, the labor certification states the proffered wage of the offered position as $32,323 a year. As previously noted, the petition's priority date is June 2, 2015. The Petitioner submitted copies of its federal income tax returns for 2014. The record, however, lacks required evidence of the Petitioner's ability to pay the proffered wage in 2015, the year of the petition's priority date, or thereafter. Therefore, the record does not demonstrate the Petitioner's ability to pay the proffered wage.

Also, USCIS records indicate that, after this petition's priority date, the Petitioner filed another petition for a different beneficiary. The Petitioner must demonstrate its ability to pay the proffered wage of each petition it files until a beneficiary obtains lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2). The Petitioner must therefore demonstrate its ability to pay the combined proffered wages of this and its other petition until the other beneficiary obtains lawful permanent residence. *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (affirming our revocation of a petition's approval where, as of the filing's grant, the petitioner did not demonstrate its ability to pay the combined proffered wages of multiple pending or approved petitions). In any future filings in this matter, the Petitioner must provide the proffered wage and priority date of its other pending petition. The Petitioner should also provide evidence of any wages it paid the other beneficiary and indicate whether the other beneficiary obtained lawful permanent status, or whether the other petition was withdrawn, denied, or revoked.

V. CONCLUSION

The Petitioner has not established that the Beneficiary has the experience required for the offered position. The Petitioner has also not established that the Beneficiary has the requisite training or that it has the ability to pay the proffered wage.

ORDER: The appeal is dismissed.

Cite as *Matter of S-G- LLC*, ID# 784876 (AAO Nov. 30, 2017)