U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33950604

Date: OCT. 1, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Skilled Worker)

The Petitioner, a provider of home healthcare services, seeks to employ the Beneficiary as a personal care attendant. The company requests his classification under the employment-based, third-preference (EB-3) immigrant visa category as a "skilled worker." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). Businesses may sponsor noncitizens for U.S. permanent residence in this category to work in jobs requiring at least two years of training or experience. *Id.*

The Director of the Texas Service Center denied the petition and the Petitioner's following combined motions to reopen and reconsider. The Director concluded that the company did not demonstrate the Beneficiary's qualifying experience for the offered job. The Director also found that the Petitioner and Beneficiary willfully misrepresented his qualifying experience on the accompanying certification from the U.S. Department of Labor (DOL). On appeal, the company contends that the Director disregarded evidence and calls the misrepresentation finding "baseless."

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the record does not support the misrepresentation finding but that the Petitioner has not established the required full-time nature of the Beneficiary's prior experience. We will therefore dismiss the appeal.

I. LAW

Immigration as a skilled worker generally follows a three-step process. First, a prospective employer must obtain DOL certification that: there are insufficient U.S. workers able, willing, qualified, and available for an offered job; and a noncitizen's permanent employment in the job would not harm wages and working conditions of U.S. workers with similar jobs. Section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

Second, an employer must submit a DOL-approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204(a)(1)(F) of the Act. Among other

things, USCIS determines whether a noncitizen beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l)(3)(ii)(D), (4).

Finally, if USCIS approves a petition, a beneficiary may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245(a) of the Act, 8 U.S.C. § 1255(a).

II. ANALYSIS

A. The Required Experience

A petitioner must demonstrate a beneficiary's qualifications for all DOL-certified requirements of an offered job by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). This petition's priority date is June 17, 2020, the date DOL accepted the labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

When assessing a beneficiary's qualifications, USCIS must examine the job-offer part of an accompanying labor certification to determine the job's minimum requirements. USCIS may neither ignore a certification term nor impose unstated requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority of setting the *content* of the labor certification") (emphasis in original).

The Petitioner's labor certification states the minimum requirements of the offered job of personal care attendant (PCA) as a U.S. high school diploma or its foreign equivalent, and at least 36 months of experience "in the job offered." The labor certification also indicates that the company will not accept experience in an alternate occupation.

Unless otherwise specified, required experience on a labor certification means full-time experience. *See Matter of Boodell & Domanskis, LLC*, 2012-PER-01275, *3 (BALCA May 11, 2016) (accepting part-time experience as qualifying experience only because the labor certification so specified). The Petitioner therefore must demonstrate that, by June 17, 2020, the Beneficiary had at least 36 months of full-time experience in the job offered.

On the labor certification, the Beneficiary attested that, by the petition's priority date, he gained about 71 months of full-time, qualifying experience in Lebanon. He stated that [redacted] a medical company, employed him as a PCA from July 2014 to June 2020. He did not list any other experience on the labor certification.

As proof of qualifying experience, a petitioner must submit a letter from a beneficiary's former employer. 8 C.F.R. § 204.5(l)(3)(ii)(A). The letter must include the employer's name, title, and address, and describe the beneficiary's experience. *Id.* "If such evidence is unavailable, other documentation relating to the [noncitizen]'s experience . . . will be considered." 8 C.F.R. § 204.5(g)(1).

The Petitioner's initial filing lacked evidence of the Beneficiary's qualifying experience. In response to the Director's request for evidence (RFE), however, the Petitioner provided a letter from [redacted]

general manager. Consistent with 8 C.F.R. § 204.5(l)(3)(ii)(A), the letter states that the company began employing the Beneficiary as a full-time PCA in July 2014 and describes his duties. The letter also states that, in December 2017, [redacted] began paying him as a full-time, independent contractor to sell orthopedic implants for the company. Although the labor certification omits the sales position, the letter indicates that, while the Beneficiary served as a sales representative, he also continued to work full-time for the company as a PCA.

The Petitioner also submitted copies of "hiring" and "leaving" notices addressed to Lebanon's National Social Security Fund (NSSF). The fund provides mandatory insurance covering employees and their dependents during the employees' work years. *See, e.g.*, The Ctr. for Soc. Sci. Rsch. & Action, "Social Protection in Lebanon: The National Social Security Fund," https://civilsociety-centre.org/content/social-protection-lebanon-national-social-security-fund-nssf. Both employers and employees, as well as the Lebanese government, finance the fund. *Id.*

Consistent with the information on the labor certification and [redacted] letter, the NSSF hiring notice states the company's hiring of the Beneficiary in July 2014. The leaving notice states his resignation from the company in June 2020. The Petitioner further submitted copies of the Beneficiary's paystubs from [redacted] and its "business model." The monthly paystubs consecutively run from July 2014 to January 2018 and include a couple of other months in 2018 and 2019. The paystubs show that, beginning in December 2017, the Beneficiary received two monthly paystubs: one as a PCA; and the other as a sales representative. The paystubs indicate that, by the time the Beneficiary left [redacted] he earned 2 million Lebanese pounds, currently about $22 a month, as a CPA and 3 million Lebanese pounds, about $33 a month, as a sales representative. *See* XE Currency Converter, www.xe.com/currencyconverter/. The sales representative paystubs do not show any tax or social security deductions from the Beneficiary's pay. This supports [redacted] statement that, as a sales representative, he worked as an independent contractor. [redacted] business model document states that the company provides both medical devices and home care services.

About a year after issuing the RFE, the Director mailed the Petitioner a notice of intent to deny (NOID) the petition. The NOID alleged that the Beneficiary did not work for [redacted] as a PCA, but rather as a sales representative. The NOID noted that, on a U.S. visitor visa's application in January 2018, the Beneficiary attested to [redacted] employment of him at that time as a "senior sales representative." The NOID also cited a Lebanese business website. The website stated that [redacted] supplied medical equipment and devices but did not indicate that it provided home healthcare services. Also, although the Beneficiary listed no other qualifying experience on the labor certification or on his Form I-485, Application for Adjustment of Status, his U.S. visitor visa application stated that he previously worked as a "medical sales representative" for [redacted] another Lebanese company, from October 2012 to April 2017.[1]

The NOID also questioned the authenticity of the [redacted] leaving notice, which indicates its signing on June 17, 2020 by the Beneficiary and the company's general manager. The Beneficiary last entered the United States in August 2019. Thus, the NOID found it "impossible" that the Beneficiary and his

[1] The NSSF hiring certificate does not identify [redacted] as a previous employer. But the record does not indicate whether the Beneficiary worked for [redacted] as an independent contractor and whether that non-employee status would preclude the company's listing on the NSSF certificate.

former employer signed the notice on the same day while in different countries thousands of miles apart. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring petitioners to resolve inconsistencies with independent, objective evidence pointing to where the truth lies).

The Petitioner's NOID response included a statement from the Beneficiary. He stated that he often simultaneously worked two or more jobs between 2012 and 2020 to earn extra money to support his growing family.[2] For example, when beginning work for [redacted] as a PCA in 2014, he said he also worked as a sales representative in his spare time for [redacted] He stated that in April 2017, after [redacted] offered him additional work as a sales representative at a higher commission rate than [redacted] he resigned from [redacted] and began working in sales for [redacted] in December 2017 as an independent contractor. As previously noted, the NSSF document does not fully verify this claim.

The Beneficiary stated that, after entering the United States in August 2019, he worked "remotely" for [redacted] Once the COVID-19 pandemic began, he said he could not immediately leave the United States. Also, he said that the Lebanese banking system later began to fail, devaluing the country's currency. The Beneficiary stated that he signed the [redacted] leaving notice on June 17, 2020 and immediately e-mailed it to the company's general manager in Lebanon. He said that [redacted] needed to give the document to the NSSF to terminate the Beneficiary's insurance benefits and the company's obligation to contribute to the fund on his behalf.

The Petitioner also submitted: letters from [redacted] a Lebanese hospital, and a patient's son; and additional [redacted] paystubs. The monthly paystubs indicate that [redacted] continuously paid the Beneficiary from January 2018 until his resignation from the company in June 2020. Thus, the record includes copies of [redacted] paystubs for the Beneficiary continuously from July 2014 to June 2020.[3]

[redacted] letter states that the company provides home care services to patients recovering from surgeries and elderly people. The company's general manager stated that the Lebanese business website that the NOIR cites did not reflect all the company's services and that he would ask the website to add the missing services.[4] The hospital stated that the Beneficiary worked nearly 40 hours a week as a "freelance" PCA from April 2010 until he began working for [redacted] in 2014. The letter from the patient's son states that, through [redacted] the Beneficiary assisted the patient in 2015 after the patient had a hip replacement surgery.

The Director found insufficient evidence of the Beneficiary's claimed qualifying experience as a PCA with [redacted] The Director afforded the letter from the patient's son little evidentiary value because it indicates that the Beneficiary assisted the patient for only one month. The Director also faulted the Petitioner for not submitting additional documentation from [redacted] to confirm the Beneficiary's assistance to the patient. Further, the Director gave little evidentiary weight to the hospital letter because the Beneficiary did not list this purported PCA experience on the labor certification.[5]

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[2] The record indicates that the Beneficiary married in 2012 and that he and his spouse had sons in 2013 and 2015.

[3] The paystubs indicate that, once the Beneficiary entered the United States in August 2019 [redacted] only paid him as a sales representative. Because he was in the United States, he presumably could not provide direct assistance as a PCA to clients in Lebanon.

[4] The website currently states that, besides selling medical equipment and devices, [redacted] provides "[a]ssistance services for the elderly and the disabled" and "[h]ome healthcare services for the elderly or disabled."

[5] The NSSF certificates also do clearly list the Beneficiary's hospital experience.

In its following motion to reopen, the Petitioner submitted: another letter from [redacted], a list of 36 clients the Beneficiary purportedly served while working for the company and the dates of their care; and copies of his time sheets at the company from July 2014 through June 2017. The letter states that the Beneficiary sent the June 17, 2020 leaving notice to [redacted] "through electronic communication." The company's general manager stated: "The document was signed by [the Beneficiary] and was delivered to our office for me to sign and submit to the National Social Security Fund."

The Director again found insufficient evidence of the Beneficiary's claimed qualifying experience as a PCA with [redacted]. The Director faulted the client list for omitting the Beneficiary's duties. The Director also noted gaps in time on the list between the Beneficiary's assistance to clients. For example, the list indicates that the Beneficiary cared for one patient from February 13, 2016 to March 1, 2016 and did not begin helping his next client until August 2016.

The Director also found the timesheets largely illegible. Nevertheless, the Director stated that they appear to indicate that the Beneficiary sometimes spent less than eight hours a day as a CPA, providing care for only four or five hours a day. The Director further questioned the Beneficiary's purported emailing of the leaving notice to [redacted]. The Director noted that the company's most recent letter states that the notice was "delivered to our office." The Director interpreted the phrase "delivered to our office" to indicate that the Beneficiary did not email the signed, original notice to [redacted] but rather had it "delivered" by a courier or other means. The Director stated that the notice's delivery to [redacted] office suggests that, contrary to the document's date, the Beneficiary and the company's general manager did not sign the notice on the same day.

Despite the Director's findings, a preponderance of the evidence demonstrates that [redacted] employed the Beneficiary as a PCA from July 2014 until he entered the United States in August 2019. The company's paystubs and time sheets and the hiring and leave notices are the type of "independent, objective" evidence that the Director requested. *See Matter of Ho*, 19 I&N Dec, at 591 (requiring a petitioner to resolve inconsistencies with independent, objective evidence).

Nevertheless, the Petitioner's independent and objective evidence does not demonstrate the Beneficiary's possession of at least 36 months of employment as a PCA on a full-time basis. Full-time employment generally requires at least 35 work hours a week. DOL Field Memorandum No. 48-94 from Barbara Ann Farmer, Admin'r for Reg'l Mgmt., 2 (May 5, 1994). As a month includes four weeks, the Petitioner must demonstrate that the Beneficiary worked as a PCA at least 140 hours a month. (4 weeks x 35 hours).

On appeal, the Petitioner submits clearer copies of [redacted] time sheets. They show that the Beneficiary worked for at least 140 hours a month: from July 2014 through October 2015; from September 2016 through October 2016; from December 2016 through January 2017; and in May 2017. Thus, from July 2014 to June 2017, the Beneficiary worked full-time only 21 of the 36 months. Even if we totaled all the hours he worked during the period, he would average about 132 hours a month (4,754 hours divided by 36 months), less than the minimum monthly requirement for full-time employment.

Petitioners can also rely on beneficiaries' part-time qualifying experience. But a beneficiary's part-time experience equals less than full-time experience. The value of a beneficiary's part-time

experience depends on the length of employment and the number of hours worked a week. For example, 29.5 months of part-time, 25-hour-a-week experience equates to 18.4 months of full-time, 40-hour-a-week experience. *Matter of 1 Grand Express*, 2014-PER-00783, *4 (BALCA Jan. 26, 2018) (dividing 25 hours-a-week by 40 hours-a-week to get 0.625 and then multiplying that by 29.5 months to get full-time, equivalent experience of 18.4375 months).

The Petitioner, however, has not submitted any [redacted] time sheets for the Beneficiary dated after June 2017.[6] Thus, the record does not indicate how many hours he worked for [redacted] as a PCA after that date. Also, the time sheets show that, beginning in November 2015, he did not regularly work as many hours for the company as a PCA as he did previously. The time sheets and the client list indicate that, during some months, he did no PCA work at all. Thus, the current record does not establish that, after June 2017, he more likely than not worked enough hours as a PCA to equate to the requisite 36 months of full-time experience.

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary's experience for the offered job on the requisite full-time basis. We will therefore affirm the petition's denial on this ground.

B. The Alleged Willful Representation

The Director's finding that the Petitioner and the Beneficiary willfully misrepresented his qualifying experience on the labor certification did not constitute a petition denial ground. The determination, however, could render the Beneficiary inadmissible to the United States. *See* section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). We will therefore review it.

Misrepresentations are willful if they are "deliberately made with knowledge of their falsity." *Matter of Valdez*, 27 I&N Dec. 496, 498 (BIA 2018) (citations omitted). A misrepresentation is material when it has a "natural tendency to influence, or [be] capable of influencing, the decision of the decision-making body to which it was addressed." *Id.* Because of the potential, severe consequences to noncitizens and their petitioning employers, we must "closely scrutinize" the factual bases of misrepresentation findings. *Matter of Y-G-*, 20 I&N Dec. 794, 797 (BIA 1994).

The record does not support the Director's finding that the Petitioner willfully misrepresented the Beneficiary's qualifying experience on the labor certification. The company's president credibly stated that, before offering the job to the Beneficiary, he reviewed the Beneficiary's qualifications – including an employment verification letter from [redacted] on the Beneficiary's behalf – and believed the Beneficiary had at least 36 months of full-time experience in the offered job. The evidence does not indicate that, at the time of filing the labor certification or petition, the company had reason to know that the Beneficiary worked as a PCA for [redacted] on less than a full-time basis to reach three years of required full-time employment. We will therefore withdraw the Director's contrary finding.

The Beneficiary stated that he did not intend to misrepresent any material facts when he submitted his U.S. visitor's visa application in 2018. The issue, however, is his intent when he completed the labor

[6] On appeal, the Petitioner states that "Lebanon has had an ongoing political crisis for many years." The company, however, does not claim unavailability of additional [redacted] time sheets in Lebanon.

certification in 2021, stating his employment as a PCA with [redacted] from July 2014 to June 2020 on a full-time basis. [redacted] time sheets do not establish that work's full-time nature. The record, however, demonstrates that [redacted] employed him as a PCA during that period and that – during certain days, weeks, and months – he worked many hours beyond full-time. The Beneficiary could have genuinely believed that he worked for [redacted] enough hours as a PCA to constitute full-time employment. Also, the time sheets do not cover all the clients listed on the client list. So, some time sheets may be missing. We therefore find the record insufficient to support the Beneficiary's willful misrepresentation of his qualifying experience.

The record does not support that the Petitioner and Beneficiary willfully misrepresented his qualifying experience on the labor certification. We will therefore withdraw the Director's contrary finding.

C. The Required Education

Although unaddressed by the Director, the Petitioner has not demonstrated the Beneficiary's qualifying education for the offered position. As previously indicated, the labor certification states that the offered PCA job requires a U.S. high school diploma or its foreign equivalent. The Beneficiary attested on the labor certification that he has a bachelor's degree. But a skilled worker petition must include documentary evidence that a beneficiary meets all job requirements of an accompanying labor certification. 8 C.F.R. § 204.5(l)(3)(ii)(B). The record lacks documentary evidence that the Beneficiary met the job's educational requirement.

The Director did not notify the Petitioner of this evidentiary deficiency. Thus, in any future filings in this matter, the company must document the Beneficiary's satisfaction of the offered job's educational requirement.

III. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's qualifying experience for the offered job. The record, however, does not support the Director's finding that the Petitioner and Beneficiary willfully misrepresented his experience on the accompanying labor certification.

ORDER: The appeal is dismissed.