U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33930483

Date: OCT. 2, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Other Worker

The Petitioner, a restaurant, seeks to employ the Beneficiary as a cook. It requests classification of the Beneficiary as an unskilled worker under the third preference employment-based immigrant visa category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). This immigrant visa category allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires less than two years of training or experience.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary possessed the minimum experience required for the offered position. The Director also found that the Beneficiary misrepresented her qualifying experience on the labor certification, a fact material to her eligibility for the requested benefit. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position. *Id.* Labor certification also indicates that the employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a beneficiary meets the requirements of a certified position and a requested immigrant visa classification. 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. ANALYSIS

The accompanying labor certification in this case was filed on March 26, 2018.[1] The labor certification states that the offered position requires 12 months of experience in the offered job of cook, with no education or training required. The Petitioner stated that it will not accept experience in an alternate occupation.

On the labor certification, the Petitioner asserts that the Beneficiary gained the following experience as a cook in Saudi Arabia:

- With [redacted], from February 2, 2010 to February 13, 2012.
- With [redacted], from December 1, 2012 to June 1, 2015.

The Petitioner initially submitted an experience certificate from [redacted] dated May 30, 2012. The certificate states that the Beneficiary worked as a cook from February 2, 2010 to February 14, 2012. The certificate is accompanied by a certified English language translation which states that the certificate has a "signature" and "stamp," but does not list the name or title of the signatory.

The Director issued a notice of intent to deny (NOID) the petition, stating that the evidence submitted in support of the petition to demonstrate the Beneficiary's qualifying experience is inconsistent with information previously provided by the Beneficiary in two nonimmigrant visa applications she submitted in 2015 and 2016 to the U.S. Department of State (DOS). In her prior nonimmigrant visa applications, submitted in February 2015 and July 2016, the Beneficiary did not list any employment and listed her primary occupation as "housewife" and "homemaker." In both applications, the Beneficiary answered "No" when asked whether she was previously employed.

The Beneficiary's answers on the visa applications conflict with her claimed qualifying experience on the labor certification and with the experience certificate from [redacted] The Director raised these concerns in the NOID and asked the Petitioner to provide documentary evidence which would explain these conflicts in the record, as well as independent and objective evidence to establish the Beneficiary's qualifying experience for the offered position of cook. A petitioner must resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The Petitioner's NOID response included sworn statements from the Beneficiary and her spouse, a sworn statement from the Petitioner's president, copies of the Beneficiary's residence permit for the

[1] The "priority date" of a petition is the date the underlying labor certification is filed with the DOL. *See* 8 C.F.R. § 204.5(d). The Petitioner must establish that all eligibility requirements for the petition have been satisfied as of the priority date, which in this case is March 26, 2018.

Kingdom of Saudi Arabia, and articles discussing unauthorized employment in Saudi Arabia. The Petitioner also submitted an undated experience certificate from [redacted] listing the Beneficiary's occupation as "Chef open buffet," from December 1, 2012 to June 1, 2015. The certificate is accompanied by an English language translation which states that the letter is "Signed and sealed" but does not list the name or title of the signatory.[2]

In the Beneficiary's sworn statement, she states that her spouse provided information to a visa agency that completed the applications on their behalf. She asserts that her spouse was the contact for the visa agent and that she did not provide any information herself or have any contact with the agent. She further states that her employment was unauthorized in Saudi Arabia.

In his sworn statement, the Beneficiary's spouse also states that the nonimmigrant visa applications were filed by a visa agency on their behalf. He states that he, and not the Beneficiary, was the contact for the agent and provided the requested information. He states that the agent did not ask any information about his wife's employment, but that her employment could not have been reported because it was unauthorized.

The Petitioner's president states in his sworn statement that he did not have knowledge of the Beneficiary's prior nonimmigrant visa applications or any information therein. He further states that he verified the Beneficiary's employment history and did not misrepresent her qualifying experience on the labor certification.

The Director denied the petition, concluding that the evidence did not establish the Beneficiary's qualifying employment. The Director also made a finding of willful misrepresentation of a material fact against the Beneficiary.

On appeal, the Petitioner asserts that the omission of the Beneficiary's prior employment on the nonimmigrant visa applications was not a willful misrepresentation. The Petitioner does not provide any additional evidence to establish the Beneficiary's qualifying experience or corroborate her explanation for the inconsistencies.

A. The Beneficiary's Experience

As the Director concluded, the Beneficiary's claimed unemployment on her prior nonimmigrant visa applications casts doubt on her claimed qualifying employment on the labor certification. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, at 591-92. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

[2] The English language translation of the employment certificate does not comply with the regulation at 8 C.F.R. § 103.2(b)(3), as it does not identify the translator. Nor does it include a certification that the translator is competent to translate from the foreign language into English or that the translation is complete and accurate.

The regulation at 8 C.F.R. § 204.5(l)(3) provides:

> (ii) *Other documentation*—
>
> (A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

A petitioner must establish a beneficiary's possession of all DOL-certified job requirements of an offered position by a petition's priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). Therefore, the Petitioner must establish by a preponderance of the evidence that the Beneficiary possessed 12 months of experience as a cook as of the March 26, 2018 priority date.

The record includes experience certificates from the Beneficiary's claimed former employers. However, neither certificate meets the regulatory requirements of 8 C.F.R. § 204.5(l)(3). As noted above, the undated employment certificate on [redacted] letterhead and the experience certificate from [redacted] do not identify the issuing individual or signatory, as required by 8 C.F.R. § 204.5(l)(3)(ii)(A). Without this information, we are precluded from determining how the issuer has knowledge of the Beneficiary's employment and job duties. The omission of the title of the author or issuing individual of the Beneficiary's employment certificates casts doubt on the reliability of this evidence, absent further independent objective evidence.

In adjudicating immigration benefit requests, USCIS regularly reviews affidavits, testimonials, and letters from both laypersons and recognized experts. To be probative, a document must generally provide: (1) the nature of the affiant's relationship, if any, to the affected party; (2) the basis of the affiant's knowledge; and (3) a specific - rather than merely conclusory - statement of the asserted facts based on the affiant's personal knowledge. *Matter of Chin*, 14 I&N Dec. 150, 152 (BIA 1972); *see also* 8 C.F.R. § 103.2(b)(2)(i) (requiring affidavits in lieu of unavailable required evidence from "persons who are not parties to the petition who have direct personal knowledge of the event and circumstances"); *Matter of Kwan*, 14 I&N Dec. 175, 176-77 (BIA 1972); *Iyamba v. INS*, 244 F.3d 606, 608 (8th Cir. 2001); *Dabaase v. INS*, 627 F.2d 117, 119 (8th Cir. 1980). While a petitioner may submit a letter or affidavit that contains hearsay or biased information, as may be the case here, such factors will affect the weight to be accorded the evidence in an administrative proceeding. *See Matter of D-R-*, 25 I&N Dec. 445, 461 (BIA 2011) (citations omitted). Probative evidence beyond a letter or affidavit may be required to resolve inconsistencies or discrepancies in the record. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Ultimately, to determine whether a petitioner has established eligibility for a requested benefit by a preponderance of the evidence, USCIS must examine each piece of evidence - both individually and within the context of the entire record - for relevance, probative value, and credibility. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Here, the Petitioner relies only on testimonial evidence from the Beneficiary's purported former employers in attempt to establish her claimed employment experience, without providing independent,

objective evidence in support of this testimony. Based on inconsistencies from the Beneficiary's prior nonimmigrant visa applications and the omitted name and title of the signatories on the experience certificates, further independent evidence is required. The record does not include evidence of the Beneficiary's income tax or payroll records to corroborate her claimed employment. Although the Beneficiary states that her employment was unauthorized, she does not assert that these records are unavailable for any reason. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012).

As the inconsistencies in the record have not been resolved, the Petitioner has not established with independent, objective evidence that the Beneficiary possesses the required 12 months of experience in the offered position, as required by the labor certification. The Petitioner has not overcome this basis of the Director's denial.

Although not raised by the Director, and not a basis for our decision, additional information casts doubt on the Beneficiary's claimed employment experience with [redacted] A review of the record reveals that the Beneficiary may have a familial relationship with her purported previous employer and the business issuing the employment certificate. On the July 2016 nonimmigrant visa application, the Beneficiary lists her mother's surname as [redacted] If the employment certificate's issuer was not properly identified as a relative, USCIS may be precluded from assessing the credibility and proper weight to be accorded to such evidence. The Petitioner must address this in any further filings.

B. The Beneficiary's Willful Misrepresentation of a Material Fact

To find a willful and material misrepresentation of fact an immigration officer must determine that (1) the petitioner or beneficiary made a false representation to an authorized official of the U.S. government, (2) the misrepresentation was willfully made, and (3) the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). A "material" misrepresentation is one that "tends to shut off a line of inquiry relevant to the alien's eligibility." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

Accordingly, for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, they must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Kai Hing Hui*, 15 I&N Dec. at 288.

Noncitizens render themselves inadmissible to the United States if they seek to obtain U.S. visas, other documents, U.S. admission, or other benefits under the Act by fraudulently or willfully misrepresenting material facts. Section 212(a)(6)(C)(i) of the Act. Misrepresentations are willful if they are "deliberately made with knowledge of their falsity." *Matter of Valdez*, 27 I&N Dec. 596, 598 (BIA 2018) (citations omitted). A misrepresentation is material if 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.* Petitioners and applicants who submit applications or documents with knowledge or reckless disregard of their containment of false information may face fines or criminal penalties. Section 274C of the Act.[3]

As discussed above, the NOID addressed discrepancies between the Beneficiary's claimed experience and information on her February 2015 and July 2016 applications for a U.S. visa. The statements provided by the Beneficiary and her spouse in the NOID response to explain the inconsistencies are not supported by corroborating evidence. The Beneficiary's nonimmigrant visa applications were submitted in February 2015 and July 2016. On both applications, when asked whether anyone assisted the Beneficiary in filling out this application, the Beneficiary answered "No." This response contradicts the statements made by the Beneficiary and her spouse that a visa agency was responsible for completing the nonimmigrant visa applications. The record does not include corroborating documentary evidence, such as agreements or correspondence with any visa agency.

The U.S. Department of State (DOS) clearly advises visa applicants that, by submitting applications, they certify under penalty of perjury that they have read and understood the applications' questions and that their answers are true and correct to the best of their knowledge and beliefs. *See, e.g.,* DOS, "DS-160: Frequently Asked Questions," https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/forms/ds-160-online-nonimmigrant-visa-application/ds-160-faqs.html.

In her nonimmigrant visa applications, the Beneficiary attested that she was not currently or previously employed. On the accompanying labor certification, the Beneficiary attested that she had been employed as a cook. The record supports the Director's conclusion that the Beneficiary willfully misrepresented material facts relating to her claimed qualifying work experience in the petition. The preponderance of evidence indicates that the Beneficiary misrepresented her employment history in evidence submitted in support of the petition and in her U.S. visa applications.

Here, the record also supports the misrepresentation's materiality. The offered position requires the Beneficiary's possession of 12 months of experience and the requested visa classification requires the Beneficiary's possession of the minimum requirements set forth on the labor certification. Section 203(b)(3)(A) of the Act. Her misrepresentation about her former employment therefore naturally influences a decision on her required qualifications for the offered position and the requested visa category.

The Beneficiary's misrepresentations also appear to be willful. She signed the labor certification application declaring under penalty of perjury that she reviewed the document and that its information was true and correct. *See Matter of Valdez*, 27 I&N Dec. at 499 (holding that a noncitizen's signature on an immigration filing creates a "strong presumption" that they knew and assented to the filing's

[3] Visa petition proceedings are inappropriate fora for determining beneficiaries' admissibility. *Matter of O-*, 8 I&N Dec. 295, 296-97 (BIA 1959). Thus, our review of the Beneficiary's alleged misrepresentation is a "finding of fact," not an admissibility determination. All USCIS decisions should include specific findings on material issues of law or fact that arise, including determinations of fraud or material misrepresentation. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also* 5 U.S.C. § 557(c). After we enter a finding here, USCIS or another agency may consider the Beneficiary's admissibility in separate proceedings.

contents). Thus, the Beneficiary knew that she misrepresented her employment history in pursuit of U.S. immigration benefits.

IV. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's possession of the minimum experience required for the offered position or requested visa classification. Further, the record supports that the Beneficiary willfully misrepresented her employment history, a fact material to her eligibility for the requested immigration benefit.

ORDER: The appeal is dismissed.