U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31497536

Date: OCT. 29, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a provider of commercial and residential cleaning services, seeks to employ the Beneficiary as a cleaner. The company requests his classification under the employment-based, third-preference (EB-3) immigrant visa category as an "other worker." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). This category allows U.S. businesses to sponsor aliens for permanent residence to work in jobs requiring less than two years of training or experience. *See* 8 C.F.R. § 204.5(l)(2) (defining the term "other worker").

Service Center Operations (SCOPS) denied the petition. SCOPS concluded that the Petitioner misrepresented the relationship between its sole owner and the Beneficiary by concealing their brotherhood on the U.S. Department of Labor (DOL) certification accompanying the petition. On appeal, the Petitioner contends that its owner misunderstood a question on the labor certification application. The company also argues that, because no U.S. workers applied for the job, the concealment was immaterial.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *See 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 supports the Director's denial. We will therefore dismiss the appeal.

I. LAW

Immigration as an other – or unskilled – 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 an alien'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, 8 U.S.C. § 1154(a)(1)(F). Among other things, USCIS determines whether an alien 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 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

USCIS must determine eligibility for the immigrant visa classification requested. *See* section 204(b) of the Act. The Agency ensures that a labor certification's facts are true – i.e., that there are insufficient workers able, willing, qualified and available whose employment will not harm the wages and working conditions of similarly employed U.S. workers. Sections 204(b), 212(a)(5)(A)(i) of the Act. When asked, a petitioner must show that a valid employment relationship exists, i.e., that a *bona fide* job opportunity is available to U.S. workers. 20 C.F.R. §§ 656.3, 626.20(c)(8); *see also Matter of Amger Corp.*, 87-INA-545, 87-WL 341738, at *2 (BALCA 1987) (citing *Pasadena Typewriter & Adding Machine Co., Inc. v. Dep't of Labor*, No. CV-83-5516-AAH(T), slip op. (C.D. Cal. Mar. 26, 1984)); *Bulk Farms, Inc. v. Martin,* 963 F.2d 1286, 1288 (9th Cir. 1992) (citing the Act's Legislative History, H.R. Rep. No. 1365 82d Cong., 2d Sess.). Moreover, a family or financial relationship or friendship may invalidate a bona fide job offer. *See Matter of Sunmart 374*, 00-INA-93, at *4 (BALCA May 15, 2000).

Before approving a visa petition, USCIS must verify the facts of a petition, including the facts of an accompanying labor certification. *See* sections 203(b)(3)(C), 204(b) of the Act; 8 C.F.R. §§ 204.5(a)(2), 204.5(k)(4)(i), (l)(3)(i). For petitions with labor certifications, USCIS' investigation into the facts must include consultations with DOL. *See id.* Accordingly, when USCIS receives such a Form I-140, Immigrant Petition for Alien Workers, the labor certification serves as the consultation with DOL. USCIS may also, on a case-by-case basis, obtain additional information from DOL to verify facts in the labor certification. Thus, the labor certification does not conclusively demonstrate eligibility. Instead, it is a pre-condition to filing an I-140 petition. USCIS need only approve those petitions containing true facts. *See* sections 203(b)(3)(C), 204(b) of the Act; 8 C.F.R. §§ 204.5(a)(2), 204.5(k)(4)(i), (l)(3)(i); *see also Lockhart v. Napolitano*, 573 F.3d 251, 254 (6th Cir. 2009). A petition encompasses its accompanying evidence – including a labor certification. 8 C.F.R. § 103.2(b)(1).

On a labor certification, an employer must attest that "[t]he job opportunity has been and is clearly open to any U.S. worker." 20 C.F.R. § 656.10(c)(8). "This provision infuses the recruitment process with the requirement of a *bona fide* job opportunity: not merely a test of the job market." *Matter of Modular Container Sys., Inc.*, 89-INA-228, 1991 WL 223955, at *7 (BALCA July 16, 1991) *(en banc)* (referring to the former, identical regulation at 20 C.F.R. § 656.20(c)(8)).
Here, the labor certification accompanies the Form I-140 as supporting evidence and thus is incorporated into the petition. The Petitioner signed Part 8 of the Form I-140 petition, stating that "I certify that [a]ll of the responses and information were complete, true, correct...." Thus, the Petitioner certified that the Form I-140 and its underlying evidence, including the required labor certification, were true and correct. If USCIS does not believe a fact stated in the petition, the Agency may reject the fact. Section 204(b) of the Act; *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001).On Form I-140s, Immigrant Petitions for Alien Workers, as petitioners

certify that all the information contained in, and submitted with, their petitions is "complete, true, and correct," a signature on an immigration application establishes a "strong presumption" that the signer knows the application's contents and has assented to them. *Matter of Gonzalez Jimenez*, 29 I&N Dec. 129, 133 (BIA 2025).

Both the labor certification and the I-140 petition stated that the employer had four employees.[1]

Question C.9 on the Petitioner's labor certification application asked: "Is the employer a closely held corporation, partnership, or sole proprietorship in which the alien has an ownership interest, or is there a familial relationship between the owners, stockholders, partners, corporate officers, or incorporators, and the alien?" The Petitioner marked the box labeled "No."

SCOPS' notice of intent to deny (NOID) the petition, however, notes that, in a 2018 application for a U.S. visitor's visa, the Beneficiary attested to his fraternal relationship to the Petitioner's sole shareholder. In the company's NOID response, the business conceded that its owner and the Beneficiary are biological brothers. Concluding that the petition's facts were false because the Petitioner concealed the family relationship on the labor certification, SCOPS denied the petition.

On appeal, counsel states that, at the time of the labor certification application's filing, he did not realize the fraternal relationship between the Petitioner's shareholder and the Beneficiary. He states that the brothers' family name is common in their native country of Brazil. He also states that, in the United States, the Petitioner's shareholder "anglicized" his family name.[2]

Further, counsel asserts that the Petitioner's owner misunderstood Question C.9 on the labor certification. Counsel states that the shareholder answered the question "the best he could, given that English is not his native language." (emphasis in original). Counsel also contends that Question C.9 is confusing because it contains two interrogatories that he says should be separated: "Is the employer a closely held corporation, partnership, or sole proprietorship in which the alien has an ownership interest?"; and "Is there a familial relationship between the owners, stockholders, partners, corporate officers, or incorporators, and the alien?"[3]

Counsel's arguments, however, do not resolve the misrepresentation. Both counsel and the Petitioner's owner signed the labor certification, attesting that its contents were "true and correct." The shareholder also certified that he read and reviewed the application and that he takes "full responsibility for the accuracy of any representations made by my agent or attorney." By signing the labor certification, the Petitioner's owner created a "strong presumption" that he knew the application's contents and assented to them. *See Matter of Gonzalez Jimenez*, 29 I&N Dec. at 133. A signatory "may not deliberately avoid reading the application or having it explained or translated in an attempt to circumvent the presumption." *Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018). Thus, counsel's assertions that the Petitioner's shareholder did not know English or understand

[1] The Petitioner's 2019 federal income tax returns state that it paid only $30,915 in officer compensation to the owner, listing no other salaries, wages, or compensation paid.

[2] The record shows that the Petitioner's owner and the Beneficiary spell their family name the same way. The Beneficiary, however, separates the name into two parts.

[3] Counsel notes that, on DOL's revised labor certification application form, effective June 1, 2023, the agency separated former Question C.9 into two questions. *See* DOL, "Forms," ETA-9089, www.dol.gov/agencies/eta/foreign-labor/forms.

Question C.9 do not absolve the shareholder of responsibility. *Id.* at 500 ("Given the nature and significance of immigration documents, . . . it is reasonable to expect that [signatories] will take steps to ascertain the accuracy of documents they sign and obtain a translation, if necessary.")

Moreover, counsel's unsubstantiated assertions are not evidence that the Petitioner's owner misunderstood Question C.9 on the labor certification. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("[S]tatements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). Further, "the officers and principals of a corporation are presumed to be aware and informed of the organization and staff of their enterprise." *Matter of Silver Dragon Chinese Rest.*, 19 I&N Dec. 401, 404 (Comm'r 1986).

The Petitioner also contests the misrepresentation's materiality. "[I]n assessing materiality the test is whether the misrepresentation 'had a natural tendency to influence' the [] decisions." *Toribio-Chavez v. Holder*, 611 F.3d 57, 63 (1st Cir. 2010) (citation omitted)*; Matter of Mensah*, 28 I&N Dec. 288, 293-94 (BIA 2021) (citations omitted) (stating that material information has a "natural tendency to affect the official decision" of an adjudicator or "tends to shut off a line of inquiry ... that would predictably have disclosed other [relevant] facts"). The Petitioner notes its submission of evidence showing that no U.S. workers applied for the offered job during the labor certification proceedings. The company argues that, because the job lacked qualified U.S. workers, the family relationship between the Petitioner's owner and the Beneficiary would not have led to the denial of the labor certification application.

But a lack of U.S. applicants for an offered labor certification job does not assure a finding of the position's availability to U.S. workers. Because the Petitioner's owner had a family relationship with the sponsored alien, the company, upon request, had "to demonstrate the existence of a bona fide job opportunity." 20 C.F.R. § 656.17(l). The Board of Alien Labor Certification Appeals (BALCA) has held that, despite a lack of U.S. applicants for an offered job, an employer did not establish the job's availability to U.S. workers. *E.g., Matter of Orly Beauty Salon & Barbershop*, 2013-PER-02548, at *8 (BALCA Feb. 24, 2017). Thus, as SCOPS found, notwithstanding the lack of U.S. applicants for the offered job, the Petitioner's disclosure of the family relationship in response to Question C.9 on the labor certification application could have influenced DOL's decision on the filing. Thus, the Petitioner's concealment of the family relationship on the labor certification mattered.

Misrepresentations are willful if they are deliberately made with knowledge of their falsity. *Matter of Mensah*, 28 I&N Dec. at 293 (citations omitted). Information is material when it has a natural tendency to affect the official decision of an adjudicator or tends to shut off a line of inquiry ... that would predictably have disclosed other [relevant] facts. *Id.* at 293-94.

In its NOID response, the Petitioner conceded that its response to Question C.9 on the labor certification was a misrepresentation. The misrepresentation was willful because the business has not overcome the strong presumption that it knew the labor certification application's contents and assented to them. The misrepresentation was material because a family relationship between a petitioner's principal and a beneficiary creates a presumption of the job's unavailability to U.S. workers. *See* 20 C.F.R. § 656.17(l); *see also* 20 C.F.R. § 656.10(c)(8) (requiring a labor certification employer to certify that "[t]he job opportunity has been and is clearly open to any U.S. worker").

As noted above, USCIS approves a petition if a beneficiary qualifies for the requested immigrant visa category and "the facts stated in the petition are true." Section 204(b) of the Act. A petition includes any evidence submitted with it. 8 C.F.R. § 103.2(b)(1). Here, the Petitioner has not demonstrated that all the facts stated in this petition are true, and, therefore, USCIS cannot approve it.

III. CONCLUSION

The record supports the Director's finding that the Petitioner concealed the fraternal relationship between its owner and the Beneficiary on the accompanying labor certification. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.

NOTICE: This is the final decision in this matter. A motion's filing would not postpone the decision's effect. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are unlawfully present, or who are otherwise inadmissible or deportable, may receive Forms I-862, Notices to Appear, placing them in removal proceedings. *See* section 240 of the Act, 8 U.S.C. § 1229a. Removal proceedings may result in an alien's removal from the United States and ineligibility for U.S. visas or other immigration benefits.