U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38875184

Date: OCT. 29, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a jewelry store, seeks to employ the Beneficiary as a jewelry repairer. 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 aliens for U.S. permanent residence in this category to work in jobs requiring at least two years' training or experience. *Id.*

After first granting the filing, Service Center Operations (SCOPS) revoked the petition's approval. SCOPS concluded that it mistakenly granted the petition because the Petitioner concealed a family relationship between its managing partner and the Beneficiary. On appeal, the company denies the alleged relationship and contends that the Beneficiary identified the managing partner on a school form as his "cousin" merely as a show of respect in their South Asian culture.

In these revocation proceedings, the Petitioner continues to bear the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *See Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988) (citation omitted). 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 company has insufficiently rebutted the stated family relationship. 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 U.S. Department of Labor (DOL) certification that: there are insufficient U.S. workers able, willing, qualified, and available for an offered job; and an alien's employment in the job would not harm wages or working conditions of U.S. workers with similar jobs. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i); *see also Patel v. USCIS*, 732 F.3d 633, 634 (6th Cir. 2013).

Second, an employer must submit a DOL-approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* 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)(2), (3)(ii)(B); *see also Patel*, 732 F.3d at 634.

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; *see also Patel*, 732 F.3d at 634.

"[A]t any time" before a beneficiary obtains U.S. permanent residence, USCIS may revoke a petition's approval for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155; *see also Mehanna v USCIS*, 677 F.3d 312, 315 (6th Cir. 2012). If supported by a record, a petition's erroneous approval may justify its revocation. *Matter of Ho*, 19 I&N Dec. at 590.

USCIS properly sends a notice of intent to revoke (NOIR) a petition if the unrebutted and unexplained record at the time of the notice's issuance would have warranted the filing's denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). USCIS properly revokes a petition's approval if a petitioner does not timely respond to a NOIR or does not overcome the stated revocation grounds. *Id.* at 451-52.

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).

The Petitioner's Form I-140, filed in 2021, states that the business employed three people. But the company's 2020 labor certification and copies of its quarterly federal payroll tax returns for the second quarter of 2023 indicate that the business has six employees.

SCOPS found that the petition stated a false fact. The Petitioner filed the accompanying labor certification application in July 2020. Asked on the application form "[I]s there a familial relationship between the owners, stockholders, partners, corporate officers, or incorporators, and the alien?" the company checked the box marked "No." In June 2021, however, about a month before the labor application's certification and about two months before the petition's filing, the Beneficiary listed the Petitioner's managing partner/co-owner as a financial sponsor of the Beneficiary in U.S. student visa status. *See* 8 C.F.R. § 214.2(f)(1)(i)(B) (requiring a student visa holder to have "documentary evidence of financial support"). On a form submitted to the U.S. school where the Beneficiary studied, he identified the company's managing partner as his "cousin."

For labor certification purposes, a familial relationship includes "any relationship established by blood, marriage, or adoption, even if distant." DOL, "OFLC [Office of Foreign Labor Certification] Frequently Asked Questions and Answers," Familial Relationships, www.dol.gov/agencies/eta/foreign-labor/faqs/print. A labor certification 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). A family relationship between a petitioner's principal and a beneficiary creates a presumption that a job is unavailable to U.S. workers.

> [I]f there is a familial relationship between the stockholders, corporate officers, incorporators, or partners, and the alien, or if the alien is one of a small number of employees, the employer in the event of an audit must be able to demonstrate the existence of a bona fide job opportunity, *i.e.*, the job is available to all U.S. workers.

20 C.F.R. § 656.17(l); *see also, e.g., Matter of Pro. Dialysis Ctr., LLC*, 2016-PER-00657, at *2 (BALCA June 6, 2018) (finding that, when there is a familial relationship between an employer's owner and the foreign worker, "a strong presumption exists that ... the job opportunity is not bona fide or open and available to U.S. workers"). Also, "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).

In response to SCOPS' NOIR,[1] the Petitioner's managing partner and the Beneficiary, who are Pakistani members of the Ismaili Muslim community, denied any family relationship between themselves. The Beneficiary stated:

> In 2021, when my [U.S.] school required an alternate financial sponsor, I approached [the Petitioner's managing partner] for assistance with my application, and he kindly agreed to be listed as an alternate sponsor. In our culture, it is common to refer to others as "brother" or "cousin" as a sign of respect. I believed that establishing a personal connection would be more persuasive to the school than simply stating he was a community member. In hindsight, this was an unnecessary error in judgment, for which I am deeply remorseful.

The Petitioner submitted copies of its recruitment materials for the offered job during the labor certification proceedings as evidence of its compliance with DOL regulations. The company's managing partner stated that, despite the position's advertisement, no U.S. workers applied for the job.

SCOPS found the Petitioner's evidence insufficient to rebut the revocation ground. SCOPS concluded that the record lacks "corroborative evidence establishing that others are commonly referred to as 'brother' or 'cousin' in the petitioner's (and beneficiary's) culture, and government registered documentation establishing there is no familial relationship between the beneficiary and petitioner." *See Matter of Ho*, 19 I&N Dec. at 591-92 (requiring a petitioner to resolve inconsistencies of record "by independent objective evidence" pointing to where the truth lies).

On appeal, the Petitioner notes that SCOPS did not acknowledge the managing partner's statement denying the partner's alleged family relationship with the Beneficiary. But the oversight is, at most, harmless. *See Abdulahad v. Garland*, 99 F.4th 275, 295 (6th Cir. 2024) (citations omitted) (stating that an error is harmless if there is "no reason to believe … remand might lead to a different result"); *see generally Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors). SCOPS discussed the Beneficiary's denial of a family relationship between the men and found it lacking sufficient independent objective corroborating evidence. Like the Beneficiary's denial, the statement of the Petitioner's managing partner also lacks independent objective corroborating evidence. The managing partner's statement therefore also does not satisfy *Ho*'s evidentiary requirements.

The Petitioner contends that, by requiring corroborating evidence that the men have no family relationship, "USCIS is holding it to a higher evidentiary standard than the preponderance of the evidence standard." As previously indicated, however, because the record contains inconsistent descriptions of the relationship between the Petitioner's managing partner and the Beneficiary, the company must submit "independent objective evidence" to resolve the discrepancy. *See Matter of Ho*, 19 I&N Dec. at 591-92. Because the Beneficiary and the Petitioner share an interest in the petition's approval, their statements are not independent, objective evidence. Thus, USCIS properly requested additional materials from the company.

[1] We refer to SCOPS' second NOIR in this matter. SCOPS found that the Petitioner successfully rebutted the first NOIR, which questioned the company's intent to employ the Beneficiary in the offered job.

The Petitioner further argues that:

> even if USCIS considers [that the Beneficiary's] reference to [the Petitioner's managing partner] as his "cousin" on a document submitted to his school was, in fact, a "willful misrepresentation," it is not material to the I-140 Petition since there is not, in fact, any familial relationship between [them].

(emphasis in original). Misrepresentations are willful if they are deliberate and voluntary, requiring "knowledge of the falsity." *Parlak v. Holder*, 578 F.3d 457, 464–65 (6th Cir. 2009) (citations omitted); *Matter of Mensah*, 28 I&N Dec. 288, 293 (BIA 2021). A misrepresentation is material if it has a "'natural tendency to affect[] the official decision' of an adjudicator." *Id.*

The Petitioner, however, misunderstands SCOPS' misrepresentation finding. Contrary to the company's argument, SCOPS did not find that the Beneficiary misrepresented his relationship to the company's managing partner on the document submitted to the school. Rather, the Agency found that the Petitioner concealed the relationship on the labor certification application. Also, as previously discussed, a family relationship between a petitioner's principal and a foreign worker is material because it creates a presumption that the offered job is unavailable to U.S. workers. *See* 20 C.F.R. § 656.17(l); *see also, e.g., Matter of Pro. Dialysis Ctr., LLC*, *supra*, at *2.

The Petitioner submits additional evidence on appeal, including: an updated statement from the company's managing partner; birth, marriage, death, and family registration certificates of the Beneficiary, his spouse, and their parents; and a letter from a South Asian international relations researcher who temporarily lived in Pakistan. The record, however, shows that SCOPS' NOIR notified the company of the revocation ground and afforded the business a reasonable opportunity to respond. The company does not contend that the additional evidence was previously unavailable. Thus, we decline to consider the materials on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal where a petitioner received notice of the required materials and a reasonable opportunity to provide them); *see also* 8 C.F.R. § 103.2(b)(11) (requiring submission of all requested evidence together at one time).

Even if we accepted the Petitioner's appellate evidence, it would not rebut the evidence of a family relationship between the company's managing partner and the Beneficiary. The managing partner's new statement simply reiterates his claim that he has no family relationship with the Beneficiary. The certificates provide information about the Beneficiary's immediate family. But the word "cousin" ordinarily refers to "a child of one's uncle or aunt." *Cousin*, Online Merriam-Webster Dictionary, www.merriam-webster.com/dictionary/cousin. The certificates do not indicate whether the Beneficiary has cousins and, if so, whether they include the company's managing partner. The researcher's letter states that, in South Asian culture, titles such as "brother," "sister," "uncle," and "aunt" are "commonly used to show respect to someone older or perceived as having a higher social status." The letter, however, does not specifically address the term "cousin." The letter therefore does not establish "cousin" as a term of respect in the men's culture and thus would not rebut the revocation ground.

USCIS approves a petition if an alien beneficiary qualifies for the requested preference category and "the facts stated in the petition are true." Section 204(b) of the Act; *see also Lockhart*, 573 F.3d at

254. A petition encompasses its accompanying evidence – including a labor certification. 8 C.F.R. § 103.2(b)(1). Based on the evidence here, USCIS cannot conclude that the petition's facts are true, and, therefore, cannot approve the petition.

III. CONCLUSION

The Petitioner has not rebutted the stated family relationship between its managing partner and the Beneficiary. We will therefore affirm the revocation of the petition's approval.

ORDER: The appeal is dismissed.