U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31145224

Date: OCT. 29, 2025

Appeal of Service Center Operations Decision

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

The Petitioner, a provider of real estate appraisal services, seeks to employ the Beneficiary as an appraiser. The company requests his classification under the employment-based, third-preference category (EB-3) 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). U.S. businesses may sponsor aliens for permanent residence under this subcategory to work in jobs requiring at least two years of training or experience. *Id.*

Service Center Operations (SCOPS) denied the petition. SCOPS concluded that, on the U.S. Department of Labor (DOL) certification accompanying the petition, the Petitioner concealed the fraternal relationship between its sole corporate officer and the Beneficiary. On appeal, the company contends that, when preparing the labor certification application, counsel unintentionally checked the wrong box.

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 company's claim of inadvertent error. We will therefore dismiss the appeal.

I. LAW

Immigration as an EB-3 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 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)(B), (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.

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," signatures on immigration applications establish a "strong presumption" that signers know the applications' contents and have assented to them. *Matter of Gonzalez Jimenez*, 29 I&N Dec. 129, 133 (BIA 2025).

The petitioning company filed this petition in May 2023. The petition includes a labor certification signed by the company's president and counsel, attesting that they read and reviewed the certification application and that it was true and correct to the best of their knowledge. Two days later, SCOPS issued a request for additional evidence (RFE), questioning, in part, the company's response to Question C.9 on the labor certification application. Specifically, Question C.9 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, corporate officers, incorporators, or partners, and the alien?*" (emphasis added). The company checked the box marked "No."

The RFE noted that, on a 2016 application for a U.S. nonimmigrant visa, the Beneficiary listed the name of the Petitioner's officer, who shares his family name, as his "sibling." A family relationship between a petitioner's principal and a beneficiary establishes a presumption that an offered job is unavailable to U.S. workers. *See* 20 C.F.R. § 656.17(l) (requiring a labor certification employer to demonstrate the existence of a bona fide job opportunity if one or more of the business's officers has a family relationship with the sponsored alien). SCOPS therefore asked why, given evidence of a family relationship between the Petitioner's officer and the Beneficiary, the company answered "No" to question C.9 on the labor certification.

In its RFE response, the Petitioner admitted that its sole corporate officer and the Beneficiary are biological brothers. In an affidavit, counsel attested that he prepared the labor certification application for the company. He described the negative response to Question C.9 on the application as "an oversight on my part." He stated that the "vast majority" of the labor certification applications that his firm prepares lack family relationships between the employers and their corresponding foreign workers. Counsel stated that the "No" response to Question C.9 was an "unintentional oversight," not an attempt to mislead or deceive DOL or USCIS.

About two weeks after receiving the Petitioner's RFE response, SCOPS issued a notice of intent to deny (NOID) the petition. The NOID, in part, requested additional evidence that the family relationship's concealment on the labor certification was unintentional.

The Petitioner's NOID response included copies of e-mail messages between counsel and the company's officer. In a February 2021 message from the officer to counsel at the start of the Beneficiary's immigration process and later in a September 2021 message, the officer described the Beneficiary as his "brother." The Petitioner argued that these e-mails show that it never hid the fraternal relationship between the men and that the company's response to Question C.9 on the labor certification stemmed from a "genuine oversight."

To the extent the Petitioner claims ineffective assistance of counsel, the company has not complied with applicable requirements. In the immigration context, such claims must include:

- an affidavit explaining the Petitioner's legal representation agreement with counsel;
- evidence that counsel has been informed of the allegations and has had an opportunity to respond; and
- a complaint filed with disciplinary authorities against the attorney or an explanation for a complaint's non-filing.

See Ferreira v. Barr, 939 F.3d 44, 46 (1st Cir. 2019) (recognizing *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988), "as a leading case with respect to claims of ineffective assistance of counsel in the immigration context"). Because the Petitioner has not met these requirements, "the attorney is the petitioner's agent when acting, or failing to act, in furtherance of the litigation, and the petitioner must 'bear the risk of attorney error.'" *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 357 n.6 (2006) (citations omitted).

Also, the Petitioner's president and counsel signed the labor certification, certifying that they reviewed its contents before the petition's filing and that its information was true and correct to the best of their knowledge. The company therefore must rebut a "strong presumption" that its officer and counsel knew the certification's contents and assented to them. *See Matter of Gonzalez Jimenez*, 29 I&N Dec. at 133.

The Petitioner concedes that its Question C.9 response was a misrepresentation. In response to SCOPS' RFE, the company stated: "The Labor Certification mistakenly indicated 'No' for the C.9 question regarding the familial relationship between the alien and the officers of the petitioning company. We acknowledge and regret this oversight." 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"). "[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).

On appeal, the Petitioner argues that the misrepresentation was not willful, but rather constitutes an unintentional oversight by counsel when preparing the application. The company contends that it submitted "multiple pieces of evidence" showing that the C.9 response was inadvertent, including affidavits from the Petitioner's president and counsel, and the copies of the e-mail messages between the two. The company asserts that the evidence "conclusively proves" a lack of intent to mislead DOL or USCIS.

The Petitioner's evidence, however, is insufficient to rebut the strong presumption of willfulness in this case. The copies of the e-mail messages show that, before the labor certification application's filing, counsel knew that the Beneficiary and the company's officer were brothers. The record lacks sufficient corroborating evidence that, despite that knowledge, the Petitioner and counsel did not intend to answer "No" to Question C.9 on the certification.

Also, as SCOPS noted, the Petitioner has not explained why, if the company's president and counsel reviewed the labor certification's contents before the petition's filing, they did not inform USCIS of the purported error regarding the family relationship. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies).

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 all its supporting evidence – including a labor certification. 8 C.F.R. § 103.2(b)(1). Here, all of the facts stated in the labor certification, incorporated into the I-140 petition, are not true.

III. CONCLUSION

The Petitioner has not overcome the strong presumption that it knew of the misrepresentation on the labor certification application and deliberately concealed the family relationship between its president and the Beneficiary. Because the petition contains a false material fact, we will affirm the filing'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.