U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17517761

DATE: SEPT. 1, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for a Skilled Worker

The Petitioner, a restaurant, seeks to employ the Beneficiary as cook. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(B)(3)(A)(i). This employment-based "EB-3" immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent residence to work in a position that requires at least two years of training or experience.

The petition was initially approved. However, the Director of the Nebraska Service Center subsequently revoked the approval based on the Beneficiary's interview at the U.S. Embassy in [redacted] Turkey, in which she reportedly did not provide any documentation of her employment history as a cook and the interviewer regarded her stated intention to cook as not credible. The Director concluded that the Beneficiary failed to demonstrate that she has the requisite experience to meet the requirements of the labor certification and to qualify for classification as a skilled worker.

On appeal the Petitioner disputes the Director's description of the Beneficiary's embassy interview, asserts that the Beneficiary documented her employment history as a cook at the interview, and submits additional employment verification materials confirming that the Beneficiary meets the experience requirements of the labor certification and for skilled worker classification. The Petitioner requests that the revocation decision be withdrawn and the approval of the petition reinstated.

Upon *de novo* review, we will withdraw the Director's decision and remand the case for further consideration, including the issue of whether the Beneficiary meets the educational requirement of the labor certification.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification (ETA Form 9089) from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the

Act. Second, the employer files an immigrant visa petition (Form I-140) with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national 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.

Section 205 of the Act, 8 U.S.C. § 1155, provides that the Secretary of Homeland Security may "for good and sufficient cause, revoke the approval of any petition." By regulation this revocation authority is delegated to any USCIS officer who is authorized to approve an immigrant visa petition "when the necessity for the revocation comes to the attention of [USCIS]." 8 C.F.R. § 205.2(a). USCIS must give the petitioner notice of its intent to revoke the prior approval of the petition and the opportunity to submit evidence in opposition thereto, before proceeding with written notice of revocation. *See* 8 C.F.R. § 205.2(b) and (c). A notice of intent to revoke (NOIR) "is not properly issued unless there is 'good and sufficient cause' and the notice includes a specific statement not only of the facts underlying the proposed action, but also of the supporting evidence." *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). Per *Matter of Estime*, "[i]n determining what is 'good and sufficient cause' for the issuance of a notice of intention to revoke, we ask whether the evidence of record at the time the notice was issued, if unexplained and unrebutted, would have warranted a denial based on the petitioner's failure to meet his or her burden of proof." *Id.*

II. ANALYSIS

The instant petition for skilled worker classification was filed on February 1, 2016, accompanied by a labor certification that was filed with the DOL on September 4, 2014, and certified in January 2016. The labor certification required two years of experience as a cook (as well as a high school education) to qualify for the job offered, and claimed that the Beneficiary exceeded the experience requirement by virtue of her employment as a cook at the [redacted] Restaurant in [redacted] Iran, from June 13, 2010, to March 6, 2013. Documentary evidence relating to that alleged employment was submitted with the petition, which was approved on June 15, 2016.

A. Beneficiary's Experience

On December 26, 2018, the Director issued a notice of intent to revoke (NOIR) the petition's approval on the ground that the Beneficiary did not have the requisite two years of qualifying experience. The NOIR focused almost exclusively on the Beneficiary's interview at the U.S. Embassy in [redacted] Turkey, in which the Beneficiary was questioned about her previous work history. As summarized by the Director from the Embassy report, the Beneficiary was unable to provide credible documentation of her alleged experience as a cook, claiming that she was paid "under the table" in cash, and the interviewer found the Beneficiary's stated desire to be a cook "not credible." The Director concluded that the Beneficiary apparently lacked the requisite experience to meet the terms of the labor certification and to qualify for skilled worker classification. The Petitioner was granted 30 days to submit evidence in support of the petition and in opposition to the revocation.

On December 22, 2020, the Director issued a decision revoking the petition's approval. After stating that the Petitioner "failed to provide a response to the NOIR," the Director repeated the grounds for revocation in the NOIR verbatim and revoked the approval of the petition.

The Petitioner filed an appeal on January 12, 2021, accompanied by a brief entitled "Response to Notice of Intent to Revoke" and additional documentation relating to the Beneficiary's alleged employment as a cook at the [redacted] Restaurant in [redacted] Iran. The Petitioner does not specifically claim that the brief and supporting materials were actually submitted in response to the NOIR of December 2018, and there is no postmark or other evidence that these materials were originally submitted at that time. Nonetheless, they were timely filed on appeal, and supplement the materials previously submitted with the petition.

It is noteworthy that none of the documentation in the record relating to the Beneficiary's alleged experience at the [redacted] Restaurant in [redacted], Iran, was mentioned in the NOIR, or in the subsequent revocation decision. The Director relied instead on the report of the Beneficiary's interview at the U.S. Embassy in Turkey. The Director did not review any of the materials submitted by the Petitioner as evidence of the Beneficiary's alleged experience as a cook, much less determine the probative value and credibility of those materials, or the lack thereof. Accordingly, we will remand this matter for further consideration, based on the entire record of proceedings.

B. Beneficiary's Education

Though not addressed by the Director in the NOIR or in the revocation decision, it does not appear that the Beneficiary meets the educational requirement of the labor certification. As stated in the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B):

> If the petition is for a skilled worker, the petition must be accompanied by evidence that alien meets the educational, training or experience, and any other requirements of the individual labor certification . . . .

In this case the labor certification requires, in addition to two years of experience as a cook, a high school level education. The labor certification also specifies as section H.9, however, that a foreign educational equivalent is not acceptable. The labor certification indicates in section J that the Beneficiary completed her high school education in 1975 at [redacted] in [redacted] Iran. Thus, the Beneficiary's high school education was not in the United States. The Director may also address this issue on remand.

III. CONCLUSION

For the reasons discussed above, we will remand this case for further consideration of the Beneficiary's experience and education. The Director may issue a new NOIR in accordance with the requirements of 8 C.F.R. § 205.2(b) and (c) and *Matter of Estime*. Following the Petitioner's response to the NOIR, or the expiration of the time period to respond, the Director shall issue a new decision.

ORDER: The Director's decision is withdrawn. The matter is remanded for further consideration and the entry of a new decision consistent with the foregoing analysis.