U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10817463

Date: SEPT. 2, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for a Skilled Worker

The Petitioner seeks to employ the Beneficiary as an assistant manager of a gas station/retail store. The company requests her classification under the third-preference, immigrant classification for skilled workers. See Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i).

The Director of the Texas Service Center initially approved the petition, but subsequently revoked the approval on the grounds that the evidence did not establish that the Beneficiary had the requisite work experience to meet the terms of the labor certification and to qualify for skilled worker classification. The Director also found that the Beneficiary misrepresented her experience. The Petitioner filed an appeal, which we dismissed on the same grounds.

The matter is now before us on a motion to reopen and a motion to reconsider. Upon review, we will dismiss the combined motion.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. See 8 C.F.R. § 103.5(a)(2). A motion to reconsider must demonstrate that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. See 8 C.F.R. § 103.5(a)(3). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy.

II. ANALYSIS

A. Motion to Reopen

To qualify for classification as a skilled worker a beneficiary must have at least two years of training or experience. See 8 C.F.R. § 204.5(l)(3)(ii)(B). A beneficiary must also meet the specific educational, training, experience, or other requirements of the labor certification. Id. All requirements

must be met by the petition's priority date,[1] which in this case is April 16, 2007. See Matter of Wing's Tea House, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

The accompanying labor certification states the minimum requirements of the offered position of assistant manager as a U.S. (or foreign equivalent) high school diploma, and two years of experience in the job offered. On the labor certification, and with the supporting experience letter, the Beneficiary attested that she gained more than three years of full-time, qualifying experience in Pakistan, working as an assistant manager at a retail store from September 2011 through October 2014.

After approving the petition, the Director noted discrepancies between the labor certification and the Beneficiary's previous application for a U.S. nonimmigrant visitor's visa. Her October 2014 visa application stated her "Primary Occupation" as "homemaker" and indicated that she had "No" prior employment. The Director revoked the petition's approval after finding that the record lacked sufficient reliable evidence of the Beneficiary's possession of the minimum experience required for the offered position or the requested visa classification, and found misrepresentation.

In our prior decision, we addressed the evidence in the record and found that the Petitioner has not demonstrated the Beneficiary's possession of the minimum experience required for the offered position or the requested visa classification. We also found that substantial evidence in the record supported that the Beneficiary willfully misrepresented her experience on the labor certification.

The Beneficiary's explanation that her spouse completed her online visa application and did not consider her employment history relevant to the application was found to be unconvincing. The record did not support counsel's assertion that Pakistani culture identifies a wife's primary responsibility as her family's home (and her primary occupation to be "homemaker").

An updated experience letter from the Beneficiary's previous employer did not include independent evidence to corroborate the letter's contents, and the Beneficiary's 2011 offer letter could not be verified as authentic. The previous employer's monthly "muster rools" (listing employee names, dates of employment, and wages) were found to be unreliable, as the record did not establish that these records were prepared contemporaneously with the Beneficiary's employment or were part of the employer's routine record keeping.

The primary issue to be addressed in this decision is whether the Petitioner has submitted new facts that overcome our prior decision. The Petitioner has supplemented the record with additional documentation on motion.

On motion, the Petitioner asserts that the Beneficiary used her income from her purported employment in Pakistan to pay for medical treatment, and submits medical records and invoices from 2013. The Petitioner also submits a letter from a bank and savings passbook, asserting that the Beneficiary kept a savings account from March 2009 to December 2014.[2]

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[1] The priority date of a petition is the date the underlying labor certification is filed with the Department of Labor, which in this case is April 22, 2016. See 8 C.F.R. § 204.5(d).

[2] In its brief dated March 4, 2020, the Petitioner requests an additional 45 days to obtain supplemental evidence. The regulation pertaining to motions does not permit the submission of materials after filing in order to meet the applicable

The Petitioner does not assert that this evidence was previously unavailable or explain why it did not submit this evidence previously. If the petitioner had wanted this evidence to be considered, it should have submitted the documents in response to the Director's Notice of Intent to Revoke or on appeal. The medical records and invoices do not demonstrate the source of the income used to pay these amounts. Similarly, the passbook does not reflect the source of income for any deposits. Further, the savings passbook reflects no activity from December 2009 until February 2014, and reflects only minimal deposit amounts in 2014. Therefore, the evidence submitted on motion is of little evidentiary value in supporting the Beneficiary's purported employment from 2011 to 2014.

Further, the record includes multiple inconsistencies regarding the Beneficiary's name.[3] The names on the medical records and invoices, and on the bank letter are inconsistent with each other, and do not match the Beneficiary's name as shown in the record.[4] Upon further examination, the 2011 offer letter from the Beneficiary's purported previous employer misspells her first name and uses her married name before the date of her marriage, casting further doubt on its authenticity.[5] Additionally, we note that the previously submitted "muster rools" identify the Beneficiary by different names at different times during her purported employment, casting further doubt that these records were prepared contemporaneously with the Beneficiary's employment.[6] The Petitioner must resolve any material inconsistencies in the record by competent, objective evidence. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. See Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's evidence also reflects on the reliability of the petitioner's remaining evidence. See id.

In our previous decision, we specifically notified the Petitioner that with any future filings in this matter, the Petitioner must submit a complete copy of its federal income tax return for 2016 and disclose any family relationships between the Beneficiary and the company's owners, officers, or incorporators as of the application's filing. See Matter of Modular Container Sys., Inc., 89-INA-228, slip op. at *9 (BALCA July 16, 1991) (en banc) (holding that a foreign national's relationship to a petitioning corporation's director, officer, or employee may indicate the unavailability of the offered job to U.S. workers). The Petitioner did not submit this evidence on motion and does not address this issue in its brief.[7]

In view of the evidentiary deficiencies discussed above, we conclude that the Petitioner has not established on motion that the Beneficiary gained at least two years of qualifying experience by the

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requirements. Motions must meet the applicable requirement when filed. See 8 C.F.R. § 103.5; compare 8 C.F.R. § 103.3(a)(2)(vii).

[3] The Beneficiary's name as listed on the labor certification and the petition is [redacted]. The record reflects that the Beneficiary's maiden name is [redacted] and the date of her marriage is [redacted], 2012. The Beneficiary does not list any other names used or aliases in the record.

[4] The family names on the medical records and invoices include [redacted] and [redacted] The family name on the bank letter is [redacted]

[5] The letter is addressed to [redacted]

[6] The "muster rools" list an employee [redacted] N (in 2011, before her marriage) and an employee [redacted] (in 2013, after her marriage).

[7] The regulation at 8 C.F.R. § 103.2(b)(14) provides that the failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request.

priority date of April 22, 2016, as required to meet the terms of the labor certification and to be eligible for classification as a skilled worker. As set forth above, the record includes unresolved, significant inconsistencies between the Beneficiary's claimed experience and her prior nonimmigrant visa application, and, therefore, supports the finding of willful misrepresentation against the Beneficiary, which the Petitioner has not overcome on motion. Therefore, we will dismiss the motion to reopen.

B. Motion to Reconsider

The Petitioner does not assert that that our previous decision with regard to the Beneficiary's experience was based on an incorrect application of law or policy, as required for a motion to reconsider under 8 C.F.R. § 103.5(a)(3). Therefore, we will dismiss the motion to reconsider.

III. CONCLUSION

The Petitioner has not shown proper cause for reopening or reconsideration of our previous decision, nor established eligibility for the benefit sought.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.