U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-M- CORP.

DATE: SEPT. 11, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a convenience store, seeks to employ the Beneficiary as a cook. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(B)(3)(A)(i). This employment-based immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status 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 Texas Service Center subsequently revoked the approval, finding that the Petitioner did not establish that the Beneficiary had at least two years of qualifying experience, as required by the terms of the labor certification and for the requested classification of skilled worker. We dismissed a subsequent appeal. *Matter of C-M- Corp.*, ID# 1095157 (AAO Feb. 15, 2019). The matter is now before us on a motion to reopen and motion to reconsider.

On motion, the Petitioner submits additional documentation and asserts that it has established by a preponderance of the evidence that the Beneficiary has the requisite experience to meet the terms of the labor certification and qualify for the skilled worker classification.

Upon review, we will deny the motion to reopen and deny the motion to reconsider.

I. MOTION REQUIREMENTS

A petitioner must meet the formal filing requirements of a motion and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1). A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish 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. 8 C.F.R. § 103.5(a)(3).

II. ANALYSIS

At issue on motion is whether the evidence of record establishes that the Beneficiary had at least two years of experience as a cook by the petition's priority date,[1] as required to meet the terms of the labor certification and to qualify for classification as a skilled worker.

A. Minimum Requirements of the Labor Certification

A beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977). In this case, the labor certification requires two years of experience in the job offered of cook. The labor certification states that Beneficiary was employed as a cook by the Hotel [redacted] India, from May 1995 to September 1997. With the petition, the Petitioner submitted an undated letter bearing the signature of [redacted] on the letterhead of Hotel [redacted] certifying that the Beneficiary was employed as claimed on the labor certification. The letter does not list the title of the writer as required by 8 C.F.R. § 204.5(l)(3)[2] and does not confirm her full-time employment. It also lists the employee's name as [redacted] and not [redacted] A Form G-325A, Biographic Form, for the Beneficiary in the record states that she has not used any other names. Thus, it is not clear that the letter references the Beneficiary. Thus, the initial petition was approved in error because the record did not establish the Beneficiary's qualifications for the offered job.

The Director revoked the petition's approval on the ground that the evidence of record did not establish that the Beneficiary had two years of qualifying experience as a cook, as required by the labor certification. On appeal, the Petitioner asserted that the record establishes the Beneficiary's work experience as a cook at the [redacted] Hotel in India from 1995 to 1997.

Following the Petitioner's appeal, we referred this case to USCIS officials in India for further investigation. Following an investigation, we issued a notice of intent to dismiss the appeal (NOID). According to an affidavit from [redacted] dated July 31, 2017, he stated that he currently lived at [redacted] in [redacted] India; that he was the sole owner/proprietor of the Hotel [redacted] from 1991 until 2002; and that he employed the Beneficiary as a cook from May 1995 to September 1997. We advised the Petitioner that according to government records, [redacted] was never the owner of Hotel [redacted]. Government records confirmed that the Hotel [redacted] was in operation from 1991 to 2002; that it had 13 partners until 2000; that 12 of the partners withdrew in 2000; and that the remaining partner ran the business as sole proprietor until the hotel closed in 2002. [redacted] was not listed in the records as a partner or owner of Hotel [redacted] at any time from 1991 to 2002.

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[1] The "priority date" of a petition is the date the underlying labor certification is filed with the DOL. *See* 8 C.F.R. § 204.5(d). The priority date in this case is April 16, 2002.

[2] Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. 8 C.F.R. § 204.5(l)(3).

We also advised the Petitioner that a site visit to the address [redacted] identified in July 2017 as his residence – [redacted] – revealed that the current resident is not [redacted] that [redacted] was identified as the property owner; and that all residents of the [redacted] are [redacted] family members and Hindu.[3] According to the current resident of [redacted] never lived in the [redacted] residential community. This information was confirmed by another resident of the [redacted] who stated that he had been a resident since 2002; that house number [redacted] was owned by [redacted] and that nobody by the name of [redacted] had ever lived in the [redacted]

Based on the information described above, we advised the Petitioner that it appeared [redacted] did not reside at [redacted] as claimed in his July 2017 affidavit, and that he never had an ownership interest in the Hotel [redacted] where he claimed to have employed the Beneficiary as a cook from 1995 to 1997.

In response to our NOID, the Petitioner asserted that that the property located at [redacted] is owned by [redacted], not [redacted] The Petitioner submitted an affidavit from [redacted] who confirmed that he is the owner of [redacted]; that he does not live there; and that he rented the house to [redacted] from January 5, 2017, to March 31, 2018. An additional affidavit from [redacted] confirmed that he rented the house from [redacted] and asserted that he sublet a room to "Mr. [redacted] a.k.a. [redacted]" for the three month period from June 1, 2017, to August 31, 2017. According to the Petitioner, since [redacted] and [redacted] are the same person, the address Mr. [redacted] identified as his residence in his 2017 affidavit was correct.

On appeal, we found that while the documentation may indicate that the owner of the residential property at [redacted] is [redacted], it does not clearly show that [redacted] ever lived there as a tenant. We stated that both [redacted] and [redacted] assert that [redacted] rented [redacted] to [redacted] from January 5, 2017, to March 31, 2018. Since [redacted] was no longer the tenant of the property after March 31, 2018, we determined that "it is inexplicable how he could have sublet a room to [redacted] from June 1 to August 31, 2018."

We noted two affidavits in the record stating that [redacted] alias [redacted] lived at [redacted] "for three months until August 2017." According to the Petitioner, [redacted] was not available to clarify this matter because he is retired and living in a remote village in India. We stated that no independent, objective evidence has been submitted, such as a sublease agreement or rental payments, to confirm Mr. [redacted] residence at [redacted] from June through August 2017. Based on the entire record, including the results of our onsite investigation, we concluded that the Petitioner has not established that Mr. [redacted] resided at [redacted] in July 2017.

We also found that Mr. [redacted] assertion that he was the sole owner/proprietor of the Hotel [redacted] from 1991 to 2002 is contradicted by government records confirming that the hotel was co-owned by 13 partners from 1991 to 2000, and by one remaining individual for the next two years until

[3] The record does not establish whether [redacted] is Hindu.

the hotel closed in 2002. [redacted] was not listed in the office records as either a partner or an owner of the hotel at any time from 1991 to 2002. The office records do indicate that [redacted] was one of the 13 partners from 1991 to 2000, and that he was the sole proprietor from 2000 to 2002. Two affidavits claim that [redacted] and [redacted] are the same person, with the former being his official name. We noted in our appeal decision that [redacted] had not acknowledged a second name, and that government records or other official documents have not been submitted to show that [redacted] has a second name.[4]

Furthermore, we stated that even if we accepted the Petitioner's contention that [redacted] and [redacted] are the same person, government records indicate that Mr. [redacted] was not the sole owner/proprietor of the Hotel [redacted] from 1991 to 2000, but rather one of 13 partners during those years. Finally, we stated that there is no primary evidence in the record, such as an employment contract or pay statements, documenting any employment of the Beneficiary by the Hotel [redacted] For all of the reasons discussed above, we concluded that the Petitioner has not established that the Beneficiary had two years of qualifying experience as a cook by the priority date of April 16, 2002, as required by the labor certification.

On motion, the Petitioner asserts that [redacted] sublet a room from [redacted] until August 31, 2017, not August 31, 2018, as indicated in our appeal decision. It states that by relying on an erroneous fact, we incorrectly found an inconsistency in the record that does not exist. We agree that the date listed in one portion of our decision was incorrect. However, the error did not alter our ultimate decision in this case. Based on the USCIS site visit, we found inconsistencies in Mr. [redacted] claim that he lived in the [redacted] residential community. The current resident of the property and former resident of the housing complex stated that he never lived there, and he did not own the property. Because of these inconsistencies, we required independent, objective evidence of his residency there. The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). We stated that a sublease agreement or evidence of rental payments would be independent, objective evidence of his subtenancy.

On motion, the Petitioner submits an affidavit dated March 13, 2019, from [redacted] alias [redacted]' stating that he sublet the premises from June 1, 2017, to August 31, 2017. However, no independent, objective evidence has been submitted, such as a sublease agreement or evidence of rental payments, to confirm Mr. [redacted] residence at the subject address from June 1, 2017, through August 31, 2017.

Next, the Petitioner asserts on motion that the new affidavit from [redacted] alias [redacted] clarifies his two names and the circumstances under which the discrepancies found in the 2017 affidavit occurred. He asserts that his parents came to [redacted] from

[4] Presumably, there would have been a partnership agreement detailing the circumstances under which the 13 individuals operated the hotel. It may have identified a managing partner or partners with hiring and firing rights; it may have detailed their responsibilities, if any, at the hotel; and it may have identified any aliases of the partners. However, a partnership agreement was not submitted to the record. None of the other partners have corroborated the Beneficiary's employment at the hotel.

[redacted] and that is why he is called [redacted]. He indicates that the representation that that he was the sole owner/proprietor of the Hotel [redacted] from 1991 to 2002 resulted from a "clerical error." He claims that he doesn't speak English well and the "notary typist made a mistake when he prepared my statement." However, it is not clear why all of his affidavits are written in English, instead of in his native language and translated into English, if he doesn't speak English well. Further, the 2017 affidavit consistently refers to Hotel [redacted] as his business, not a business he co-owned with 12 other partners when the Beneficiary purportedly worked there.[5] Thus, his claim of "clerical error" is not credible.

A few errors or minor discrepancies are not reason to question the credibility of a foreign national or an employer seeking immigration benefits. *See Spencer Enters. Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir. 2003). However, anytime a petition includes numerous errors and discrepancies, and a petitioner fails to resolve those errors and discrepancies after USCIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of a petitioner's assertions. Doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In this case, the discrepancies and errors catalogued above lead us to conclude that the evidence of the Beneficiary's prior employment is not credible. The Petitioner has not overcome the inconsistencies in the record with independent, objective evidence of the Beneficiary's employment as a cook at the [redacted] Hotel in India from 1995 to 1997. *Id.*

On motion, the Petitioner also submits an affidavit from [redacted], "a customer of Hotel [redacted] and resident of [redacted]," stating that [redacted] had two names, [redacted] and [redacted], and that he was known to be the owner of Hotel [redacted] while it was in operation. It asserts that [redacted] alias [redacted] was the "last and only owner" of the hotel from 2000 to 2002 and that as such, he was authorized to issue the Beneficiary's experience letter for her employment there from May 1995 to September 1997. However, the record contains no official documents showing that [redacted] had two names, such as government-issued identification or court documents referencing his two names; and it contains no independent, objective evidence of the Beneficiary's employment at Hotel [redacted] such as an employment contract, payroll records, paystubs, and/or tax records.

On motion, the Petitioner also asserts that the AAO abused its authority by relying on the USCIS site visit report and failing to consider the Petitioner's documentation and explanations. This claim is without merit, as we have properly and thoroughly considered the Petitioner's explanations and documentation on appeal and on motion. The Petitioner further asserts on motion that we did not "provide any proof or documents to show that [*sic*] actual field visit was done and it was done properly." The regulation at 8 C.F.R. § 103.2(b)(16)(i) requires that the Petitioner be "advised of" the derogatory information relied on in the adverse decision. The regulation does not place upon USCIS a requirement that the actual documents be provided to a petitioner. *Mangwiro v. Napolitano*, 939 F. Supp. 2d 639, 646 (N.D.Tex. 2013). We properly advised the Petitioner about the results of the site

[5] For example, he states "I registered my business…;" "My business was located…;" "In the course of operation of my business, I hired [the Beneficiary]…;" "as the owner/proprietor of the company…;" and "I was the sole owner/proprietor of the business."

visit and the Petitioner was given an opportunity to supplement the record with a rebuttal before a final administrative decision was rendered.

The Petitioner has not established by a preponderance of the evidence that the Beneficiary has two years of qualifying experience required by the labor certification.

B. Eligibility for Classification as a Skilled Worker

We additionally determined that the Beneficiary does not qualify for classification as a skilled worker. Because the Petitioner has not established on motion that the Beneficiary had two years of qualifying experience, she does qualify for classification as a skilled worker.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of its appeal. The motion to reopen and motion to reconsider will be denied for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of C-M- Corp.*, ID# 6531336 (AAO Sept. 11, 2019)