U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17999712

Date: SEPT. 13, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for An Alien Worker

The Petitioner, a janitorial business, seeks to employ the Beneficiary as an administrative assistant. It requests "other worker" classification for the Beneficiary under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). This employment-based "EB-3" immigrant classification allows a U.S. employer to sponsor for lawful permanent resident status a foreign national who is capable of performing unskilled labor that requires less than two years of training or experience and is not of a temporary or seasonal nature.

The Director of the Texas Service Center denied the petition on the ground that the Petitioner did not establish that the Beneficiary had the requisite experience to meet the terms of the labor certification and to qualify for the requested visa classification. The Petitioner submitted an appeal, which we dismissed on the same grounds. The Petitioner then filed a motion to reconsider, which we dismissed on the ground that it was not timely filed.

The matter is now before us on a motion to reopen and a motion to reconsider, in which the Petitioner asserts that its previous motion was timely filed and submits supporting documentation. Upon review of the previous motion, which includes a receipt stamp on the Form I-290B, we determine that the Petitioner's motion to reconsider was timely filed. Accordingly, we will withdraw our contrary finding and adjudicate the motion on the merits.

In its brief accompanying the motion to reconsider the Petitioner asserts that the Director's decision was erroneous in law and policy because it did not give proper weight to the new evidence submitted on appeal, in particular the Beneficiary's official Work and Social Security Card (*Carteira de Travalho e Previdencia Social*, or CTPS) from the Brazilian government. According to the Petitioner, the CTPS clearly identifies the Beneficiary as the cardholder and records her four years of employment as an administrative assistant in Brazil, thereby establishing the Beneficiary's eligibility for the requested immigrant visa classification under the terms of the labor certification.

It is the Beneficiary's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). For the reasons discussed herein, we will dismiss the motion to reconsider.

I. MOTION REQUIREMENTS

A motion to reconsider must establish that our previous 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. PROCUDURAL HISTORY

The instant petition (Form I-140) was filed with U.S. Citizenship and Immigration Services (USCIS) on September 25, 2019, accompanied by a labor certification (ETA Form 9089) that was filed with the Department of Labor (DOL) on June 27, 2019, and certified by the DOL in August 2019.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(D) states that "[i]f the petition is for an unskilled (other) worker, it must be accompanied by evidence that the alien meets any educational, training and experience, and other requirements of the labor certification." All requirements must be met by the petition's priority date, which in this case is June 27, 2019. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977). As discussed in previous decisions, the only requirement of the labor certification in this case is 12 months of experience as an administrative assistant, and the only experience listed for the Beneficiary on the labor certification was an administrative assistant job with [redacted] in [redacted] Massachusetts, lasting approximately 18 months during the years 2015 and 2016.

The Director denied the petition on the ground that the Petitioner did not resolve evidentiary discrepancies regarding the Beneficiary's alleged experience with [redacted] and therefore did not establish that the Beneficiary had at least 12 months of qualifying experience.

On appeal the Petitioner submitted additional documentation regarding the Beneficiary's alleged experience in Massachusetts, but we concluded that the evidence did not establish that the Beneficiary was employed by [redacted] as a full-time administrative assistant for at least 12 months, as required to meet the experience requirement of the labor certification.

On appeal the Petitioner asserted for the first time that the Beneficiary was also employed as an administrative assistant for more than four years in Brazil before coming to the United States. The Petitioner contended that this employment met the experience requirement of the labor certification even if we discounted the employment with [redacted] and claimed that this experience was not previously identified because it was thought the evidence of the Beneficiary's experience with [redacted] would suffice. As evidence of the alleged experience the Petitioner submitted a letter from the human resources manager of [redacted] in [redacted] Brazil, dated March 19, 2020, stating that the Beneficiary was employed in the financial department as a full-time administrative assistant from June 2, 2008, to November 29, 2012. Also submitted was a partial copy of the Beneficiary's CTPS (select pages in Portuguese with English translations) including a *contrato de trabalho* (contract of employment) on page 12 identifying [redacted] as the employer, the position as an administrative assistant, and the dates of employment as June 2, 2008 to November 29, 2012. In

addition, three identically worded letters were submitted from individuals who claimed to have been co-workers of the Beneficiary at [redacted]

As we pointed out in our appellate decision, the AAO need not accept evidence offered for the first time on appeal when the petitioner has had the opportunity to submit such evidence earlier in the proceeding. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). Though the Petitioner based its failure to disclose the job with [redacted] earlier in this proceeding on the belief that it was unnecessary in view of the Beneficiary's more recent job with [redacted] we noted that section K of the labor certification specifically instructed the Petitioner to "list any other experience that qualifies the alien for the job opportunity [of administrative assistant]." We indicated that the failure to list the Beneficiary's alleged job with [redacted] on the labor certification[1] lessened the credibility of the asserted work experience. *See Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976).

Even if we granted the Petitioner's request to consider the new job claim and supporting evidence, we indicated that it was insufficient to establish that the Beneficiary gained any qualifying experience with [redacted] While the letter from [redacted] appeared to comport with the substantive requirements of 8 C.F.R. § 204.5(g)(1),[2] we discussed how the contents of the letter – in particular how the description of the job duties tracked so closely to the job duties of the subsequent [redacted] position, as described in the labor certification and the letter from that company in 2020 – raised questions about the authenticity of the employment verification. We indicated that the three letters from alleged co-workers of the Beneficiary's at [redacted] had little probative value since they were identically worded, thus indicating that they were not individually prepared, and did not comport with the requirement of 8 C.F.R. § 204.5(g)(1) that employment verification letters be written by the Beneficiary's employer, not her co-workers. The only other evidence of the alleged employment with [redacted] were select pages of the Beneficiary's CPTS including a contract of employment entry with [redacted] on page 12 which did not specifically identify the employee on that page as the Beneficiary.[3]

We concluded in our appellate decision that the Petitioner did not establish that the Beneficiary was employed by [redacted] as a full-time administrative assistant for at least 12 months, as required to meet the experience requirement of the labor certification.

III. MOTION TO RECONSIDER

On motion the Petitioner's only reference to the Beneficiary's alleged employment with [redacted] in 2015 and 2016 is the so-called scrivener's error in the labor certification regarding the starting date, which the Petitioner contends was an immaterial error because the difference was only three months and the Beneficiary would have gained more than 12 months of qualifying experience in any event by the end of her employment with [redacted] As we stated in our appellate decision a three-month difference in the starting date of the Beneficiary's employment with [redacted] would indeed be immaterial if the record

[1] The Petitioner also had the opportunity to submit evidence of the Beneficiary's alleged experience with [redacted] in response to the NOID, but did not.

[2] The regulation provides that "[e]vidence relating to qualifying experience . . . shall be in the form of letters from current or former employer(s) . . . and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien." 8 C.F.R. § 204.5(g)(1)

[3] We note on motion that the cover of the CPTS does identify the Beneficiary as the card holder and appears to link her to the entries therein.

established that the Beneficiary was actually employed by that business as an administrative assistant through September 30, 2016. After reviewing the evidence, however, we concluded that the Petitioner did not establish that the Beneficiary was so employed. The Petitioner has not identified any incorrect application of law or policy in that decision. Therefore, the Petitioner has not shown cause for us to reconsider our determination that the record does not establish that the Beneficiary gained at least 12 months of qualifying experience with [redacted] in 2015 and 2016.

As for the Beneficiary's alleged experience with [redacted] during the years 2008-2012, the Petitioner submits copies of additional pages from the Beneficiary's CPTS. Several pages appear to record salary and contributions of some sort during the years 2008-2012, but they are in Portuguese without English translations, and therefore do not comport with the requirements of 8 C.F.R. § 103.2(b)(3).[4] Since the substance of the Portuguese language entries is unclear, they have little probative value in this proceeding. We also have questions about the reliability of the CTPS entries (including the previously submitted pages with English translations) as evidence of the Beneficiary's employment history in Brazil, since the alleged employment with [redacted] from June 2008 to November 2012 is the only job listed in the document, though the Beneficiary did not come to the United States until April 2015. The CTPS does not list any other employment for the Beneficiary between November 2012 and April 2015, and neither the Petitioner nor the Beneficiary has accounted for the Beneficiary's activity during that time period. Most importantly, the Petitioner has submitted no contemporary documentation of the Beneficiary's alleged employment with [redacted] in the years 2008-2012, such as official employment records and/or pay statements issued by [redacted] during those years. It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Doubt cast on any aspect of the petitioner's evidence also reflects on the reliability of the petitioner's remaining evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In view of the evidentiary deficiencies discussed above, the omission of the Beneficiary's alleged employment with [redacted] from the labor certification (despite specific instruction on the form to list all qualifying experience), and the fact that the Beneficiary's alleged employment with [redacted] was not asserted by the Petitioner before the appellate stage of this proceeding, we conclude that the Petitioner has not established that the Beneficiary gained any experience with [redacted] In its motion brief the Petitioner did not identify any incorrect application of law or policy in our appellate determination that the record did not establish that the Beneficiary was employed by [redacted] as a full-time administrative assistant for at least 12 months, as required to meet the experience requirement of the labor certification. Therefore, the Petitioner has not shown cause for us to reconsider our decision on this issue.

IV. ISSUE OF PETITIONER'S ADDRESS

On the labor certification application filed with the DOL in June 2019, and on the I-140 petition filed with USCIS in September 2019, the Petitioner's address was identified as [redacted] Street, Suite [redacted] [redacted] MA [redacted] However, two subsequent notices from the AAO to the Petitioner that were mailed to that address – including our receipt notice of the Petitioner's appeal, dated January 18, 2021, and our Notice of Dismissal of the Petitioner's appeal, dated March 9, 2021 – were returned by the U.S. Postal Service as "unable to forward." We have consulted the corporation search website of The

[4] The regulation at 8 C.F.R. § 103.2(b)(3) provides that "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

Commonwealth of Massachusetts which shows that the Petitioner changed its registered office address to [redacted] Road, [redacted] MA [redacted] on May 22, 2019. https://corp.sec.state.ma.us/CorpWeb/CorpSearch/Corp_Search_ViewPDF.aspx (last visited Sept. 10, 2021). This change of address preceded the filing of both the labor certification application and the I-140 petition, but was not reflected on either form. Thus, the address entered on both the labor certification and the petition, which was also identified on both forms as the primary worksite address of the proffered position, was evidently incorrect.[5] The Petitioner has provided no explanation for this error, and has yet to inform USCIS of its change of address. In any future proceedings the Petitioner must address this issue and confirm its correct address.

V. CONCLUSION

We withdraw our previous decision dismissing the motion to reconsider as untimely filed. However, the Petitioner has not shown proper cause for reconsideration of our appellate decision. Therefore, the Petitioner has not established eligibility for the benefit sought.

ORDER: The motion to reconsider is dismissed.

[5] According to GoogleMaps the two locations, both located in the Boston metropolitan area, are 11 miles apart.