U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11244283

Date: SEPT. 22, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner seeks to employ the Beneficiary as an administrative assistant. It requests classification of the Beneficiary under the third-preference, immigrant category as a skilled worker. 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" category allows a U.S. business to sponsor a foreign national for lawful permanent resident status based on a job offer requiring at least two years of training or experience.

After the filing's initial grant, the Director of the Nebraska Service Center revoked the petition's approval. The Director concluded that the Petitioner did not provide objective evidence of the Beneficiary's qualifying experience for the offered position.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. EMPLOYMENT-BASED IMMIGRATION

Employment-based immigration generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position. *Id.* Labor certification also indicates that the employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a beneficiary meets the requirements of a certified position and a requested immigrant visa classification. If USCIS approves the petition, a foreign national may finally 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. THE BENEFICIARY'S EXPERIENCE

The accompanying labor certification was filed on July 18, 2016. The labor certification states that the offered position requires a high school, or foreign equivalent degree, and 24 months of experience in the offered job of administrative assistant, and no alternate experience is accepted. The duties and required skills for the offered position are stated as:

> Receive, analyze and interpret incoming correspondence to determine priority and significance, and distribute it accordingly. Answer telephone calls and provide general information, take messages and transfer calls to staff. Distribute internal memorandums and communications. Send outgoing mail and correspondence. Greet visitors and clients, handle their general inquiries and direct them to the appropriate staff members. Set up, maintain and operate electronic and paper-based filing systems to organize, file, store and retrieve document, records, correspondence and reports. Attend meetings, record minutes and distribute meeting notes. Provide office support and assistance to staff members for copies, document formatting and proofreading; collect, place and track orders for office supplies and materials.

On the labor certification, the Petitioner asserts that the Beneficiary completed high school in Romania in 2004, and that she gained experience as an assistant manager from May 30, 2011 to June 7, 2013 with [redacted] in Romania. The initial evidence submitted with the petition included a letter from this employer, indicating that the Beneficiary was employed as a manager assistant from May 2011 to June 2013.

Following the approval of the petition, the Director sent the Petitioner a NOIR stating that, upon further review, the petition was approved in error. The Director found that the Beneficiary's claimed employment was inconsistent with a nonimmigrant visa application she submitted in May 2013. In her prior nonimmigrant visa application, the Beneficiary listed her present occupation as "student," and answered "No" when asked whether she was previously employed.

The Director noted additional inconsistencies regarding the Beneficiary's claimed employment that were raised during the Beneficiary's interview at a USCIS field office. In that interview, the Beneficiary provided two inconsistent statements:

1. She worked for [redacted] Monday through Friday, 7:30 a.m.-4:00 p.m., from 2011 to May 2013.
2. She was a full-time student from October 2012 until June 2013, while working for [redacted] Monday through Thursday, 2:00 p.m.-5:00 p.m., during that time.

Noting that the letter from [redacted]. did not state that her employment was full-time, the Director found that the Beneficiary could not have accumulated a full 24 months of experience with [redacted] as she could not have been employed full-time while also attending school during the same period.

In response to the NOIR, the Petitioner submitted a statement from the Beneficiary clarifying her employment and work schedule. The Beneficiary asserts that both her employer and her university allowed her flexibility in setting her hours. She asserts that she continued to work 40 hours per week while attending school full-time, as she was able to alter her schedule as needed and work make-up hours in the evening and on weekends. The Beneficiary also states that [redacted] is no longer in business and she was unable to obtain an additional letter verifying her experience.

The Director concluded that the Petitioner did not submit independent objective evidence to resolve the inconsistencies and verify the Beneficiary's qualifying employment, and revoked the petition's approval.

On appeal, the Petitioner submits a letter from the Beneficiary's former supervisor at [redacted] attesting to her full-time employment from May 2011 to June 2013 and flexibilities in her schedule while she attended school. The Petitioner also submits a second statement from the Beneficiary explaining her emotional state during her USCIS interview due to the recent birth of her child.

The Director issued the NOIR for good and sufficient cause. The prior employment information and claim to have been a student on the Beneficiary's prior nonimmigrant visa application contradicts the employment listed on the labor certification and in the experience letter. The Beneficiary's statements during her USCIS interview present additional discrepancies regarding the full-time nature of her employment. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* Thus, the record lacked sufficient reliable evidence of the Beneficiary's qualifying experience for the offered position or the requested visa classification.

On appeal, the Petitioner's counsel states that "the record is replete with evidence that the Beneficiary did in fact work full time and attended school at the same time," but this evidence was "intentionally ignored." We disagree.

In adjudicating immigration benefit requests, USCIS regularly reviews affidavits, testimonials, and letters from both laypersons and recognized experts. To be probative, a document must generally provide: (1) the nature of the affiant's relationship, if any, to the affected party; (2) the basis of the

affiant's knowledge; and (3) a specific - rather than merely conclusory - statement of the asserted facts based on the affiant's personal knowledge. *Matter of Chin*, 14 I&N Dec. 150, 152 (BIA 1972); *see also* 8 C.F.R. § 103.2(b)(2)(i) (requiring affidavits in lieu of unavailable required evidence from "persons who are not parties to the petition who have direct personal knowledge of the event and circumstances"); *Matter of Kwan*, 14 I&N Dec. 175, 176-77 (BIA 1972); *Iyamba v. INS*, 244 F.3d 606, 608 (8th Cir. 2001); *Dabaase v. INS*, 627 F.2d 117, 119 (8th Cir. 1980). A petitioner may submit a letter or affidavit that contains hearsay or biased information, but such factors will affect the weight to be accorded the evidence in an administrative proceeding. *See Matter of D-R-*, 25 I&N Dec. 445, 461 (BIA 2011) (citations omitted). Probative evidence beyond a letter or affidavit may be considered when submitted to resolve inconsistencies or discrepancies in the record. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Ultimately, to determine whether a petitioner has established eligibility for a requested benefit by a preponderance of the evidence, USCIS must examine each piece of evidence - both individually and within the context of the entire record - for relevance, probative value, and credibility. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Here, the Petitioner relies only on testimonial evidence from her former employer to establish the Beneficiary's claimed employment experience, without providing independent, objective evidence in support of this testimony. Based on inconsistencies in the Beneficiary's interview statements, and conflicting information from her nonimmigrant application, further independent evidence is required. The record does not include the Beneficiary's income tax or payroll records to corroborate her claimed employment, or school records documenting her claimed class hours during the period in question. Nor does the Petitioner assert that these records are unavailable for any reason. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012).

As the inconsistencies in the record have not been resolved, the Petitioner has not established with independent, objective evidence that the Beneficiary possesses the required 24 months of experience in the offered position, as required by the labor certification. The Director properly revoked the approval of the petition on this basis.

ORDER: The appeal is dismissed.