U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-G-, INC.

DATE: SEPT. 28, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a restaurant/bakery, seeks to employ the Beneficiary as bread maker. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. *See* 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 (Form I-140, Immigrant Petition for Alien Worker) was initially approved. However, the Director of the Nebraska Service Center subsequently revoked the approval, and invalidated the underlying labor certification (ETA Form 9089, Application for Permanent Employment Certification), based on findings that fraudulent statements were made to obtain the labor certification and that the Beneficiary was not performing the duties of the proffered position.

On appeal the Petitioner asserts that no fraud or misrepresentation occurred in the labor certification process and requests that the revocation decision be withdrawn and the original approval reinstated.

Upon *de novo* review, we will sustain the appeal.

An employment-based immigrant petition for skilled worker classification, like this petition, must be accompanied by a valid labor certification. *See* 8 C.F.R. § 204.5(l)(3)(i). A labor certification may be invalidated by the Department of Homeland Security (DHS) based on a finding by DHS of fraud or willful misrepresentation of a material fact involving the labor certification application. *See* 20 C.F.R. § 656.30(d). Lack of a valid labor certification is grounds for denying, or revoking the previous approval of, an employment-based immigrant petition.

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 U.S. Citizenship and Immigration Services (USCIS) officer 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. 8 C.F.R. § 205.2(b) and (c).

In this case, four years after approving the petition, the Director issued a notice of intent to revoke (NOIR) the approval following a site visit by USCIS. According to the Director, the site visit appeared to show that the specific skills listed in section H.14 of the labor certification were not required to perform the job of bread maker and raised the question of whether "fraudulent statements" were made to obtain the labor certification. After receiving the Petitioner's response to the NOIR, the Director issued a decision in which he found that "the beneficiary does not actually perform the duties outlined" in the labor certification. On this ground, the Director invalidated the labor certification and revoked the approval of the petition.

On appeal the Petitioner asserts that the Director's decision was improper because it does not state how the Petitioner committed fraud or willfully misrepresented a material fact. We agree with the Petitioner that the Director's decision did not explain how fraud or willful misrepresentation of a material fact was committed by the Petitioner. In fact, after briefly referring to "fraudulent statements" allegedly made on the labor certification which led to the issuance of the NOIR, the Director made no specific finding of fraud or willful misrepresentation of a material fact in the revocation decision.

We find that the Director's invalidation of the labor certification was improper because it was not based on a finding that the Petitioner committed fraud or willfully misrepresented a material fact in the labor certification process, as required by 20 C.F.R. § 656.30(d). Since the labor certification was not properly invalidated, the legal basis for the revocation decision – lack of a valid labor certification accompanying the petition, as required by 8 C.F.R. § 204.5(l)(3)(i) – was also improper. We conclude, therefore, that there was no "good and sufficient cause" to revoke the approval of the petition, as required by section 205 of the Act.

For the reasons discussed above, we will withdraw the Director's decision. We will sustain the appeal, reinstate the labor certification, and reinstate the approval of the petition.

ORDER: The appeal is sustained.

FURTHER ORDER: The ETA Form 9089, case number [redacted] is reinstated.

Cite as *Matter of M-G-, Inc.*, ID# 832333 (AAO Sept. 28, 2017)