U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6344091

Date: SEP. 29, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Professional

Before going out of business, the Petitioner, a shoe store operator, sought to employ the Beneficiary as a network administrator. The company requested his classification under the third-preference, immigrant visa category for professionals. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii).

After first granting the filing, the Director of the Texas Service Center revoked the petition's approval. The Beneficiary appealed, and we withdrew the Director's decision. We remanded the matter for a determination of the Beneficiary's eligibility to appeal under *Matter of V-S-G- Inc.*, Adopted Decision 2017-06 (AAO Nov. 11, 2017).[1] *Matter of S-T-USAB-R-, Inc.*, ID# 329356 (AAO Jan. 31, 2018).

On remand, the Director found the Beneficiary eligible to participate in the proceedings, informed him of the proposed revocation grounds, and again revoked the petition's approval. The Director concluded that the Beneficiary didn't establish his possession of the minimum educational requirements of the offered position and the requested immigrant visa category.

The matter is before us again on the Beneficiary's appeal.[2] As the appellant in revocation proceedings, the Beneficiary bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988) (discussing the burden of proof); *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). Upon *de novo* review, we will dismiss the appeal.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as a professional generally follows a three-step process. First, a prospective employer must apply to the U.S. Department of Labor (DOL) for certification that: (1) there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and (2) the employment of a

[1] *V-S-G-* requires U.S. Citizenship and Immigration Services (USCIS) to treat beneficiaries in revocation proceedings as affected parties if they qualify to "port" to new jobs under section 204(j) of the Act, 8 U.S.C. § 1154(j), and properly requested to do so. *Matter of V-S-G-*, Adopted Decision 2017-06 at *14.

[2] Contrary to our prior appellate order, the Director didn't certify his most recent adverse decision to us. Also, while this appeal was pending, the Director dismissed the Beneficiary's motions to reopen and reconsider the revocation decision. *See* 8 C.F.R. § 103.5(2), (3). The motion decisions are not before us on review.

noncitizen in the position would not harm wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5).

Second, an employer must submit an approved labor certification with an immigrant visa petition to USCIS. *See* section 204 of the Act. Among other things, USCIS determines whether a noncitizen beneficiary meets the requirements of a certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l).

Finally, if USCIS approves a petition, a designated noncitizen may 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.

"[A]t any time" before a beneficiary obtains lawful permanent residence, however, USCIS may revoke a petition's approval for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. If supported by a record, the erroneous nature of a petition's approval justifies its revocation. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

USCIS may issue a NOIR if the unexplained and unrebutted record would have warranted a petition's denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). The Agency properly revokes a petition's approval if a party's NOIR response does not rebut the stated revocation grounds. *Id.* at 451-52.

II. THE EDUCATIONAL REQUIREMENTS

To qualify as a professional, a beneficiary must hold "at least a United States baccalaureate degree or a foreign equivalent degree." 8 C.F.R. § 204.5(l)(3)(2) (defining the term "professional"). A beneficiary with the equivalent of a baccalaureate based solely on employment experience, or a combination of education and experience or of lesser educational credentials, doesn't qualify for the classification. *See* Final Rule for Employment-Based Immigrant Petitions, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (stating that "both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification . . ., *an alien must have at least a bachelor's degree*") (emphasis added).

A beneficiary must also meet all DOL-certified job requirements of an offered position by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977).[3] In evaluating a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine a position's minimum requirements. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

The accompanying labor certification states the minimum requirements of the offered position of network administrator as a U.S. bachelor's degree, or a foreign equivalent degree, in computer science

[3] This petition's priority date is July 5, 2006, the date DOL accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

and two years of experience in the job offered. The labor certification states that the Petitioner will not accept a degree in an alternate field of study or experience in an alternate occupation.

On the labor certification, the Beneficiary attested that, by the petition's priority date, he earned the equivalent of a U.S. bachelor's degree in computer science from a Pakistani institute affiliated with a university in the country. The Petitioner submitted copies of the Beneficiary's diploma and transcript from the institute that issued his master's degree. *See* 8 C.F.R. § 204.5(l)(3)(ii)(C) (requiring a petition for a professional to include "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study"). The record also contains three independent professional evaluations of the Beneficiary's foreign educational credentials, concluding that his master's degree equates to a U.S. bachelor's degree in computer science.

The Director's most recent NOIR, however, cites information from the Pakistani government that casts doubt on the validity of the Beneficiary's master's degree. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (allowing the immigration service to reject or afford lesser evidentiary weight to expert testimony that conflicts with other evidence or "is in any way questionable").[4] The NOIR notes that an online list of recognized universities from the Higher Education Commission (HEC), the government body that establishes and monitors degree-granting institutions in Pakistan, omits the institute that issued the Beneficiary's master's degree. *See* HEC, "Recognised Universities," https://www.hec.gov.pk/english/ universities/pages/recognised.aspx (last visited Sep. 7, 2021). The NOIR also notes that the HEC's online list of "illegal and fake" schools contained an institute of the same name and city as the school that issued the Beneficiary's master's degree. *See* HEC, "Illegal/Fake Universities & Campuses," https://www.hec.gov.pk/english/universities/pages/ajk/ illegal-dais.aspx (last visited Sep. 7, 2021). The online information casts doubt on the institute's authority to issue the Beneficiary's master's degree and the diploma's authenticity. The unexplained and unrebutted record at the time of the NOIR's issuance therefore would have warranted the petition's denial.

On appeal, the Beneficiary notes that neither the Act nor Department of Homeland Security regulations require issuance of foreign degrees by "accredited" schools. But Congress clearly intended professionals to have authentic degrees validly issued by authorized institutions. *See* section 204(b) of the Act (requiring USCIS to determine "that the facts stated in the petition are true"). The NOIR's allegations cast doubt on the validity and authenticity of the Beneficiary's foreign degree. The Director therefore issued the notice for "good and sufficient cause."

The Beneficiary, however, has rebutted the NOIR's allegations. The record contains a July 2016 letter from a university administrative officer, certifying the school's prior affiliation with the institute that issued the Beneficiary's master's degree in 1993. The letter states that, because of the institute's affiliation with the accredited university, the institute "did not require separate accreditation from HEC" to issue the Beneficiary's degree. A July 2016 letter from a regional deputy director of the HEC also states that "if an institute/college is affiliated with the University . . . and operating in

[4] The Director's initial NOIR, which the Petitioner received and responded to, alleged that the company didn't demonstrate its required ability to pay the proffered wage or its intent to employ the Beneficiary in the offered position. The most recent NOIR, which only the Beneficiary received, alleges that the record didn't establish his educational qualifications for the offered position and requested immigrant visa category, and that he and the Petitioner misrepresented his educational credentials in the petition and on the accompanying labor certification application.

province it needs to implement HEC affiliation criteria but it does not require a separate Accreditation from HEC." The letters constitute objective, independent evidence of the institute's authorization to issue the Beneficiary's master's degree.

The Beneficiary also submitted a February 2019 letter from another university administrative officer. This letter states that the institute he attended changed its name after the 2004-05 academic year and closed about six years later. The letter states that the institute on the HEC's list of illegal/fake schools bears the original name of the institute that issued the Beneficiary's degree. But the letter states that the institute on the list didn't produce the Beneficiary's degree, as that school opened after the closing of the institute the Beneficiary attended. This university letter constitutes independent, objective evidence that HEC's list of illegal/fake institutions didn't include the institute that issued the Beneficiary's master's degree.

The Director found the February 2019, university letter unreliable because the name of its signatory didn't appear on the school's online list of staff members. The Beneficiary, however, submits evidence that the online staffing list now includes the signatory. A preponderance of evidence therefore establishes the letter's reliability.

The Director also found that the university's website listed the name and title of the signatory of the school's prior letter differently than on the document. The Director received the prior letter in response to his first NOIR, which he issued only to the Petitioner. But the copy of the NOIR that the Beneficiary received didn't question the name or title of the letter's signatory. A revocation can only be grounded on, and an affected party need only respond to, a NOIR's factual allegations. *Matter of Arias*, 19 I&N Dec. 568, 570 (BIA 1988). The Director therefore improperly based the revocation on the alleged inconsistencies in the university's prior letter. In any event, the Beneficiary submits evidence that, at the time the Director viewed the university website, the signatory held a different position at the school than indicated in the letter and that translation variations accounted for different spellings of the signatory's name. Thus, a preponderance of evidence demonstrates the validity of the university letters submitted by the Beneficiary. The record therefore establishes that, by the petition's priority date, the Pakistani institute validly issued the Beneficiary the foreign equivalent of a U.S. bachelor's degree in computer science.

Contrary to the Director's decision, the record establishes the Beneficiary's educational qualifications for the requested immigrant visa classification and the offered position. We will therefore withdraw the petition's revocation on this ground.

III. THE EXPERIENCE REQUIREMENTS

The appeal overcomes the revocation ground. But, as our notice of intent to dismiss (NOID) the appeal informed the Beneficiary, the record indicates the petition's erroneous approval.[5] Specifically, the Beneficiary hasn't demonstrated that he gained the minimum employment experience required for the offered position.

[5] We may revoke a petition's approval on grounds omitted from a NOIR if we notify the affected party of the grounds and afford it a reasonable opportunity to respond. *Patel v. Johnson*, 2 F.Supp.3d 108, 127 (D. Mass. 2014).

Recall that a party must demonstrate a beneficiary's possession of all DOL-certified job requirements of an offered position by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. at 160. The labor certification states that, besides a bachelor's degree in computer science, the offered position of network administrator requires two years of experience "in the job offered."

On the labor certification, the Beneficiary attested that, by the petition's priority date of July 5, 2006, he gained more than 11 years of full-time, qualifying experience. He stated the following employment history:

- About one year, nine months as a network administrator and programmer analyst for a U.S. shoe store with the same address as the Petitioner, from October 2004 to July 2006;
- About one year, three months as a network administrator for a U.S. computer services company, from July 2003 to October 2004;
- About four years, five months as a manager of information technology for a Pakistani computer services company, from February 1999 to June 2003; and
- About three years, 10 months as a network administrator for the same Pakistani company, from April 1995 to February 1999.

The Beneficiary's NOID response states that he doesn't rely on his claimed experience with the U.S. shoe store. The response, however, contains evidence of his purported employment by the U.S. computer services company from July 2003 to October 2004. Copies of a February 2003 employment agreement, a March 2003 letter from the company's managing director to a U.S. consulate in Pakistan, and a company job description indicate the company's intent to employ the Beneficiary as a "network & systems analyst." The record also contains copies of paystubs and the Beneficiary's U.S. federal income tax returns for 2003 and 2004, indicating the company's employment of him from August 2003 to September 2004.

The employment agreement and company letter are dated before the Beneficiary's purported start date of employment and therefore don't confirm his work for the company during the claimed period. The payroll and tax records appear to document the company's full-time, employment of the Beneficiary from August 2003 to September 2004. But all the "YTD" (year to date) salary amounts on the Beneficiary's payroll records from May 16, 2004 through September 15, 2004, state $13,846.20. The records for this period show his receipt of wages but omit the wages from his YTD amounts. The static YTD amounts cast doubt on the Beneficiary's receipt of payments during the period and the authenticity of the payroll records. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies). The Petitioner therefore has not demonstrated the Beneficiary's claimed qualifying experience from July 2003 to October 2004.

To support the Beneficiary's claimed experience abroad, the Petitioner submitted a letter from the managing director of the computer services company in Pakistan. The letter states the company's employment of the Beneficiary as a senior network administrator from April 1993 to February 1999 and as a manager of information technology from February 1999 to January 2002.

Because the company letter is dated in January 2002, it documents the Beneficiary's employment only until that date. But the start date of employment in the letter also doesn't match the date listed on the

labor certification. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record). In addition, contrary to 8 C.F.R. § 204.5(l)(3)(ii)(A), the letter does not describe the Beneficiary's experience.

The Beneficiary contends that he began working for the Pakistani computer services company in April 1993. He asserts that the April 1995 start date in the company's letter is a typographical error that was continued onto the labor certification application. The record, however, lacks evidence from the Pakistani company or the Petitioner explaining how the purported error occurred, and independent, objective evidence of the Beneficiary's claimed employment by the Pakistani company from April 1993 to April 1995. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies with independent, objective evidence).

The Beneficiary also asserts that the letter from the Pakistani company describes his experience. He states that an attachment to the letter contains a detailed description of his positions with the company. The letter's attachment, however, appears to be a copy of the Beneficiary's resume. Resumes don't generally demonstrate qualifying experience because corresponding beneficiaries usually prepared them, and they therefore usually constitute biased, unreliable evidence. Moreover, "employers" must describe a beneficiary's experience. 8 C.F.R. § 204.5(l)(3)(ii)(A). The record doesn't establish who prepared the letter's attachment. The Beneficiary's NOID response twice describes the attachment as "*prepared by the petitioning company*" (emphasis in original), which we assume means by the Petitioner. Later, however, the NOID response states that both the letter and attachment were "*prepared by the company*" (emphasis in original), which appears to mean by the Pakistani company. Because the record doesn't establish the attachment's preparation by the Beneficiary's claimed, former employer, the attachment doesn't meet regulatory requirements and doesn't reliably demonstrate the Beneficiary's claimed foreign qualifying experience.

For the foregoing reasons, the record doesn't demonstrate the Beneficiary's possession of the minimum experience required for the offered position. We will therefore affirm the petition's denial.

IV. CONCLUSION

The Beneficiary has established his educational qualifications for the offered position and the requested immigrant visa category. But he hasn't demonstrated his possession of the minimum employment experience required for the position.

ORDER: The appeal is dismissed.