U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18984607

Date: SEPT. 30, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Other Worker

The Petitioner seeks to employ the Beneficiary as a dental laboratory technician. It requests classification of the Beneficiary as an unskilled worker under the third preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). 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 less than two years of training or experience.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that it made a *bona fide* job offer to the Beneficiary. The Director also entered a finding of willful misrepresentation of material fact against the Petitioner.[1] The matter is now before us on appeal.

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 withdraw the Director's decision and remand the matter to the Director for the entry of a new decision.

I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL).[2] *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See id*. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS) with the certified labor certification. *See* section 204 of the Act, 8 U.S.C. § 1154. Third, upon approval of the petition, a foreign national may

[1] The Director formally entered a finding of willful misrepresentation of material fact against the Petitioner, but his decision also references the Beneficiary's willful misrepresentation of a material fact. If a finding of willful misrepresentation of material fact was entered against the Beneficiary, we will withdraw it.

[2] The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is August 23, 2019. *See* 8 C.F.R. § 204.5(d).

apply for an immigrant visa abroad, or if eligible, adjust status in the United States to lawful permanent resident. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

On appeal, upon review of the entire record, we conclude that the Petitioner has established by a preponderance of the evidence that it made a *bona fide* job offer to the Beneficiary. Thus, the Director erred in denying the petition and entering a finding of willful misrepresentation of material fact against the Petitioner. We will therefore withdraw the Director's decision and finding of willful misrepresentation of material fact against the Petitioner. We will also withdraw any finding of willful misrepresentation of material fact entered against the Beneficiary involving the labor certification.

Although the Director's decision is withdrawn, we cannot affirmatively conclude that the Petitioner has established eligibility for the benefit sought. Unless accompanied by an application for Schedule A designation or documentation of a beneficiary's qualifications for a shortage occupation, a petition for an unskilled worker must include an original, valid labor certification. 8 C.F.R. § 204.5(l)(3)(i). If an original labor certification was lost or destroyed, a petitioner may ask USCIS to request a duplicate copy from DOL. *See* 6 *USCIS Policy Manual* E.6(C), https://www.uscis.gov/policymanual. DOL will issue a duplicate labor certification only to the USCIS officer who requested it. *Id.*; *see also* 20 C.F.R. § 656.30(e)(l).

Here, the petition does not contain an original labor certification,[3] and the record does not contain a duplicate copy of the labor certification from DOL. It does not appear that the Petitioner asked USCIS to request one. Thus, we cannot affirmatively find that the petition is accompanied by the required labor certification. *See* 8 C.F.R. § 204.5(l)(3)(i). We will therefore remand the matter to the Director for further review.

III. CONCLUSION

In conclusion, we withdraw the Director's decision on the issue of *bona fide* job offer, and we remand the matter to the Director for further review. Additionally, we withdraw the Director's finding of willful misrepresentation of material fact against the Petitioner and Beneficiary involving the labor certification application.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[3] The record contains a photocopy of the labor certification.