U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20644034

Date: JUL. 14, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for a Professional

The Petitioner, a shoe store operator which went out of business after filing the petition, 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).

The Director of the Texas Service Center initially approved the petition, but subsequently revoked the approval. Upon appeal by the Beneficiary, we withdrew the Director's decision and remanded 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]

In his decision on remand, the Director found that the Beneficiary was eligible to participate in these proceedings, informed him of the revocation grounds, and once more revoked the approval of the petition, concluding that he did not establish that he possessed the minimum educational requirements for the offered position and the requested immigrant visa classification. The Beneficiary appealed this decision, and we withdrew the revocation on these grounds. However, after providing notice and an opportunity to respond, we concluded that he had not established that he had gained the minimum employment experience required for the offered position and dismissed the appeal. The Beneficiary now offers new arguments and submits new evidence with combined motions to reopen and reconsider.

As the appellant in these proceedings, it is the Beneficiary's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss both motions.

I. LAW

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

[1] V-S-G- requires 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.

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.

A motion to reconsider is based on an incorrect application of law or policy to the prior decision, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

As noted above, the sole ground for dismissal identified in our most recent appeal decision, and addressed in the motions, is that the Beneficiary did not possess the required two years of experience in the offered job of network administrator by the priority date of the petition, which is July 5, 2006.

In support of claimed qualifying experience, a petitioner must submit a letter from a beneficiary's former employer. 8 C.F.R. § 204.5(l)(3)(ii)(A). The letter must state the employer's name, title, and address, and "a description of . . . the experience of the alien." *Id.* If such a letter is unavailable, USCIS will consider other evidence of a beneficiary's experience. 8 C.F.R. § 204.5(g)(1).

Here, the minimum requirements for the offered position of network administrator, as stated on the labor certification which accompanied the petition, are a U.S. bachelor's degree, or foreign equivalent degree, in computer science and two years of experience in the job offered. As noted above, we concluded on appeal that the record established that the Beneficiary meets the minimum educational requirement for both the offered position and requested immigrant visa classification. On motion, he asserts that he also meets the work experience requirements.

A. Motion to Reconsider

The Beneficiary listed the following employment history on the labor certification:

- Approximately one year and 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;
- Approximately one year and three months as a network administrator for a U.S. computer services company, from July 2003 to October 2004;

- Approximately four years and five months as a manager of information technology for a Pakistani computer services company, from February 1999 to June 2003; and
- Approximately three years and ten months as a network administrator for the same Pakistani computer services company, from April 1995 to February 1999.

Regarding the most recent of these experiences, the Beneficiary asserts on motion that we "concede that [the Beneficiary] has shown 18 months of qualifying experience from January 2005 July 2006." This assertion is incorrect. In our notice of intent to dismiss (NOID), we stated that although an employment letter from the U.S. shoe store could potentially serve as evidence of qualifying experience from January 2005 to July 2006, as that period preceded the priority date, the letter indicated that the Beneficiary worked for that company as well as two affiliated companies during this period, one of which was the Petitioner. The regulation at 20 C.F.R. § 656.17(i)(3) states that a beneficiary's experience gained with a petitioning employer is not considered as qualifying experience unless that experience was gained in a position not substantially comparable to the offered position, or the employer can demonstrate that it is no longer feasible to train a worker to qualify for the position. Because the Beneficiary has not submitted documentary evidence which demonstrates that either of the requirements under 20 C.F.R. § 656.17(i)(3) have been met, his experience with the U.S. shoe store and the Petitioner during this period will not be considered as qualifying for the offered position.

The Beneficiary also refers to evidence previously submitted in response to our NOID when discussing his experience with the U.S. computer services company from July 2003 to October 2004. This includes a letter from the employer to a U.S. consulate in support of its nonimmigrant petition on his behalf, as well as an employment agreement, job description, copies of paystubs, and copies of the Beneficiary's 2003 and 2004 tax returns. As we noted in our last decision, the letters are dated before the beginning of the claimed period of employment, and thus do not serve to verify the employment. The Beneficiary concedes that it has not submitted an employment experience letter in compliance with 8 C.F.R. § 204.5(l)(3)(ii)(A) from this claimed employer.

In addition, we mentioned in our previous decision that the paystubs from this employer for the payment periods in May through September 2004 reflected static year-to-date (YTD) figures, and concluded that these discrepancies undermined the authenticity of these documents. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies). On motion, the Beneficiary does not offer additional documentary evidence or an explanation of these discrepancies, but instead refers to his 2003 and 2004 tax returns as evidence of his employment during this period, noting that the figures in these returns match those from the submitted paystubs.

We first note that the tax returns for both years are dated November 21, 2010. Like a delayed birth certificate, the tax returns signed years after they were due to be filed with IRS raise serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991) (discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings). In addition, both returns indicate that the income and tax withholding figures from the Beneficiary's claimed employment with the U.S. computer services company are based not upon Forms W-2 from this employer, but on the paystubs discussed

above.[2] As the Beneficiary has not offered an explanation or provided documentary evidence which overcomes the inconsistencies noted with the paystubs, the self-reported data on these forms is no more reliable than the paystubs themselves. In addition, the record does not include evidence that the Beneficiary's 2003 Form 1040 and 2004 Form 1040X were submitted to the IRS, or that they were received and accepted. Assertions made without supporting documentation are of limited probative value and do not carry the weight to satisfy the Beneficiary's burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998). The Beneficiary did not submit IRS-certified copies or transcripts of these returns to establish that they were actually received and processed by the IRS.

After review, the Beneficiary has not established that our previous decision regarding the evidence of his employment with these two employers was based on an incorrect application of law or policy or was incorrect based on the evidence of record at the time of the decision.

B. Motion to Reopen

In our most recent decision, we concluded that the Beneficiary had not submitted sufficient documentary evidence to overcome the discrepancies regarding the start date of his employment with the Pakistani computer services company. Further, the employment experience letter from this employer did not provide a description of his duties as required under 8 C.F.R. § 204.5(l)(3)(ii)(A), and the Beneficiary had not overcome discrepancies in his own description of the source of a supposed attached document which appears to be his resume.[3]

On motion, the Beneficiary submits two new notarized statements, both dated October 2021, from individuals stating that they worked with him at this company. We note that the statements were written at least 20 years after the events they purport to describe.

The first individual states that he worked as a data processor and data analyst with the company from 1994 to 2001, and that when he joined the company the Beneficiary was already working there. He further states that they had similar duties while working for the company and would discuss their work on a regular basis. In addition, he describes the Beneficiary's duties as a network administrator with the company using nearly identical language to that included in the resume document. The use of identical language and phrasing, particularly when describing the Beneficiary's duties after such a long period, suggests that the language in the statement is not the authors' own. *See Surinder Singh v. BIA*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an adverse credibility determination in asylum proceedings based in part on the similarity of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an Immigration Judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). Because this document appears to have been drafted by someone other than the purported authors, it possesses little credibility or probative value. In evaluating the evidence, the truth is to be

[2] Both returns include IRS Form 4852, used as a substitute for Form W-2, in which the Beneficiary explains that he was unable to contact the company to receive the W-2s and that the figures are based upon the pay stubs. We also note that the form used in 2004 is Form 1040X, used to file an amended return.

[3] The Beneficiary asserts on motion that the Pakistani computer services company prepared this document in addition to the employment letter. As pointed out in our most recent decision, the Beneficiary's response to our NOID initially indicated twice that the document was "prepared by the petitioning company," but later states that it was "prepared by the company," and is therefore inconsistent. We further note that the employment letter makes no reference to an attachment.

determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376.

The second statement was written by a former marketing manager who worked for the Pakistani computer services company from 1992 to 1999 and states that he recalls the Beneficiary joining the company in 1993. This individual describes the Beneficiary's duties in broader terms, but does not claim to have supervised or worked directly with him on network or other computer-related duties. He also verifies that the writer of the first statement was employed in the IT department of the Pakistani computer services company from at least 1994 to 1999, when he left the company.

When these notarized statements are considered together with the previously submitted evidence relating to the Beneficiary's employment experience with this company, the inconsistency concerning the dates of his employment and the lack of independent evidence of the nature of his duties remain. Specifically, whereas the resume document and the labor certification signed by the Beneficiary indicate that he began working for this company in April 1995, the employment letter and statements indicate that he began employment in April 1993. As such, the new evidence submitted on motion does is insufficient to show that the Beneficiary gained the qualifying experience of two years as a network administrator with this company.

III. CONCLUSION

The Beneficiary has not demonstrated that our previous decision was based upon an incorrect application of law or policy, or was incorrect based on the record at the time of that decision. In addition, the new evidence submitted on motion does not establish that he gained the requisite qualifying work experience prior to the priority date.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.