U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 80926

Date: MAR. 28, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner, a liquor store operator, seeks to employ the Beneficiary as a bookkeeper under the third-preference, immigrant visa category for skilled workers. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i).

After the filing's initial grant, the Director of the Texas Service Center revoked the petition's approval. The Director concluded that the Petitioner did not demonstrate the *bona fides* of its job offer or the Beneficiary's possession of the minimum employment experience required for the offered position and the requested immigrant visa category. The Director also found that the Beneficiary misrepresented his qualifying experience on the accompanying certification from the U.S. Department of Labor (DOL).

In these revocation proceedings, the Petitioner 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as a skilled worker generally follows a three-step process. First, a prospective employer must apply to DOL for certification that: (1) there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and (2) employment of a 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 U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS determines whether a noncitizen beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l).

Finally, if USCIS approves a petition, a noncitizen beneficiary 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. at 590.

USCIS properly issues a notice of intent to revoke (NOIR) a petition if the unexplained and unrebutted record at the time of the NOIR's issuance would have warranted the filing's denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). If a petitioner's NOIR response does not overcome stated revocation grounds, USCIS properly revokes a petition's approval. *Id.* at 451-52.

II. THE BONA FIDES OF THE JOB OFFER

A business may file an immigrant visa petition if the enterprise is "desiring and intending to employ [a noncitizen] within the United States." Section 204(a)(1)(F) of the Act. A petitioner must intend to employ a beneficiary under the terms and conditions of an accompanying labor certification. *See Matter of Izdebska*, 12 I&N Dec. 54, 55 (Reg'l Comm'r 1966) (affirming a petition's denial where, contrary to an accompanying labor certification, a petitioner did not intend to employ a beneficiary as a domestic worker on a full-time, live-in basis).

The Director's NOIR questions the Petitioner's need for the full-time, offered position of bookkeeper. The NOIR notes the Petitioner's stated operation of a liquor store and employment of three people. The NOIR states that "the petitioner ha[s] not indicated why a small business such as [it] would need a full-time bookkeeper at [its] location."

The Petitioner's stated number of employees casts doubt on the business's need for a full-time bookkeeper. But the size of the company's staff, alone, would not have warranted the petition's denial for an invalid job offer. The Director should have considered additional factors, such as the amount of the Petitioner's revenues and the complexity of its business and the proposed job duties.

The NOIR also notes the Beneficiary's associations with four other Massachusetts corporations. The NOIR suggests that the Beneficiary's other business activities would prevent him from working for the Petitioner on the offered, full-time basis.

The NOIR, however, does not describe the Beneficiary's other business activities sufficiently enough to establish that they would hinder his ability to work full-time in the offered position. Commonwealth records list the Beneficiary as a corporate officer or director of the other companies. *See* Sec'y of the Commonwealth of Mass., "Search for a business entity," https://corp.sec.state.ma.us/corpweb/CorpSearch/CorpSearch.aspx. Massachusetts corporations, however, need not employ their officers or directors. Rather, officers and directors need only meet the requirements stated in the corporations' respective articles of organization or bylaws. Mass. Gen. Laws ch. 156D § 8.02, 8.40. Thus, the Beneficiary's association with the other businesses in the commonwealth may not hamper his ability to work for the Petitioner full-time. Also, Form I-140 beneficiaries need not begin working in offered positions until they obtain lawful permanent residence. *See, e.g., Matter of Rajah*, 25 I&N Dec. 127,

132 (BIA 2009). Thus, without citing evidence of time spent working for other employers that raises inferences of continued future employment, the NOIR's reference to the Beneficiary's other business associations would not have warranted the petition's denial.

The NOIR also notes that copies of the Petitioner's federal income tax returns indicate their preparation by an independent accountant. As a result, the NOIR alleges that the company did not demonstrate its intent to employ the Beneficiary in the offered position of bookkeeper.

As certified by DOL, however, the job duties of the offered position do not include preparing the Petitioner's tax returns. Also, the labor certification does not state the Beneficiary's current employment in the offered position. Thus, an accountant's handling of the company's taxes does not negate its stated intent to employ the Beneficiary in the offered position. Moreover, as previously discussed, the Beneficiary need not begin working for the Petitioner in the position until he obtains lawful permanent residence. *See Matter of Rajah*, 25 I&N Dec. at 132. Therefore, even if the proposed job duties included preparing the Petitioner's taxes, the accountant's tax preparations would not substantially undermine the Petitioner's stated intent to employ the Beneficiary. *See Matter of Arias*, 19 I&N Dec. 568, 570 (BIA 1988) (holding that conclusory, speculative, equivocal, or irrelevant observations do not provide "good and sufficient cause" to issue a NOIR).

For the foregoing reasons, the NOIR's current allegations regarding the *bona fides* of the Petitioner's job offer would not have warranted the petition's denial. We will therefore withdraw the petition's revocation on this ground.

III. THE REQUIRED EXPERIENCE

A skilled worker must perform "skilled labor (requiring at least 2 years training or experience)." Section 203(b)(3)(A)(i) of the Act. A petitioner must also demonstrate a beneficiary's possession of all DOL-certified, job requirements of an offered position by a petition's priority date.[1] *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977).

In evaluating a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine a position's minimum job 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 bookkeeper as two years of experience in the job offered. The labor certification states that the position requires neither training nor education.

On the labor certification, the Beneficiary attested that, by the petition's priority date, he gained more than three years of full-time, qualifying experience. He stated that a metals company in India

[1] This petition's priority date is August 20, 2001, the date an office in DOL's employment service system 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).

employed him as a bookkeeper from June 6, 1994, to August 25, 1997. He claimed no other qualifying experience.

Consistent with 8 C.F.R. § 204.5(l)(3)(ii)(A), the Petitioner supported the Beneficiary's claimed experience with letters from the purported proprietor of the metals company. The letters - dated in 2000, 2001, and 2010 - state the company's employment of the Beneficiary during the claimed period and describe his experience.

The Director, however, did not credit the letters from the Beneficiary's purported former employer. Because the record contains discrepancies regarding the Beneficiary's identity, the Director found the letters insufficient to establish the Indian company's employment of the Beneficiary.

As the NOIR notes, the Beneficiary contends that he has used another identity. He claims that the Form I-140 petition, his applications for adjustment of status, and the letters from the Indian company list his true birth date and name, bearing the initials "D.P." The name of his other purported identity reflects the initials "M.K." The Beneficiary's two most recent applications for adjustment of status include copies of pages in an Indian passport, a business visitor visa, and a Form I-94 entry card bearing the M.K. name and birthdate. The Beneficiary's second adjustment application includes a 2005 affidavit from him, stating his last admission to the United States as a business visitor under the M.K. identity. With his third and most recent adjustment application, the Beneficiary submitted a 1995 affidavit, also stating that "both names are used for me."[2]

As the Director noted, the Petitioner has not explained all the discrepancies of record regarding the Beneficiary's identity. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring petitioners to resolve inconsistencies with independent, objective evidence pointing to where the truth lies). The Beneficiary claims his last admission to the United States as a business visitor in the M.K. name on July 29, 1997. But the record does not explain why the Form I-140 petition and the Beneficiary's first adjustment application state that he last entered the country *without admission* in *September* 1997. Also, contrary to U.S. immigration records, the copy of the visa under the M.K. identity states the document's issuance in [redacted] India, not [redacted] Brazil. The Petitioner has not explained the discrepancy in the visa's issuing post.

Additionally, a page in the passport in the D.P. name contains a U.S. admission stamp purportedly issued in [redacted] in April 1998. The stamp suggests that, contrary to the Beneficiary's claim, he last entered the United States as D.P. in 1998, not as M.K. in 1997. Further, the Beneficiary's 1995 affidavit indicates that he began using the M.K. identity by at least that year. Thus, the statement suggests that he assumed the alias before his arrival in the United States. The Petitioner has not specified when or explained why the Beneficiary purportedly began using the M.K. identity.

Despite these unresolved inconsistencies of record, the Director did not fully consider or notify the Petitioner of additional evidence regarding the Beneficiary's identity. Consistent with the passport, visa, and Form I-94 entry card in the name and birthdate of M.K., USCIS records show that immigration officers admitted an M.K. at [redacted] on July 29, 1997. The records do not indicate

[2] The Beneficiary withdrew his first adjustment application, which he filed in 2004. USCIS denied his second application, finding that he did not demonstrate eligibility for the requested benefit.

any other immigration activity by M.K. Thus, these records tend to support the Beneficiary's claimed last admission to the country as M.K. Also, consistent with the copy of the M.K. visa, U.S. immigration records indicate the document's issuance on June 4, 1997, and its validity for a single, U.S. entry through August 29, 1997. Thus, notwithstanding the discrepancy in the visa's listed post of issuance, the records suggest the document's original, valid issuance by U.S. authorities.

The Beneficiary also submitted copies of his purported birth and marriage certificates under the D.P. identity, his claimed true name and birthdate. As the Director noted, the birth certificate states its issuance in August 1997, more than 24 years after the Beneficiary's claimed date of birth. Thus, the certificate's delayed issuance casts doubt on the document's reliability. *See Matter of Serna*, 16 I&N Dec. 643, 645 (BIA 1978) (stating that "the opportunity for fraud is much greater with a delayed birth certificate"). But USCIS records show that, in 2018, Indian authorities found both the Beneficiary's birth certificate and his 1995 marriage certificate in the D.P. identity to be copies of authentic government documents. The birth and marriage certificates therefore support the Beneficiary's claimed, true identity. *See Matter of Rehman*, 27 I&N Dec. 124, 127 (BIA 2017) (requiring consideration of other evidence and circumstances when determining the reliability of delayed birth certificates).

The record also contains additional, derogatory information of which the NOIR did not fully inform the Petitioner. The Beneficiary claims his last entry into the United States as M.K. on *July 29, 1997.* This date, however, conflicts with the Beneficiary's claimed employment in India from June 6, 1994, through *August 25, 1997.* The discrepancy in the end date of the Beneficiary's claimed employment casts doubt on the accuracy of the letters from his purported former employer and his claimed, qualifying experience. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record). Also, U.S. government records identify the proprietor who signed the letters from the claimed, former employer as an older brother of the Beneficiary. The letters do not disclose this purported relationship, preventing proper consideration of the documents' evidentiary value. A petitioner may submit a letter or affidavit that contains biased information, but the partiality will affect the weight to be accorded the evidence. *See Matter of D-R-*, 25 I&N Dec. 445, 461 (BIA 2011) (citations omitted).

Additionally, in May 2011, the Beneficiary's purported son and the Beneficiary's purported brother - the signatory of the experience letters - provided sworn statements to U.S. officers in India regarding a visa application by the son, who was then 14 years old. Both the Beneficiary's purported brother and son identified the proprietor/signatory as the boy's uncle and the Beneficiary's brother. The Beneficiary's purported son also attested that, in 2008 and 2009, the proprietor gave him false documents with which to apply for U.S. visitor visas. The proprietor's apparent fraternal relationship to the Beneficiary and his purported, illicit visa help to the Beneficiary's son cast doubt on the objectivity and reliability of the experience letters he signed for the Beneficiary. *See Matter of Ho*, 19 I&N Dec. at 591 (stating that doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the sufficiency and reliability of the remaining evidence of record).[3]

[3] The Director noted that copies of Indian permanent account number cards ("PAN cards") of the Beneficiary and the signatory of the experience letters suggest a fraternal relationship between the men. The Director, however, did not allege that the letters were biased or unreliable. Additional evidence also casts doubt on the Beneficiary's reliability. USCIS records indicate that he and members of his family attempted to enter the United States in 1996 with false immigrant visas

The Director did not consider or notify the Petitioner of this additional evidence regarding the Beneficiary's identity. *See* 8 C.F.R. § 103.2(b)(16)(i). We will therefore withdraw the Director's decision regarding the Beneficiary's qualifying experience and his alleged misrepresentation of the experience on the accompanying labor certification.

We will remand the matter so the Director can issue an amended NOIR describing the additional, derogatory information and how it casts doubt on the Beneficiary's claimed, qualifying experience. The amended NOIR should also explain that the Petitioner must submit independent, objective evidence resolving the inconsistencies of record regarding the Beneficiary's identity and experience.

If supported by the record, the amended NOIR may allege any additional inconsistencies, evidence, or grounds of revocation. The Director, however, must afford the Petitioner a reasonable opportunity to respond to all issues raised on remand. Upon receipt of a timely response, the Director should review the entire record and enter a new decision.

V. CONCLUSION

The NOIR did not support the revocation of the petition's approval based on the *bona fides* of the job offer. The Director, however, did not consider or notify the Petitioner of additional evidence regarding the Beneficiary's identity and his claimed experience for the offered position and the requested immigrant visa category.

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

with which he claimed another brother had supplied them. Further, the Beneficiary's purported brother who operates the Indian company told U.S. officials in 2011 that the Beneficiary participated in schemes to obtain false U.S. visas for his son.