U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 04678977

Date: MAY 26, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for an Alien Worker

The Petitioner, a poultry processing business, seeks to employ the Beneficiary as a poultry trimmer. It requests classification of the Beneficiary as an "other worker" under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(B)(3)(A)(iii). This employment-based "EB-3" immigrant classification allows a U.S. employer to sponsor for lawful permanent residence a foreign national who is capable of performing unskilled labor that requires less than two years of training or experience and is not of a temporary or seasonal nature.

The petition was initially approved, but the Director of the Texas Service Center subsequently revoked the petition's approval.[1] The Director determined that the Petitioner failed to establish that a *bona fide* job opportunity existed which was clearly open to any U.S. worker, and that U.S. workers who applied for the job opportunity were rejected for lawful job-related reasons. The Director also determined that the Petitioner failed to establish that the job requirements stated on the labor certification represented its actual minimum requirements.

On appeal the Petitioner contests the Director's findings, submitting a brief and supporting documentation. The Petitioner requests that the approval of the petition be restored. Upon *de novo* review, we will sustain the appeal.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden is on the petitioner in visa petition proceedings to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of the evidence that the beneficiary is fully qualified for the benefit sought. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). To establish its eligibility for the immigration benefit it seeks under the preponderance of the evidence standard, the Petitioner must

[1] 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 USCIS officer who is 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. *See* 8 C.F.R. § 205.2(b) and (c).

submit sufficiently probative and credible evidence to establish that its claim is "more likely than not" or "probably" true. *See Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

Upon *de novo* review, we determine that the Petitioner has established, by a preponderance of the evidence, that the proffered position was a *bona fide* job opportunity open to U.S. workers. We also determine that the Petitioner has established, by a preponderance of the evidence, that the inconsistencies in the job requirements as stated in the labor certification and certain other documents not directly connected to the labor certification process are not substantial and do not support a finding that the job requirements stated on the labor certification misrepresented its actual minimum requirements. As the only two grounds for revocation have been overcome, we will withdraw the Director's decision and sustain the appeal.[2]

**ORDER**: The Director's decision is withdrawn. The appeal is sustained.

[2] We recognize that that the Director raised significant if somewhat speculative concerns. While not sufficiently developed for purposes of this visa petition, the Director is not barred from further inquiry, investigation, or the development of questions for consular processing or adjustment of status proceedings. *See Matter of O*, 8 I&N Dec. 295 (BIA 1959) (stating that the immigrant visa petition is not the appropriate stage of the process for questions regarding admissibility).