U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23069817

Date: NOV. 30, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner operates a gas station and seeks to permanently employ the Beneficiary as a bookkeeper. The company requests her classification in the third-preference, immigrant visa category as a "skilled worker." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i).

After first granting the filing, the Director of the Texas Service Center revoked the petition's approval. The Director concluded that:

- the Petitioner did not demonstrate the Beneficiary's qualifying employment experience for the offered position; and
- the accompanying certification from the U.S. Department of Labor (DOL) misrepresents the Beneficiary's experience.

On appeal, the Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we agree that the company has not demonstrated the Beneficiary's qualifying experience for the offered position and that evidence supports her willful misrepresentation of her experience on the labor certification. We will therefore dismiss the appeal.

I. LAW

Immigration as a skilled worker generally follows a three-step process. First, a prospective employer must obtain DOL certification that: there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and employment of a noncitizen in the position will 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(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). Among other things, USCIS determines whether a noncitizen beneficiary meets the

requirements of a DOL-certified position and a requested immigrant visa category. Section 204(b) of the Act.

Finally, if USCIS approves a petition, a 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.

At any time before a beneficiary obtains lawful permanent resident status, 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, a petition's erroneous approval justifies its revocation. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

USCIS properly issues a notice of intent to revoke (NOIR) a petition's approval if the unexplained and unrebutted record at the time of the NOIR's issuance would have warranted the petition's denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). If a petitioner does not submit a NOIR response or the response does not overcome the stated revocation grounds, USCIS properly revokes a petition's approval. *Id.* at 452.

II. ANALYSIS

A. The Beneficiary's Experience

A petitioner 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. 158, 160 (Acting Reg'l Comm'r 1977). This petition's priority date is October 13, 2017, the date DOL accepted the Petitioner's labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

In assessing a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine the minimum requirements of an offered position. USCIS may neither disregard a certification term nor impose unstated requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) ("DOL bears the burden of setting the *content* of the labor certification") (emphasis in original).

The Petitioner's labor certification states the minimum requirements of the offered position of bookkeeper as 24 months' (or two years') experience "in the job offered." The position's duties include: developing a system to account for financial transactions; defining bookkeeping policies and procedures; balancing the general ledger and reconciling entries; and maintaining historical records and accounts. The labor certification states that the position requires neither education nor training.

On the labor certification, the Beneficiary attested that, by the petition's priority date, she gained more than three years of qualifying experience in South Korea. She stated that a medical clinic employed her as a bookkeeper from October 2003 to January 2007. She did not list any other qualifying experience on the labor certification.

Consistent with 8 C.F.R. § 204.5(l)(3)(ii)(A), the Petitioner submitted a letter from the clinic operator as proof of the Beneficiary's experience. The letter states the clinic's employment of her as a bookkeeper during the period listed on the labor certification and describes her former job duties.

The Director's NOIR, however, notes inconsistent evidence regarding the Beneficiary's former job title and duties. Her 2016 application for a U.S. nonimmigrant visa states the clinic's employment of her not as a bookkeeper, but rather as a "nurse's aid" who provided "nursing service." The title and job duties on the visa application conflict with the experience requirements on the labor certification. The discrepancies cast doubt on the Beneficiary's claimed qualifying experience for the offered position. *See Matter of Ho*, 19 I&N Dec. at 591-92 (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies). Because of the inconsistencies, the evidence at the time of the NOIR's issuance would have warranted the petition's denial. *See Matter of Estime*, 19 I&N Dec. at 451. The Director therefore properly issued the NOIR. *Id.*

In the Petitioner's NOIR response, the Beneficiary admitted working at the clinic as a nurse's aid. But she said she also performed bookkeeping duties because the clinic otherwise lacked a bookkeeper. She said that, when her spouse applied for a visa to work at the U.S. subsidiary of his South Korean employer, he completed her application for a dependent visa, listing her occupation as a nurse's aid. The Beneficiary said her spouse mistakenly assumed the clinic's employment of her solely as a nurse's aid. She asserted that, after the petition's approval, U.S. consular officials in South Korea twice telephoned the clinic's operator, who purportedly confirmed her work as both a nurse's aid and bookkeeper. The Petitioner also submitted an affidavit from the clinic's operator, stating the Beneficiary's dual employment as a nurse's aid and bookkeeper, spending 35% of her time (or 14 out of 40 hours a week) on bookkeeping duties.[1]

In an application for adjustment of status, the Beneficiary submitted copies of South Korean pension and tax records demonstrating the clinic's employment of her from October 2003 to January 2007. But we agree with the Director that the Petitioner has not established the Beneficiary's required experience as a bookkeeper. While the Beneficiary claims that her spouse mistakenly omitted her bookkeeping title and duties from the visa application, the Petitioner did not submit a statement from the spouse confirming her claim or objective evidence of her performance of bookkeeping tasks at the clinic, such as contemporaneous business records. *See Matter of Ho*, 19 I&N Dec. at 591-92 (requiring a petitioner to resolve inconsistencies with independent, objective evidence). Similarly, the Beneficiary claims that the clinic twice confirmed her dual duties as a nurse's aid and bookkeeper to U.S. consular authorities. But neither the letter nor the affidavit from the clinic's operator mention the purported consular responses. *See Matter of Chawathe*, 25 I&N Dec. at 376 (requiring USCIS to "examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence").

Also, the clinic's affidavit, which states that the Beneficiary spent only 35% of her full-time work on bookkeeping duties, demonstrates that her qualifying experience would be part-time in nature. For

[1] The clinic's affidavit also states that the Beneficiary spent another 35% of her time "provid[ing] administrative and clerical support such as record keeping and budgeting to various departments on an as-needed basis." The Petitioner has not demonstrated that any of the Applicant's additional support duties involved bookkeeping. We therefore separate the additional support tasks from the Applicant's bookkeeping duties.

labor certification purposes, part-time experience equates to less than full-time experience, and, unless otherwise specified, labor certifications require full-time experience. *Matter of 1 Grand Express*, 2014-PER-00783, *4 (BALCA Jan. 26, 2018). In *1 Grand Express*, the Board of Alien Labor Certification Appeals (BALCA) found that a noncitizen's 29.5 months of *part-time* employment equated to only 18.4375 months of *full-time* employment, as his part-time, 25-hour work week equaled 62.5% (25 divided by 40) of a full-time, 40-hour work week. *Id.*

After the employer in *1 Grand Express* clarified its acceptance of 24 months of part-time experience, BALCA reversed the labor certification denial. *Id.* But, unlike in *1 Grand Express*, the Petitioner's labor certification indicates the Beneficiary's possession of full-time, "40"-hour-a-week qualifying experience, and the company has not indicated its acceptance of 24 months of part-time experience. We therefore assume the Petitioner's offered position requires 24 months of full-time experience. Thus, even if properly evidenced, the Beneficiary's part-time, 14-hour-a-week experience would equate to only 35% (14 divided by 40) of full-time experience. Her 39 months of part-time experience therefore would equal only 13.65 months of full-time experience (39 x 0.35), less than the required amount of 24.

Further, contrary to the labor certification's specifications, the Petitioner has not demonstrated the Beneficiary's experience "in the job offered." Experience in the job offered means experience performing the duties of an offered position, as listed on a labor certification. *See, e.g., Matter of Symbioun Techs., Inc.*, 2010-PER-01422, *4 (BALCA Oct. 24, 2011). The labor certification lists the duties of the Petitioner's offered position as:

> Develop system to account for financial transactions by establishing a chart of accounts; defining bookkeeping policies and procedures. Balance general ledger by preparing a trial balance; reconciling entries. Maintain historical records by filing documents. Maintain accounts by verifying, allocating, and posting transactions.

The Petitioner, however, has not demonstrated the Beneficiary's performance of all the listed duties at the clinic. The clinic's letter and affidavit state that she "completed regular accounts receivable and accounts payable duties, such as preparing financial reports, researching and reconciling discrepancies, and processing transactions." The evidence does not establish the Beneficiary's performance of various duties of the offered position, including: "develop[ing a] system to account for financial transactions by establishing a chart of accounts;" "defining bookkeeping policies and procedures;" "balanc[ing] general ledger by preparing a trial balance;" and "maintain[ing] historical records by filing documents."

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary's possession of the minimum experience required for the offered position. We will therefore affirm the petition's denial.

B. Misrepresentation

USCIS approves a filing, in part, if "the facts stated in the petition are true." Section 204(b) of the Act. A petition includes any supporting evidence - including a labor certification. 8 C.F.R. § 103.2(b)(1). Thus, USCIS cannot approve a petition if the facts stated on an accompanying labor certification are untrue.

Misrepresentations are willful if they are deliberate and voluntary. *Witter v. INS*, 113 F.3d 549, 554 (5th Cir. 1997). They are material if they have a natural tendency to influence an agency's decisions. *Id.* A noncitizen's signature on an immigration application establishes a strong presumption that they knew the filing's contents and assented to them. *Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018).

As discussed above, the Director found that the Petitioner's labor certification misrepresents the Beneficiary's claimed qualifying experience. The labor certification states the medical clinic's full-time employment of the Beneficiary as a bookkeeper from October 2003 to January 2007. The Beneficiary and the clinic's operator, however, now contend that, during that period, she performed the duties of both a bookkeeper and a nurse's aid.

The record is unclear whether the Director attributed misrepresentation on the labor certification to the Petitioner, the Beneficiary, or both. In various parts, the NOIR and the revocation decision indicate misstatements of the experience by the Petitioner and the Beneficiary. We will therefore separately consider the parties' responsibility for the misrepresentation.

1. The Petitioner

The record lacks sufficient evidence of the Petitioner's misrepresentation of the Beneficiary's experience. By signing the labor certification, the Petitioner's president declared under penalty of perjury that he read and reviewed the application and that its information is true and correct "to the best of my knowledge." But the record lacks evidence that the president knew of the Beneficiary's dual duties at the clinic. Insufficient evidence therefore supports the Petitioner's misrepresentation of the Beneficiary's experience. *See Tongatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F.2d 1305, 1308-09 (9th Cir. 1984) (requiring "some evidence" to support a petition's revocation).

2. The Beneficiary

Substantial evidence supports the Beneficiary's misrepresentation of her experience on the labor certification. The Beneficiary claims that her spouse inadvertently omitted her bookkeeping duties at the clinic from her nonimmigrant visa application. But, even if supported by sufficient evidence, her claim would not explain the omission of her nursing duties at the clinic from the labor certification application. The Beneficiary signed the labor certification application, attesting that the section listing her experience was true and correct. She does not claim that her spouse or anyone else completed the labor application for her. Thus, we must presume that she knew the application's contents and their misrepresentation of the nature of her experience. *See Matter of Valdez*, 27 I&N Dec. at 499.

Also, as discussed above, the nature of the Beneficiary's experience is material to her eligibility for the offered position. Because only 35% of her duties at the clinic involved bookkeeping, her qualifying experience for the offered position would be part-time in nature, insufficient to demonstrate the requisite amount of full-time experience. *See 1 Grand Express*, *supra*, at *4 (stating that part-time experience on a labor certification does not equate to full-time experience). Thus, substantial evidence supports the Beneficiary's willful misrepresentation of her qualifying experience on the labor

certification. We therefore also affirm the petition's denial based on the misrepresentation of the Beneficiary's experience. *See* section 204(b) of the Act.[2]

III. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's qualifications for the offered position, and substantial evidence supports her willful misrepresentation of her experience on the labor certification. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.

[2] Our misrepresentation finding could also lead to an inadmissibility determination against the Beneficiary. A noncitizen's willful misrepresentation of a material fact on an immigration filing renders them inadmissible to the United States. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). Petition proceedings, however, are not the appropriate forum for inadmissibility determinations. *Matter of O-*, 8 I&N Dec. 295, 297 (BIA 1959). USCIS or another federal agency would make an admissibility determination in later proceedings.