U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26558511

Date: AUG. 17, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Skilled Worker)

The Petitioner operates a liquor store and seeks to permanently employ the Beneficiary as a bookkeeper. The company requests his classification under 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). This category allows a prospective U.S. employer to sponsor a noncitizen for permanent residence to work in a job requiring at least two years of training or experience. *Id.*

U.S. Citizenship and Immigration Services (USCIS) initially approved the petition in 2004. But the Director of the Texas Service Center revoked the filing's grant in 2015. The Director concluded that the Petitioner did not demonstrate: the Beneficiary's qualifying employment experience for the offered position and the requested immigrant visa category; or the bona fides of the job offer. The Director also found that the Beneficiary willfully misrepresented his experience on the accompanying certification from the U.S. Department of Labor (DOL). On appeal, we withdrew the Director's decision and remanded the matter for consideration of additional evidence. *See In Re: 80926* (AAO Mar. 28, 2022).

On remand, the Director issued a new notice of intent to revoke (NOIR) the petition and, after reviewing the Petitioner's response, again revoked the filing's approval. The Director again concluded that the company did not demonstrate the Beneficiary's qualifying experience and that he willfully misrepresented his former employment on the labor certification.

The matter returns to us on a second appeal. *See* 8 C.F.R. § 103.3(a)(1)(i). The Petitioner contends that the Director disregarded evidence and made "false assumptions."

In these revocation proceedings, the Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *See Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988) (citation omitted). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the record does not support the Beneficiary's alleged misrepresentation of his former employment. But, because the Petitioner has not demonstrated the Beneficiary's qualifying experience for the offered position or the requested immigrant visa category, we will 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 permanent employment of a noncitizen in the position would not harm wages and working conditions of U.S. workers with similar jobs. Section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

Second, an employer must submit an approved labor certification with an immigrant visa petition to USCIS. Section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). Among other things, the Agency 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)(3)(ii)(B).

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.

"[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, a petition's erroneous approval justifies its revocation. *Matter of Ho*, 19 I&N Dec. at 590.

USCIS properly issues a NOIR if the unrebutted and unexplained record at the time of the notice'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 respond to a properly issued NOIR or if a petitioner's NOIR response does not overcome the stated revocation grounds, the Agency properly revokes a petition's approval. *Id.* at 451-52

II. ANALYSIS

A. The Beneficiary's Experience

As previously indicated, offered positions for skilled workers must require - and the workers must have - at least two years of training or experience. Section 203(b)(3)(A)(i) of the Act. Also, 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 August 20, 2001, the date an office in DOL's employment service system 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).

When assessing a beneficiary's qualifications for an offered position, USCIS must examine the job-offer portion of an accompanying labor certification to determine the position's minimum job requirements. USCIS may neither ignore a certification term nor impose an unstated requirement. *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 Petitioner's labor certification states the minimum job requirements of the offered bookkeeper position as two years of experience "in the job offered." On a labor certification, the term "in the job offered" means "experience performing the key duties of the offered position" as listed on the certification. *See, e.g., Matter of Symbioun Techs., Inc.*, 2010-PER-01422, *3 (BALCA Oct. 24, 2011) (citations omitted). The Petitioner's labor certification lists the offered position's job duties as: keeping financial records; balancing checking accounts, accounts payable, and accounts receivable; and preparing financial reports. The certification also indicates that the Petitioner will not accept experience in a "related occupation" and lists no "other special requirements." The position requires neither education nor training.

On the labor certification, the Beneficiary claimed that, by the petition's 2001 priority date, he gained more than two years of full-time qualifying experience in India. He stated that a metals company employed him as a bookkeeper from June 1994 to August 1997. He listed no other potentially qualifying experience.

To support claimed 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 include the employer's name, address, and title, and a description of the beneficiary's experience. *Id.* "If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered." 8 C.F.R. § 204.5(g)(1).

Consistent with 8 C.F.R. § 204.5(l)(3)(ii)(A), the Petitioner's initial filing included a statement from the proprietor of the Beneficiary's purported former employer. The statement does not indicate whether the Beneficiary worked on a full- or part-time basis. But it indicates the company's employment of him as a bookkeeper from June 6, 1994 to August 25, 1997, and describes his job duties as including those in the job offered.

After the petition's approval, the Beneficiary filed an application for adjustment of status that raised questions about his identity. In the application, he contended that he last gained admission to the United States in 1997 using a passport and nonimmigrant visa bearing a name and birthdate other than his own. Because the Beneficiary claimed to use two identities, the Director found insufficient evidence identifying him as the employee named in the Indian company's statement and demonstrating his claimed qualifying experience for the offered position and requested immigrant visa category. The Director therefore issued a NOIR requesting independent objective evidence of the Beneficiary's purported former employment. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies).

As the Director's most recent NOIR details, the Beneficiary claims that the Form I-140, Immigrant Petition for Alien Worker, his applications for adjustment of status - filed in 2004, 2005, and 2007 - and letters from the Indian company state his true birthdate and name, which we will initialize as "D.P." But his two most recent adjustment applications include copies of pages in an Indian passport, a U.S. business visitor visa, and a Form I-94, Arrival/Departure Record, indicating his U.S. admission under another birthdate and name, which we will initialize as "M.K." His 2005 adjustment application also includes an affidavit from the same year stating his last U.S. admission as a business visitor under

the M.K. identity. His 2007 adjustment application contains a 1995 affidavit stating that "both names are used for me."[1]

The most recent NOIR also notes the Beneficiary's last claimed U.S. admission as M.K. on *July 29, 1997*. This date conflicts with his claimed employment in India from June 6, 1994 through *August 25, 1997*. The discrepancy in the employment end date casts doubt on the accuracy of the statements from the Indian company and the Beneficiary's 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 company statements for the Beneficiary as his older brother. A petitioner may submit a letter or affidavit containing biased information, but the partiality will affect the evidentiary weight accorded the document. *See Matter of D-R-*, 25 I&N Dec. 445, 461 (BIA 2011) (citations omitted).[2]

Some evidence supports the Beneficiary's claimed U.S. admission as M.K. Consistent with the passport, visa, and Form I-94 entry card in M.K.'s name and birthdate, USCIS records show that immigration officers admitted an M.K. at [redacted] on July 29, 1997 and do not indicate any other immigration activity by M.K. Thus, these records tend to support the Beneficiary's last claimed U.S. admission as M.K. The copy of the visa in M.K.'s name provided by the Petitioner states the document's issuance in '[redacted]' India, not '[redacted]' Brazil as indicated in U.S. immigration records. But, consistent with the visa copy, U.S. immigration records indicate the visa's issuance on June 4, 1997, and its validity for a single, U.S. entry through August 29, 1997.

The record also contains copies of the Beneficiary's birth and marriage certificates in 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 birthdate. 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 1997 birth certificate and his 1995 marriage certificate in the D.P. name to constitute 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).

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[1] USCIS records show the Beneficiary's withdrawal of his 2004 adjustment application and the Agency's denials of his 2005 and 2007 applications. USCIS found that his 2005 application did not demonstrate his eligibility for the requested benefit. The Agency determined that the revocation of the petition's approval required denial of the 2007 application. *See* section 245(a) of the Act (requiring that "an immigrant visa is immediately available" to an adjustment applicant).

[2] The NOIR further notes that, in May 2011, the Beneficiary's son and brother - the signatory of the company statements - provided sworn statements to U.S. officers in India regarding a visa application by the son. Both the Beneficiary's brother and son - who was then 14 years old - identified the proprietor/signatory as the boy's uncle and the Beneficiary's brother. The Beneficiary's 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 fraternal relationship to the Beneficiary and his purported, illicit visa help to his nephew cast further doubt on the accuracy and reliability of the company experience statements. *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). Further, USCIS records indicate that the Beneficiary and his immediate family attempted to enter the United States in 1996 with false documents that he stated he received from another brother. The 1996 incident casts further doubt on the Beneficiary's credibility.

In the Petitioner's response to the most recent NOIR, the Beneficiary claimed that, before coming to the United States, he changed his name from D.P. to M.K. He stated: "I legally changed my name to [M.K.] in India because, back then, people [with the family name P.] were being discriminated against. I did not think I could get a [U.S.] visa if my [family] name was [P.]." The Beneficiary stated that he therefore obtained the Indian passport and ultimately the U.S. visa in M.K.'s name. "I knew that there was prejudice against [people with the family name P.] and that is why I did not disclose at that time that I had another name."

Despite the Beneficiary's explanation for his purported use of two separate names, the Petitioner has not sufficiently demonstrated his qualifying experience for the offered position or the requested immigrant visa category. Consistent with 8 C.F.R. § 204.5(l)(3)(ii)(A), the company provided letters from the Beneficiary's purported former employer. But the letters' signatory is his older brother, whom U.S. officials found to have provided false documents to support visa applications by the Beneficiary's son. Because of the fraternal relationship between the signatory and the Beneficiary and the signatory's illicit activities regarding the visa applications, the letters, alone, lack sufficient credibility to establish the Beneficiary's claimed qualifying experience. On remand, the Director provided the Petitioner an opportunity to submit additional evidence corroborating the claimed experience. But the Petitioner has not submitted independent, objective evidence - such as copies of contemporaneous tax or business records - sufficient to support the Beneficiary's claimed employment in India.

On appeal, the Petitioner contends that USCIS disregarded the company's submission of a news article that purportedly explains the unavailability of income tax records supporting the Beneficiary's purported Indian employment. Quoting an official of an Indian credit rating/advisory company, the article reports that only twenty million Indians - about 2% of the country's population of one billion - pay income taxes. Soutik Biswas, "Reforming India's maddening tax system," BBC News (Jul. 5, 2004), http://news.bbc.co.uk/2/hi/south_asia/3868073.stm. The Beneficiary stated that his annual wage of 84,000 rupees in India fell below the 100,000-rupee threshold that required the filing of income tax returns. The Petitioner's response to the most recent NOIR describes the threshold as a "statutory limit."

But the news article states a 10% annual income tax rate on Indians earning between 50,000 and 60,000 rupees a year and a 20% rate on Indians earning between 60,000 and 150,000 rupees a year, the range under which the Beneficiary's claimed annual income fell. *Id.* Also, the record lacks evidence of a statute that, from 1994 to 1997, allowed Indian residents earning less than 100,000 rupees a year to forego paying income taxes. The application of foreign law is a factual question that a petitioner must prove. *See, e.g., Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008). Thus, contrary to the Petitioner's contention, the article neither indicates the Beneficiary's exclusion from paying income taxes nor explains the unavailability of tax records regarding his purported employment. The record also does not establish the unavailability of contemporaneous business records of the Beneficiary's purported experience.

Also, the Petitioner has not demonstrated the Beneficiary's true identity or claimed U.S. admission. *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). He claims his last U.S. admission as a business visitor in M.K.'s name on July 29, 1997. But the record does not explain why he attested

on his first adjustment application to last entering the U.S. *without admission* in *September* 1997. The Form I-140 also states his last U.S. entry without admission in September 1997, casting doubt on the Beneficiary's credibility. Moreover, as previously mentioned, the copy of the visa in M.K.'s name states the document's issuance in [redacted] India, not '[redacted]' Brazil as USCIS records indicate. The Petitioner has not explained the discrepancy in the visa's issuing post. Further, a page of the passport in D.P.'s name contains a U.S. admission stamp purportedly issued in [redacted] in April 1998. Contrary to the claim of the company and the Beneficiary, the stamp suggests his last U.S. admission as D.P. in 1998, not as M.K. in 1997.

The Petitioner contends that it submitted evidence explaining the Beneficiary's legal use of both the D.P. and M.K. names. The Beneficiary stated that, in India, he legally changed his name from D.P. to M.K. and submitted his 1995 affidavit in support of the name-change request. But the record lacks independent, objective evidence - such as court- or other government-issued documents or stamps - of the submission of the purported name-change request or its approval. Also, the Petitioner claims to resolve only the Beneficiary's use of the two names. The company does not explain why he would have used a different birthdate with M.K.'s name.

Regarding the business visitor visa in M.K.'s name, the Petitioner asserts that USCIS incorrectly states the document's issuance in Brazil - rather than India. In its most recent NOIR response, the company stated: "The Beneficiary certainly did not claim to obtain a visa issued in [redacted] But the Beneficiary submitted a copy of the visa in M.K.'s name. Although the document indicates its issuance in [redacted] India, USCIS records show that the visa's other details - including its issuance date, number of entries, and validity period - do not match any visa issued in India on that date but rather a document issued in [redacted] Brazil. Government records are presumed to be reliable. *Matter of J-C-H-F-*, 27 I&N Dec. 211, 2012 (BIA 2018). Thus, the discrepancy regarding the issuing post tends to show the document's alteration after its issuance and the falsity of the Beneficiary's claim that he obtained the visa in India.

Also in its most recent NOIR response, the Petitioner denied the existence of the U.S. admission stamp in the passport in D.P.'s name. The company stated: "The Director discredits the Beneficiary based on statements nonexistent in the evidentiary record. This cannot be proper grounds for revocation." But the record - including page 77 of the Petitioner's appeal - contains a copy of a page in the D.P. passport showing the admission stamp, indicating its purported issuance on April 3, 1998 in New York City. The Petitioner has not explained the marking, and USCIS records contain no evidence of D.P.'s admission at that place and date. Thus, someone appears to have falsely placed the admission stamp in the passport.

The Petitioner also asserts that, after the Beneficiary's 1997 admission, he would not have left the United States. The company states that, because he overstayed the validity period of his purported business visitor status, his departure from the country would have prevented his immediate readmission. *See* section 212(a)(9)(B)(i)(I) of the Act (rendering a noncitizen inadmissible if they remained "unlawfully present" in the United States for more than 180 days and seek readmission within three years of their departure). But the record casts doubt on his purported July 1997 admission, as he attested on his initial adjustment application to a September 1997 U.S. entry without admission. The Beneficiary also presented false documents when seeking admission to the country as an

immigrant in 1996, casting doubt on his credibility. The record therefore does not establish the Beneficiary's claimed 1997 U.S. admission as M.K. and his continuous stay in the country since.

The Petitioner notes that the most recent NOIR mistakenly asks the company for evidence of the Beneficiary's claimed qualifying experience in "Venezuela." The Petitioner states: "USCIS continuously made factual errors in its decisions which make it difficult for Petitioner and Beneficiary to discern what facts are truly at issue." The NOIR, however, otherwise correctly states the Beneficiary's claimed prior employment in India. Thus, viewed in the context of the entire NOIR, the references to Venezuela were clearly erroneous, which the Director acknowledged in the revocation decision. USCIS must notify a petitioner of alleged revocation grounds and give it an opportunity to offer evidence supporting a petition or opposing the revocation grounds. 8 C.F.R. § 205.2(b). The record shows that the most recent NOIR's mistaken references to Venezuela did not prevent the Petitioner from receiving adequate notice or opportunity to respond to the revocation grounds.

The record contains many unresolved questions regarding the Beneficiary's claimed qualifying experience and identity. Consistent with the Beneficiary's attestation on the labor certification, the Petitioner submitted an experience letter that an Indian metals company employed him as a bookkeeper under the name D.P. from June 1994 to August 1997. Also, Indian officials found copies of his birth and marriage certificates under the D.P. name to match validly issued government documents. But the company letter does not indicate whether the Beneficiary worked full- or part-time and was signed by a relative. Also, the Beneficiary states his use of another identity with a different name (M.K.) and birthdate. The Petitioner provided copies of passport pages, a U.S. visa, and a Form I-94 card indicating the Beneficiary's purported U.S. admission on July 29, 1997 as M.K. He claims that, before coming to the country, he legally changed his name from D.P. to M.K. and obtained a passport and U.S. visa under the M.K identity. The record, however, lacks documentary evidence of his purported legal name change and does not explain why, as M.K., he also changed his birthdate. Further, USCIS records indicate the visa's issuance to M.K. in Brazil, not India. These and other unresolved discrepancies cast doubt on the Beneficiary's identity and thus on his claimed qualifying experience. The inconsistences required resolution with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. at 591. But the Petitioner has not provided independent, objective evidence to resolve the discrepancies or demonstrated the unavailability of such evidence. *See* 8 C.F.R. § 204.5(g)(1). Thus, the Petitioner has not established the Beneficiary's qualifying experience for the offered position or the requested immigrant visa category. We will therefore affirm the revocation of the petition's approval.

B. The Beneficiary's Alleged Misrepresentation

A willful misrepresentation of a material fact on an accompanying labor certification justifies a petition's denial. USCIS approves a filing 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 false. Also, a beneficiary's willful misrepresentation of a material fact in a petition renders the noncitizen inadmissible to the United States. *See* section 212(a)(6)(C)(i) of the Act.

Misrepresentations are willful if they are deliberately made with knowledge of their falsity. *Matter of Mensah*, 28 I&N Dec. 288, 293 (BIA 2021) (citations omitted). Information is material when it has a

natural tendency to affect an adjudicator's official decision or tends to close a line of inquiry that would predictably have disclosed other relevant facts. *Id.* at 293-94 (citations omitted).

The Director found that the Beneficiary willfully misrepresented his claimed qualifying experience on the accompanying labor certification. The Director noted that the Beneficiary's purported U.S. admission as M.K. on July 29, 1997 conflicts with the August 25, 1997 end date of his claimed employment in India. The Director also noted that the Beneficiary's brother - whom U.S. officials found to have provided false documents to the Beneficiary's son in 2008 and 2009 in attempts to obtain U.S. visas - signed the employment verification letter, casting doubt on the letter's credibility.

But we do not find these facts sufficient to support the Beneficiary's willful misrepresentation of his qualifying experience. Besides checking on the validity of the Beneficiary's birth and marriage certificates, officials in India confirmed that his brother operated the metals company. When the officials visited the company, the Beneficiary's brother was reportedly "out of town" and thus unable to confirm the validity of the company's prior employment letter for the Beneficiary. But the officials confirmed the brother's name, title and address listed on the letter. Thus, while the record lacks sufficient independent evidence of the Beneficiary's claimed qualifying experience, the record does not sufficiently support his misrepresentation of his experience. *See Matter of Y-G-*, 20 I&N Dec. 794, 797 (BIA 1994) (stating that, because of the potential severe consequences to noncitizens, we must "closely scrutinize" the factual bases of fraud or material misrepresentation findings).

The record as currently constituted does not sufficiently support the Beneficiary's alleged willful misrepresentation of a material fact on the labor certification. We will therefore withdraw the Director's contrary finding.

C. The Petitioner's Intent to Employ the Beneficiary in the Offered Position

Although unaddressed by the Director, the Petitioner also has not demonstrated its continuing intent to employ the Beneficiary in the offered position.

A business may file an immigrant visa petition if it 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 pursuant to the terms and conditions of an accompanying labor certification. *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 domestic worker on a full-time, live-in basis).

On the Form I-140 and accompanying labor certification, the Petitioner stated its intent to permanently employ the Beneficiary full-time as a bookkeeper. But online government records cast doubt on the company's continuing operations as a liquor store. State records show that the petitioning corporation voluntarily dissolved in [redacted] 2022, shortly before this appeal's filing. Sec'y of the Commonwealth of Mass., Corps. Div., "Search for a Business Entity," https://corp.sec.state.ma.us/corpweb/CorpSearch/CorpSearch.aspx. Although the state revoked the dissolution 10 days later, government records list a new address for the company's principal office and a new sole officer, suggesting new ownership, management, or both. *Id.* Also, local records show that, in late 2021, the Petitioner transferred its liquor store license to a different company at a

different address. [redacted] of License Comm'rs Minutes, 2 (Nov. 9, 2021). The local records suggest that the company no longer operates a liquor store. The record therefore does not demonstrate the Petitioner's continuing intent to employ the Beneficiary in the offered position.

The Director did not notify the Petitioner of this evidentiary deficiency. Thus, in any future filings in this matter, the company must submit evidence that it intends to do business in the future and employ the Beneficiary in the offered position.

III. CONCLUSION

The record does not support the Beneficiary's alleged willful misrepresentation of a material fact. But the Petitioner has not demonstrated his qualifying experience for the offered position or the requested immigrant visa category.

ORDER: The appeal is dismissed.