U.S. Citizenship and Immigration Services

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

In Re: 24745130

Date: FEB. 1, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner seeks to employ the Beneficiary as an administrative assistant and requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based, "EB-3" category allows a U.S. business to sponsor a noncitizen for lawful permanent resident status based on a job offer requiring at least two years of training or experience.

The Director of the Nebraska Service Center revoked the approval of the petition, concluding that the record did not establish that the Beneficiary had the required work experience for the position. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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.[1]

The Director issued a notice of intent to revoke (NOIR) informing the Petitioner of "adverse information that [it] may not be aware of regarding the beneficiary's claimed qualifying experience" and indicating that:

> [i]t appears more likely that not, that the beneficiary does not possess the required 24 months of experience as an Administrative Assistant. It also appears that the beneficiary willfully misrepresented a material fact about the beneficiary's work experience in order to appear qualified for the job opportunity as presented on the labor certification in order to procure an immigrant visa.

[1] Subsequent to the return of this petition from the U.S. Consulate in Warsaw, Poland, the Petitioner filed a new skilled worker petition on the basis of the same labor certification and with the same December 10, 2005 priority date. The petition was approved in April 2022 and forwarded to the U.S. Consulate in Warsaw, Poland in January 2023.

The NOIR did not, however, provide any additional discussion of the "adverse information" or basis for the Director's concerns. A NOIR must provide a petitioner "the opportunity to offer evidence in support of the petition . . . and in opposition to the grounds alleged for revocation of the approval." 8 C.F.R. § 205.2(b).

The Director subsequently revoked the petition based, in part, on a 2021 statement given at the U.S. Consulate in Warsaw which, according to the Director, indicated that the Beneficiary: 1) did not have the required experience; 2) was an unpaid intern at [redacted] and 3) actually interned for the employer from May 2003 until May 2005, not May 2001 until May 2003 as provided on the labor certification.

As the Director included adverse information in the denial without giving the Petitioner an adequate opportunity to rebut, we will withdraw the Director's decision and remand the matter. *See* 8 C.F.R. § 103.2(b)(16)(i). The Director must issue a new NOIR specifying the facts and evidence supporting the proposed revocation grounds. The Director shall also consider the arguments and evidence submitted in response to the NOIR and on appeal.

On appeal, the Petitioner asserts that the Director mischaracterized the Beneficiary's 2021 statement, and we agree that the Beneficiary confirmed the dates of her internship as May 2001 through May 2003, not 2003 through 2005. However, there are unresolved questions regarding the Beneficiary's claimed experience which should be addressed in the new NOIR. For example, given that the Beneficiary's unpaid internship began while she was still in high school, the Director should determine whether it constituted training rather than experience and whether the record contains sufficient, credible evidence to support her contention that she meets the experience requirement listed in the labor certification.[2] Further, it is unclear if the Beneficiary included her internship on the nonimmigrant visa applications she filed after 2001 and how she was able to intern on a full-time basis while also attending school full-time. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence).

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

[2] While unpaid experience can constitute qualifying experience, there may be serious evidentiary problems, and an affidavit from the applicant alone is insufficient. *Matter of B&B Residential Facility*, 01-INA-146, (BALCA Jul. 16, 2002).