U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25234526

Date: MAR. 20, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks to employ the Beneficiary as a truck driver. It requests classification of the Beneficiary under the third preference employment-based immigrant visa category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b) (3)(A)(iii). This immigrant visa category allows a U.S. business to sponsor a foreign national for lawful permanent resident status based on a job offer requiring less than two years of training or experience.

The petition was initially approved. The Director of the Nebraska Service Center subsequently revoked the approval of the petition concluding the record did not establish that the Beneficiary met the minimum requirements for the position. The Director further concluded that the Beneficiary misrepresented material facts in order to procure an immigrant visa. The Petitioner later filed an appeal we dismissed. However, we withdrew the Director's determination the Beneficiary had willfully misrepresented material facts. The matter is now before us on a motion to reopen and motion to reconsider.

It is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion to reopen and the motion to reconsider.

I. MOTION TO REOPEN

A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We may only grant a motion that meets these criteria and establishes eligibility for the requested benefit.

We acknowledge that in part 2 of the Form I-290B, Notice of Appeal or Motion, the Petitioner selected 1.f. indicating that it intended to file both a motion to reopen and a motion to reconsider. However, the Petitioner only submitted a brief discussing a motion to reconsider and did not submit any new evidence to support a motion to reopen. For this reason, the motion to reopen must be dismissed.

II. MOTION TO RECONSIDER

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B with the correct fee), but also show proper cause for granting the motion. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

In dismissing the Petitioner's prior appeal, we agreed with the Director's conclusion that the Petitioner did not demonstrate that the Beneficiary had the required experience for the position listed in the labor certification.[1] We concluded that the Petitioner did not submit sufficient evidence to support its assertion that the Beneficiary had retracted his prior employment experience only after being pressured by a Department of State (DOS) consular officer. We emphasized that the Petitioner did not submit documentary evidence to establish that he was employed as a fulltime truck driver abroad with [redacted] from January 2015 to March 2016 as claimed, nor evidence to demonstrate that the consular officer pressured or intimidated him into acknowledging that this employment was "not consistent with the facts." Further, we determined that the submitted evidence was insufficient to demonstrate the Beneficiary's asserted experience as a truck driver while with the Polish military from April 1992 to October 1993, since he did not disclose this experience in the labor certification as required.

On motion, the Petitioner contends that we erred in not considering the Beneficiary's experience as a truck driver gained while he was a member of the Polish military, only because it was not listed in the labor certification. The Petitioner asserts that this experience was not included in the labor certification because documentation to substantiate it had not yet been available at that time, causing the Beneficiary to list more recent experience. The Petitioner states that there is no basis in the statues or regulations requiring us to not consider experience outside that listed in the labor certification and asserts that it has provided sufficient evidence of his required experience as a truck driver with the Polish military. The Petitioner points to two employment certificates issued by the Polish Army, one of which was provided on appeal, and contends that we did not sufficiently consider this evidence.

Upon review, we conclude that we did not err in dismissing the Petitioner's prior appeal. First, as discussed in our prior decision, the Beneficiary acknowledges that he signed a statement following his DOS interview in October 2019, under the threat of penalty for knowingly making a false statement, affirming that he did not work for [redacted] as a truck driver from January 2015 to March 2016 as claimed in the labor certification. The Beneficiary further declared in the statement that "I was running my own business [redacted]" during this period. The Petitioner continues to assert that the Beneficiary was coerced into signing this statement by the DOS consular officer and threatened that if he did not sign the statement he "and his previous employer would face legal consequences." However, the presence of the Beneficiary's signature on the statement creates a strong presumption that he knew its contents and assented to it. *See Matter of A.J. Valdez*, 27 I&N Dec. 496, 499 (BIA

[1] As discussed in our prior decision, the labor certification indicated that the offered position required 12 months of experience as a truck driver and a commercial driver's license (CDL) within 30 days from employment. The labor certification further reflected that no alternative to this required experience would be accepted.

2018). Therefore, the Petitioner and Beneficiary have not demonstrated that his statement to the DOS consular officer was coerced based solely on his unsupported assertions.

Further, the Petitioner and Beneficiary appear to abandon their assertion that this employment should be considered to establish his required experience. For instance, the Petitioner states on motion that "we do not want to repeat and we agree to omit this proof of experience [with [redacted] from the record." Therefore, we will no longer consider this experience with [redacted] claimed in the labor certification. However, the Beneficiary's actions, in signing a statement acknowledging that this employment did not take place and now abandoning it, cast serious doubt on his assertions. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

It is in this light that we consider the Petitioner's contention that we did not sufficiently consider the Beneficiary's claimed experience as a truck driver with the Polish military between April 1992 and October 1993. Again, as noted in our prior decision, the Beneficiary did not disclose this claimed experience in the labor certification. We emphasized that the application's instructions require the listing of "all jobs the alien has held during the past 3 years" and "*any other experience* that qualifies the alien for the job opportunity" (emphasis added). We determined that the omission of the Beneficiary's military truck driving experience from the labor certification application casted doubt on this claimed prior experience. *See Matter of Leung*, 16 I&N Dec. 12, 14 (Distr. Dir. 1976), disapp'd of on other grounds by *Matter of Lam*, 16 I&N Dec. 432, 434 (BIA 1978) (finding a claim of additional qualifying experience by an application for adjustment of status to be unreliable where he did not state the experience on his labor certification application).

The provided evidence related to the Beneficiary's claimed employment as a truck driver with the Polish military is insufficient to overcome the discussed material discrepancies on the record. For instance, the Petitioner provided two translated "certificates" from the "Military Refill Command in [redacted]" one dated in October 2019 and the other in March 2021, and a European driver's license issued in 2005. However, there are discrepancies between the two submitted certificates. For instance, the certificate dated in October 2019 indicates that the Beneficiary was employed with the Polish military as a "driver," while the certificate dated in March 2021 reflects that we worked in the position of "Driver, with a specialization: truck driver (with a load of up to 24 tons)." This discrepancy leaves question as to whether the Beneficiary was employed fulltime as a truck driver, since this suggests his employment could have also included driving various automobiles, and not trucks fulltime.

In addition, the certificate from October 2019 indicates that the Beneficiary's birthdate is [redacted]1975," while the certificate from March 2021 shows his birthdate is [redacted]1972." Likewise, the certificate from 2019 reflects that it was signed by the "Commander, Military Refill Command in [redacted] and includes the name of the commander, while the latter certificate from March 2021 does not include the name of the signed commander. In sum, these unresolved discrepancies leave uncertainty as to the authenticity of these documents. *See Matter of Ho*, 19 I&N Dec. at 591-92. Further, it is also noteworthy that neither of these documents reflects contemporaneous evidence of the Beneficiary's military service or his experience as a truck driver for the required one year.

Evidence the Petitioner created after noted deficiencies and inconsistencies will not be considered independent and objective evidence. *Id.*

The military certificates provided by the Petitioner also did not provide the Beneficiary's specific duties during his claimed engagement as a truck driver with the Polish military. For instance, the certificates reflect that the Beneficiary was a driver, and perhaps specialized in driving trucks "with a load of up to 24 tons," but they do not set forth his specific duties in this role. Therefore, the certificates do not sufficiently confirm, particularly when considered with other noted material discrepancies on the record, that the Beneficiary had the required experience to perform the stated duties of his proposed position in the United States.[2] For example, not only do the provided certificates not specify the specific duties the Beneficiary performed while driving for the Polish military, but there is little other indication from him, or the record, about the duties he performed in this asserted role. Again, as we have noted, there is also no contemporaneous evidence of his claimed service in the military as a truck driver for the required one year.

Therefore, in sum, the Petitioner and Beneficiary have submitted conflicting and insufficient evidence to substantiate that he was employed for the required one year with the Polish military between April 1992 and October 1993 as claimed. Further, this evidence is insufficient to overcome the other material discrepancies on the record, including a signed statement from the Beneficiary submitted to DOS where he acknowledges that he fabricated his claimed truck driving experience on the labor certification. For these reasons, we conclude that we were correct to dismiss the Petitioner's prior appeal, as it has not established that our prior dismissal of its appeal was inconsistent with applicable law or policy.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[2] Section H.11 of the labor certification indicates that the duties of the position include:

> Drive a truck. Unload truck. Check vehicles to ensure that mechanical safety, and the emergency equipment is in good working order. Follow appropriate safety procedures for transporting dangerous goods. Inspect loads to ensure that cargo is secure. Maintain logs of working hours or of vehicle service or repair status, following applicable state and federal regulations. Secure cargo for transport, using ropes, blocks, chain, binders, or covers. Long distance routes: CA, AZ, FL, IL, CDL within 30 days of employment.