U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19960502

Date: AUG. 31, 2022

Appeal of California Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner, a custom tailoring business, seeks to employ the Beneficiary as a master tailor. It requests skilled worker classification for the Beneficiary under the third-preference immigrant category. *See* 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" immigrant classification allows a U.S. employer to sponsor a noncitizen for lawful permanent resident status to work in a position that requires at least two years of training or experience.

The Director of the California Service Center initially approved the petition. However, the Director subsequently revoked the approval based on a determination that the Petitioner did not demonstrate its intent to employ the Beneficiary in accordance with the terms of the labor certification.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification (ETA Form 9089) from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a noncitizen in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition (Form I-140) with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the noncitizen 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.

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). A notice of intent to revoke (NOIR) "is not properly issued unless there is 'good and sufficient cause' and the notice includes a specific statement not only of the facts underlying the proposed action, but also of the supporting evidence." *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987) (providing that "[i]n determining what is 'good and sufficient cause' for the issuance of a notice of intention to revoke, we ask whether the evidence of record at the time the notice was issued, if unexplained and unrebutted, would have warranted a denial based on the petitioner's failure to meet his or her burden of proof").

II. ANALYSIS

The issue on appeal is whether the Petitioner has established its intent to employ the Beneficiary as a master tailor in accordance with the terms of the certified labor certification.

The Petitioner initially filed a labor certification with the DOL for another beneficiary [redacted] (original beneficiary) as a master tailor, which was approved.[1] The labor certification was signed by [redacted] the claimed owner for the Petitioner. Later, the Petitioner substituted the labor certification from the original beneficiary to the Beneficiary and filed the employment petition seeking to employ him as a master tailor.[2] Both were signed by [redacted], another claimed owner for the Petitioner.

The labor certification describes the job duties as "[t]o make tailored garments such as suits, coats & other dress clothing for men and women. To make patterns and outline patterns for cutting. To work on overlock, single needle, singe & double stitch machines." In addition, the Petitioner indicated that the job of master tailor required at least four years of experience. Further, the Petitioner listed the Beneficiary's prior employment at [redacted] in [redacted] Armenia, as a master tailor from March 1990 to November 1995. The Director approved the employment petition based on the evidence in the record. However, the Director later issued a NOIR based on inconsistencies and derogatory information, discussed below.

USCIS officers conducted a site visit at the Petitioner's address and spoke to [redacted], who stated the following:

[1] California State Corporation Search records show that the Petitioning entity at the location specified on the labor certification is suspended, not in good standing, and has been inactive since July 16, 1993. https://bizfileonline.sos.ca.gov/search/business (last accessed August 30, 2022). Where there is no active business, no *bona fide* job offer exists, and the request that a foreign worker be allowed to fill the position listed in the petition has become moot. Additionally, even if the appeal could be otherwise sustained, the petition's approval would be subject to automatic revocation pursuant to 8 C.F.R. § 205.1(a)(iii)(D) which sets forth that an approval is subject to automatic revocation without notice upon termination of the employer's business in an employment-based preference case. The Petitioner must address this issue in any further filings.

[2] The substitution of beneficiaries was formerly permitted by the DOL at the time of filing this petition. On May 17, 2007, the DOL issued a final rule prohibiting the substitution of beneficiaries on labor certifications effective July 16, 2007. *See* 72 Fed. Reg. 27904 (codified at 20 C.F.R. § 656).

- The Petitioner is a family-owned business and his sister, [redacted] is the owner, and he is responsible for the daily operation of the business including immigration paperwork.
- He filed a petition for another beneficiary (Beneficiary X) as a master tailor six months prior to the site visit through Attorney [redacted]
- There were no other pending petitions.
- He has filed at least five or six petitions with Attorney [redacted] over the past few years.[3]
- He did not know the names of the individuals and their job titles because all paperwork is sent to Attorney [redacted]
- All of the beneficiaries were from Armenia and were for the position of master tailor.
- Only one of the beneficiaries for whom he petitioned ever reported for the position and that person worked for only one day and never returned.
- No master tailor was working at the time, and he assumes responsibility when the job is vacant.
- The last time the Petitioner employed a master tailor was two years ago because the company was in the process of downsizing.
- There is a job position for only Beneficiary X and no others.

In addition, both the Beneficiary and [redacted] were requested to appear for an adjustment of status interview. However, only the Beneficiary appeared. At that time, the Beneficiary stated that he has not worked since coming to the United States, and he has never worked for the Petitioner. Furthermore, the Beneficiary indicated that he is being supported by his family. Moreover, the Beneficiary presented a job offer letter purportedly from [redacted], claiming that the master tailor position was still open and current. However, the Director determined that the alleged signature of [redacted] was different than the other signatures contained in the record. Further, attempts to contact [redacted] and [redacted] were unsuccessful; response to phone calls placed to the Petitioner claimed that [redacted] "left on a business trip this morning" and [redacted] "was not in."

Finally, the Director noted in the NOIR that the original beneficiary of the labor certification was in fact the Beneficiary's mother.

In response to the NOIR, the Petitioner submitted a letter from [redacted] who claimed that "[w]e still have an open position for [the Beneficiary] as a master tailor." In revoking the approval of the petition, the Director concluded that the letter did not address the derogatory information in the NOIR, and the Petitioner did not establish its intent to employ to employ the Beneficiary in accordance with the terms of the labor certification.

[3] If a petitioner has filed immigrant visa petitions on behalf of multiple beneficiaries, the petitioner must establish that it has had the ability to pay the proffered wage to each beneficiary. *See Patel v. Johnson*, 2 F.Supp.3d 108, 124 (D. Mass. 2014) (affirming our revocation of a petition approval where the petitioner did not demonstrate its ability to pay the combined proffered wages of multiple beneficiaries). Petitions filed on behalf of other beneficiaries are considered from the priority date of each petition (not including any year prior to the priority date of the petition being reviewed on appeal) until the present or until the other beneficiary obtains lawful permanent residence. Petitions that have been withdrawn or denied are not considered in this analysis.

On appeal, the Petitioner asserts:

> The owner of the business also responsible for the daily operation of the business has submitted a rebuttal under oath that the job offer is still available []. The documentation in the record also supports that business is still viable, willing and able to hire this beneficiary. The departments [*sic*] contntions [*sic*] are vague, unrelated and no opportunity is allowed to refute the investigation report.

The Petitioner makes no other arguments or submits any other documentation in support of the appeal. Although the Petitioner references the job offer letter claiming that the job offer is still available, the letter does not address any of the derogatory information outlined in the Director's NOIR and revocation. Specifically, the Petitioner did not rebut the statements by [redacted] the Beneficiary's lack of intent to work for the Petitioner, the inconsistent signatures of [redacted] the failure to appear and inability to contact [redacted] and [redacted] The Petitioner must resolve inconsistencies in the record 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.*

In general, a few errors or minor discrepancies are not reason to question the credibility of an individual or an employer seeking immigration benefits. *See Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir. 2003). However, if a petition includes serious errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after an officer provides an opportunity to rebut or explain, then the inconsistencies will lead USCIS to conclude that the facts stated in the petition are not true. *See Ho*, 19 I&N Dec. at 591.

Because the Petitioner has not overcome the inconsistencies and the derogatory information in the record, the Petitioner has not demonstrated its intent to employ the Beneficiary in accordance with the terms and conditions of the labor certification. *See Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm'r 1966) (upholding the denial of an employment-based immigrant visa where the evidence did not establish that the petitioner actually desired and intended to employ the beneficiary pursuant to the terms of the labor certification). A labor certification is valid only for the particular job opportunity, beneficiary, and area of intended employment identified on the labor certification. *See Matter of Sunoco Energy Development Co.*, 17 I&N Dec. 283 (Reg'l Comm'r 1979) and 20 C.F.R. § 656.30(c)(1).

Here, the labor certification states that the position is for a full-time master tailor. While the Petitioner submitted one letter claiming that they intended to hire the Beneficiary, the USCIS site visit revealed that the Petitioner had "downsized," and only had one position for a master tailor at the time of the Beneficiary's adjustment interview and the company intended to onboard the other individual that it sponsored. The Petitioner has not resolved this critical inconsistency in whether they had a full-time position available for the Beneficiary in accordance with the terms of the labor certification.[4]

[4] We acknowledge that a petition represents an offer of *future* employment. A petitioner need not employ a beneficiary in an offered position until he or she obtains lawful permanent resident status. *See also* section 221(a) of the Act, 8 U.S.C. § 1201(a) (authorizing consular officers to issue immigrant visas; a beneficiary of a petition can remain outside the United States until granted an immigrant visa).

Furthermore, while the Petitioner claims that the Director's decision was vague, and it was not allowed an opportunity to rebut the information, we disagree. As discussed above, the Director properly issued a NOIR in accordance with the regulation at 8 C.F.R. § 205.2(a) detailing the inconsistencies and derogatory information. In issuing the NOIR, the Director afforded the Petitioner an opportunity to offer evidence in support of the petition and in opposition to the grounds for revocation of the approval. In the revocation, the Director addressed the Petitioner's job offer letter and correctly determined that the evidence did not overcome the derogatory information contained in the NOIR. Even on appeal, the Petitioner again does not address or offer evidence to overcome any of the inconsistencies in the record.[5]

III. CONCLUSION

The Petitioner has not established its intent to employ the Beneficiary as a master tailor in accordance with the terms of the certified labor certification. Accordingly, it has not established that the proffered position in the labor certification is, or was, a *bona fide* offer of employment.

ORDER: The appeal is dismissed.

[5] We also note that the record does not demonstrate that the Beneficiary has the required work experience. A petition for skilled worker classification must be accompanied by evidence that the beneficiary meets any educational, training, experience, or other requirements of the labor certification. 8 C.F.R. § 204.5(l)(3)(ii)(D). The labor certification in this case does not require any education or training to qualify for the job but does require at least four years of experience. As provided in the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A), any requirements of training or experience for skilled workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience. Although the Petitioner indicated on the labor certification that the Beneficiary was employed as a master tailor for over five years with [redacted] in Armenia, the Petitioner did not submit any letters from [redacted] In addition, the record reflects that the Beneficiary was previously petitioned by [redacted] for H-1B nonimmigrant classification (specialty occupation) as an economist. In support of that petition, the Petitioner claimed that the Beneficiary "received a Bachelor of Science degree in Industrial Economics. He has worked as an Economist in Armenia ever since receiving his degree." The Beneficiary's prior employment as an economist contradicts the labor certification's prior employment claim as a master tailor. Further, the labor certification indicated that the Beneficiary only received a diploma from the [redacted] Secondary School in [redacted] Armenia in 1981 while the H-1B petition reflected that the Beneficiary also received a bachelor of science degree from the [redacted] Institute in 1986. In any further pursuit of this petition, the Petitioner must resolve these additional inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Ho*, 19 I&N Dec. at 591-92.