U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19386018

Date: SEP. 22, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Skilled Worker

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

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary possessed the minimum experience required for the offered position. The Director also found that the Beneficiary willfully misrepresented a material fact, the Beneficiary's qualifying work experience for the offered position on the labor certification. We dismissed a subsequent appeal. The matter is now before us on a motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Skirball Cultural Ctr., 25 I&N Dec. 799, 806 (AAO 2012); Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

I. MOTION TO REQUIREMENTS

A motion to reconsider must demonstrate 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. See 8 C.F.R. § 103.5(a)(3). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy.

II. ANALYSIS

The issue before us is whether the Petitioner has established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy. The Petitioner must specify the factual and legal issues raised on appeal that were decided in error or overlooked in our initial decision.

In our previous decision, we explained that the record did not support a finding that the Beneficiary, more likely than not, possessed the minimum qualification required for the offered position as required under 8 C.F.R. § 204.5(1)(3). We considered all evidence of the Beneficiary's qualifying experience in the record, including the certificate of employment, letters from her previous foreign employer, letters from her former coworkers, and USCIS records. However, we concluded that the evidence was insufficient to establish that the Beneficiary possessed the required 24 months of experience in the offered position of alteration tailor.

We noted, as did the Director before us, the inconsistencies in the record of the Beneficiary's work experience, cast doubt on the authenticity of the letters submitted by the Petitioner. Specifically, the employment letters and labor certificate indicate the Beneficiary was employed from March 5, 2010, to September 20, 2014; however, the Beneficiary submitted a nonimmigrant visa application in July 2014 listing her present occupation as "not employed/I am a housewife of two young children," and listed no previous employment. Further, in a Form G-325A, Biographic Information, that she signed on October 20, 2017, the Beneficiary listed no employment in the last five years. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, at 591-92. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. Probative evidence beyond a letter or affidavit may be considered when submitted to resolve inconsistencies or discrepancies in the record. Id.

On motion, the Petitioner provides a similar explanation for the inconsistencies as was provided with the appeal, the Beneficiary's employment history responses on the nonimmigrant visa application and the G-325A "were of unintentional oversight". The Petitioner argues we erred in our decision by not applying the preponderance of the evidence standard of proof when weighing the letters supporting the Beneficiary's employment experience. We disagree with the Petitioner.

Our prior decision and the Director's decision provided detailed discussions of the inconsistencies in the record of the Beneficiary's employment history and the reasons the employment letters from the Beneficiary's former employer and coworkers are not considered probative evidence of the Beneficiary's qualifying work experience. Our decision also explains the reasons that this secondary evidence was insufficient to meet the Petitioner's burden of proof, and that independent, objective evidence is needed to resolve the inconsistencies. Our decision goes further to point out that the letters also do not provide a description of the Beneficiary's job duties and a statement that the employment was full time. We noted that the Beneficiary's explanation that she does not have income tax returns because she was not required to file returns due to her low salary of $400 per week, casts doubt on the employment being full time. We also explained that further independent evidence, such as the Beneficiary's payroll records, time sheets, bank statements, or other contemporaneous evidence, could have been submitted to corroborate her claimed employment. We noted that a petitioner may submit a letter or affidavit that contains hearsay or biased information, but such factors will affect the weight to be accorded the evidence in an administrative proceeding. See Matter of D-R-, 25 I&N Dec. 445, 461 (BIA 2011) (citations omitted).

The Petitioner further argues on motion that we erred in affirming the Director's finding of willful misrepresentation of a material fact against the Beneficiary. The Petitioner argues in the brief on motion, "[w]ithout concrete proof to establish any fraudulent activity, the proposition of willful misrepresentation should not be just thrown around as it puts unwarranted burden on the whole atmosphere of the case." The Petitioner then indicates that the Beneficiary "admitted that her responses to her previous employment on the nonimmigrant application were of unintentional oversight." We disagree with the Petitioner's arguments.

The Director's decision and our decision explain in detail the elements for a finding of willful misrepresentation of a material fact, which we note differs from a finding of fraud. See 8 USCIS Policy Manual J.2 https://www.uscis.gov/policymanual. Also, as detailed above, the decisions further explain the Beneficiary's claimed work experience indicated on the labor certification is inconsistent with the Beneficiary's responses on her nonimmigrant visa application and her Form G-325A. Prior to this petition, the Beneficiary has never claimed any work experience on multiple filings before multiple agencies. She contends that this failure to disclose what is now the basis for her eligibility was an "unintentional oversight" despite attesting under penalty of perjury that the information on the forms was true and correct. Although provided with multiple opportunities to cure this deficiency, the beneficiary has been unable to provide compelling evidence demonstrating she has not made a willful misrepresentation. The evidence on the record supports the Beneficiary misrepresented her work experience on the labor certification and that such misrepresentation was material to qualifying for the labor certification.

The Petitioner has not shown on motion that our determination concerning the Beneficiary's work experience for the offered position "was based on an incorrect application of law or policy" or that our "decision was incorrect based on the evidence in the record of proceedings at the time of the decision." See 8 C.F.R. § 103.5(a)(3). Accordingly, we will dismiss the Petitioner's motion to reconsider the matter.

ORDER: The motion to reconsider is dismissed.