U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25694179

Date: MAR. 9, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an automotive mechanic repair business, seeks to employ the Beneficiary as an automotive mechanic. It requests skilled worker classification for the Beneficiary under the third preference immigrant category. 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 foreign national for lawful permanent resident status to work in a position that requires 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 had at least two years of qualifying experience to meet the minimum requirements of the labor certification and demonstrate eligibility for classification as a skilled worker. The matter is now before us on appeal.

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 conclude that the Director did not provide an adequate analysis to explain the basis for the denial and therefore precluded a meaningful opportunity for the Petitioner to challenge the adverse decision. Notwithstanding our determination regarding the Director's decision, the Petitioner did not provide sufficient reliable evidence showing that the Beneficiary gained the requisite experience to qualify for the skilled worker classification and for the proffered position under the terms of the labor certification. Accordingly, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification 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 foreign national 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 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 foreign national 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.

Further, to be eligible for classification as a skilled worker a beneficiary must have at least two years of training or experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(B). A beneficiary must also meet the specific educational, training, experience, and other requirements of the labor certification underlying the petition. *Id.* All requirements must be met by the petition's priority date.[1] *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

II. BASIS FOR REMAND

First, we note that the requirements for the proffered position of automotive mechanic are indicated in section H of the labor certification (Job Opportunity Information). The pertinent requirements read as follows:

4.	Education: Minimum level required:	None
5.	Is training required for the job?	No
6.	Is experience in the job offered required?	Yes
6-A.	How long?	24 months
7.	Is an alternate field of study acceptable?	No
8.	Is an alternate combination of education and experience acceptable?	No
9.	Is a foreign educational equivalent acceptable?	No
10.	Is experience in an alternate occupation acceptable?	No

The Petitioner also provided the following list of job duties in section H.11 of the labor certification:

> Rebuild and overhaul engine block. Resize piston and piston ring including tuning. Diagnostic and repair of engine and emission including replacing parts as needed. Inspect vehicles for damage and record findings so that necessary repairs can be made. Estimate time of vehicle repair. Troubleshoot fuel, ignition, and emissions control systems, using electronic testing equipment. Repair, replace, or adjust timing and component.

Section K of the labor certification (Alien Work Experience) states that the Beneficiary was employed as an automotive mechanic at [redacted] from May 1, 2011, until October 20, 2018, claiming to have worked 40 hours per week during this claimed period of employment.

In the denial, the Director observed that while the Petitioner claimed and provided an employment letter corroborating the claimed place and dates of the Beneficiary's employment, USCIS records showed that the Beneficiary had been self-employed since 1997. After the initial filing, the Director

[1] The priority date of an employment-based immigrant petition is the date the underlying labor certification is filed with the DOL. *See* 8 C.F.R. § 204.5(d).

issued a notice of intent to deny (NOID) to inform the Petitioner of the inconsistency and allow for its potential resolution through the submission of independent objective evidence. The Director's decision also acknowledged that the NOID response included the Petitioner's tax and bank documents as well as foreign documents, such as a translated affidavit and translated payment vouchers. However, the Director did not analyze the Petitioner's submissions for relevance and probative value, nor did he inform the Petitioner that the translations were deficient because they were not properly certified. *See* 8 C.F.R. § 103.2(b)(3). Instead, the Director determined that the Beneficiary worked for [redacted] Company in the capacity of an independent contractor or temporary worker only from August 2018 to October 2018, but he did not explain how he arrived at that conclusion.

In sum, although the Director concluded that the Petitioner did not establish that the Beneficiary met the minimum requirements of the labor certification, the basis for this conclusion is unclear as the Director did not fully and clearly elaborate on the submitted evidence or explain how it was deficient. Because the Director denied the petition without a full analysis, we will withdraw the Director's decision.

III. EVIDENTIARY DEFICIENCIES

Notwithstanding our withdrawal of the Director's decision, the record indicates that the Petitioner did not establish that the Beneficiary met the minimum requirements as of the petition's priority date, which in this case is August 5, 2020.

First, as indicated above, the Petitioner offered foreign documents that were not accompanied by properly certified translations. Any foreign language document must be accompanied by a full English language translation along with a translator's certification that the translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Because neither the translation of the affidavit nor the translation of the pay vouchers followed the regulatory requirements, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims. Although the Petitioner provided additional pay vouchers on appeal, these translations too were not properly certified and similarly cannot serve as reliable evidence substantiating the Petitioner's claim.

In addition, as discussed in the NOID and in the Director's denial, the Petitioner's claim that the Beneficiary worked for [redacted] from May 2011 until October 2018 is inconsistent with prior records. Namely, according to the Beneficiary's 2019 nonimmigrant visa (NIV) application, the Beneficiary claimed that he had been self-employed since October 1997 upon graduating with a degree in "architecture engineering" from [redacted] University of [redacted] The Beneficiary further stated that his primary occupation was "farmland investor" and did not list any other employment or work experience. This information appears to directly conflict with the Beneficiary's employment history as provided in Section K of the labor certification and with any submitted employment letters attesting to the Beneficiary's employment for [redacted] from May 2011 until October 2018. Thus, even if the above-referenced affidavit was submitted with a properly certified translation, it would not be sufficient to resolve the inconsistency between the Beneficiary's employment history as provided in Section K of the labor certification and the Beneficiary's own claim as provided in his 2019 NIV application.

In adjudicating immigration benefit requests, USCIS regularly reviews affidavits, testimonials, and letters from both laypersons and recognized experts. To be probative, a document must generally provide: (1) the nature of the affiant's relationship, if any, to the affected party; (2) the basis of the affiant's knowledge; and (3) a specific - rather than merely conclusory - statement of the asserted facts based on the affiant's personal knowledge. *Matter of Chin*, 14 I&N Dec. 150, 152 (BIA 1972); *see also* 8 C.F.R. § 103.2(b)(2)(i) (requiring affidavits in lieu of unavailable required evidence from "persons who are not parties to the petition who have direct personal knowledge of the event and circumstances"); *Matter of Kwan*, 14 I&N Dec. 175, 176-77 (BIA 1972); *Iyamba v. INS*, 244 F.3d 606, 608 (8th Cir. 2001); *Dabaase v. INS*, 627 F.2d 117, 119 (8th Cir. 1980).

In the instant matter, not only does the affidavit lack a translator's certification, but its probative value is further diminished because it does not state how [redacted] the affiants, know the relevant facts pertaining to the Beneficiary's foreign employment. The record also contains an employment letter titled "Certificate of [G]ood [W]orkmanship" on the letterhead of [redacted] the entity where the Beneficiary is claimed to have obtained the required 24 months of work experience. However, the individual who wrote and signed the letter was not identified and the signature portion of the letter was cut off.[2] As such, we are not able to determine either the nature of the signing individual's relationship to the Beneficiary nor how the letter's signatory obtained knowledge of the Beneficiary's alleged employment with [redacted]

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). Probative evidence beyond a letter or affidavit may be considered when submitted to resolve inconsistencies or discrepancies in the record. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Ultimately, to determine whether a petitioner has established eligibility for a requested benefit by a preponderance of the evidence, USCIS must examine each piece of evidence - both individually and within the context of the entire record - for relevance, probative value, and credibility. *Matter of Chawathe*, 25 I&N Dec. at 376. Accordingly, employment letters and internally generated payment vouchers, even if they appear to contain the necessary information and are submitted with properly certified translations, may not be sufficient to overcome the noted discrepancies in the record. Based on the outlined discrepancies, the Petitioner may also need to provide contemporaneous documents, such as business or tax records, to corroborate the Beneficiary's claimed qualifying experience and to serve as the "independent, objective evidence" necessary to resolve the previously noted inconsistency. *See Matter of Ho*, 19 I&N at 591.

IV. CONCLUSION

Due to the evidentiary deficiencies described above, the Petitioner has not resolved the inconsistency regarding the Beneficiary's foreign employment. As such, we cannot conclude that the Petitioner has established with independent, objective evidence that the Beneficiary possesses the required 24 months of experience in the offered position, as required by the labor certification. However, given the previously described deficiencies in the denial, we hereby withdraw the Director's decision and

[2] *See Matter of O-M-O-*, 28 I&N Dec. 191, 193-95 (BIA 2021) (allowing administrative tribunals to question the authenticity of documents containing "obvious defects").

remand the matter for further consideration of the evidence and a new determination of the Petitioner's eligibility.

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