U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25609696

Date: OCT. 12, 2023

Appeal of Nebraska Service Center Decision

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

The Beneficiary sought to obtain lawful permanent resident status based on a job offer as a "business manager." The Petitioner, a wholesale and retail importing business, requested his classification under the third-preference immigrant visa category as a professional. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Nebraska Service Center initially approved the petition; however, the Director subsequently revoked the petition's approval, concluding that the record did not establish that the Beneficiary is qualified for the offered position. However, the Director further stated that the Beneficiary is "eligible to receive notices and is hereby granted the opportunity to participate in these proceedings because [the Beneficiary satisfied the requirements provided in *Matter of V-S-G-*, Adopted Decision 2017-06 (AAO Nov. 11, 2017)]." The matter is now before us on appeal. 8 C.F.R. § 103.3.

As an appellant in revocation proceedings, the Beneficiary 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 dismiss the appeal.

I. LAW

Immigration as a professional generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position. *Id*. Labor certification also indicates that the employment of a noncitizen will not harm wages and working conditions of U.S. workers with similar jobs. *Id*.

If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a beneficiary meets the

requirements of a certified position and a requested immigrant visa classification. If USCIS approves the petition, a noncitizen may finally 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.

"[A]t any time" before a beneficiary obtains lawful permanent residence, USCIS may revoke a petition's approval for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. If supported by a record, the erroneous nature of a petition's approval justifies its revocation. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). USCIS properly issues a notice of intent to revoke (NOIR) a petition's approval if the unexplained and unrebutted record at the time of the notice's issuance would have warranted the filing's denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). USCIS properly revokes a petition's approval if an affected party's NOIR response does not rebut or resolve the alleged revocation grounds. *Id.* at 451-52.

The term "professional" is defined in the regulation at 8 C.F.R. § 204.5(l)(2) as follows:

> *Professional* means a qualified [noncitizen] who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions.

In turn, the regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation."

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states that a petition for a professional must be accompanied by the following:

> evidence that the [noncitizen] holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the [noncitizen] is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the [noncitizen] is a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

In addition, a beneficiary must meet all of the education, training, experience, and other requirements specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

Therefore, to establish eligibility for a professional classification, a petitioner must demonstrate that the occupation requires a United States baccalaureate degree or its foreign equivalent as the minimum requirement for entry, the beneficiary possesses a United States baccalaureate degree or its foreign equivalent required for entry into the occupation, and also that the beneficiary meets the requirements for the offered position as stated on the labor certification.

II. ANALYSIS

The priority date in this matter is November 30, 2008, the date on which DOL received the DOL ETA Form 9089, Application for Permanent Employment Certification, for processing. Although the Director addressed additional issues in the NOIR, as noted above, the Director ultimately revoked the approval of the Form I-140, Immigrant Petition for Alien Workers, solely because the record does not establish the Beneficiary is qualified for the offered position. More specifically, the Director observed that the ETA Form 9089 requires—in addition to a bachelor's degree in business administration—24 months of experience in the job offered, whereas experience in an alternate occupation is unacceptable.

The Beneficiary provided only two jobs in the section of the ETA Form 9089 designated for "experience that qualifies the [Beneficiary] for the job opportunity for which the employer is seeking certification," the requested job itself as an employee of the Petitioner between October 2004 through the priority date,[1] and as a "business manager" for [redacted] India, for 40 hours per week between June 1997 and January 2000. In turn, the record contains a one-page letter signed by [redacted] identified as the "manager" of [redacted] India, dated January 17, 2000. The letter asserts that the Beneficiary "worked at [redacted] as a [b]usiness [m]anager from 06.10.1997 to 01.10.2000," and it summarizes his job duties during that period. We note, however, that the letter omits whether the Beneficiary worked on a full-time basis during that period. In the decision, the Director noted conflicting statements in the record from the Beneficiary, specifically a sworn statement submitted in response to the Director's NOIR, in which he asserted that he had "not at all" worked for [redacted] that his work experience in India between 1997 and 2000 was as "the manager of my company[, . . .] [redacted]" not [redacted] and that he worked for [redacted] "[p]art time[,] not full time" between 1997 and 2000, and that the hours he worked depended on "[w]hen they called me."[2]

The Director concluded that "the letter of experience from [redacted] is not acceptable [because] the [B]eneficiary has attested in his Sworn Statement that he never worked for [redacted] Consequently, without independent, objective evidence to substantiate the Beneficiary's assertion that he had at least two years of qualifying experience in the job offered, as required by the ETA Form 9089, the Director concluded that the record does not establish the Beneficiary is qualified for the position.

On appeal, the Beneficiary generally asserts that he was confused by the form of the questions he was asked when he gave his statement, summarized above, and that he was unaware of "what constitutes part time and full time under the USA law." He further asserts that he "did work 40 hours a week in 4 days for his previous employer, [redacted] . . June 10, 1997, to January 10, 2000." As noted above, the letter from [redacted] in the record does not indicate whether the Beneficiary

[1] A labor certification employer cannot rely on experience that a noncitizen gained with it, unless the experience was in a job substantially different than the offered position or the employer demonstrates the impracticality of training a U.S. worker for the offered position. 20 C.F.R. § 656.17(i)(3). Here, the labor certification indicates that the Beneficiary gained qualifying experience with the Petitioner in the same job, and the record does not demonstrate the impracticality of training a U.S. worker for the offered position. The record therefore does not support the use of experience that the Beneficiary gained with the Petitioner.

[2] In a prior NOIR, the Director summarized the discrepancy as follows: "During the interview the [B]eneficiary stated that he had never worked for the company [redacted] but had heard of it."

worked as a "business manager" between June 1997 and January 2000 on a full-time basis. Therefore, the letter does not confirm the Beneficiary's 24 months of experience in the job offered, as required by the ETA Form 9089. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A) (providing that "[a]ny requirements of training or experience for . . . professionals . . . must be supported by letters from trainers or employers giving . . . a description of the training received or the experience of the [individual]"). Even if the [redacted] letter had asserted that the Beneficiary worked as a "business manager" on a full-time basis, which it does not, the record lacks independent, objective evidence, such as personnel records, tax records, or pay stubs, to resolve the material inconsistencies regarding the Beneficiary's experience with [redacted] as a result of his conflicting sworn statement. *See Matter of Ho*, 19 I&N Dec. at 591-92 (providing that unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit).

In sum, the petition's approval was properly revoked for good and sufficient cause, and the affected party has not resolved this basis of revocation on appeal. The record does not establish that the Beneficiary has the minimum qualifications for the offered job as detailed on the ETA Form 9089. We will therefore affirm the revocation of the petition's approval.

ORDER: The appeal is dismissed.