U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18142729

Date: JUNE 24, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for a Skilled Worker

The Petitioner, a wholesale diamond jewelry business, seeks to employ the Beneficiary as a "sales representative, diamonds." It requests classification of the Beneficiary as a skilled worker 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 residence to work in a position that requires at least two years of training or experience.

The petition was initially approved. However, the Director of the Texas Service Center subsequently revoked the approval on the grounds that (1) a *bona fide* job offer open to U.S. workers did not exist because a familial relationship between the Beneficiary and the Petitioner's owner and president was not revealed on the labor certification, and (2) the Petitioner and the Beneficiary willfully misrepresented a material fact by failing to disclose the familial relationship between the Petitioner's president and the Beneficiary, thus violating the Petitioner's affirmations on the labor certification and the petition that their contents were true and correct and making the Beneficiary ineligible for a visa or admission to the United States under section 212(a)(6)(C)(i) of the Act.

On appeal the Petitioner acknowledges the familial relationship between the Petitioner and the Beneficiary, but asserts that the proffered position was nevertheless a *bona fide* job offer open to U.S. workers and that there was no willful misrepresentation of a material fact on the labor certification regarding the familial relationship between the Petitioner and the Beneficiary.

The AAO reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). It is the Beneficiary's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *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 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 (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 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.

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).

II. ANALYSIS

The instant petition was filed with USCIS on April 1, 2008, accompanied by a labor certification that was filed with the DOL on December 14, 2007, and certified on January 31, 2008. The petition was approved on December 4, 2008. However, the Director issued a notice of intent to revoke (NOIR) the approval on May 5, 2020, pointing to the Petitioner's incorrect answer of "No" to the compound question at section C.9 of the labor certification, which reads:

> Is the employer a closely held corporation, partnership, or sole proprietorship in which the alien has an ownership interest, or is there a familial relationship between the owners, stockholders, partners, corporate officers, or incorporators and the alien?

The Director referenced an interview conducted by USCIS officials in which the Beneficiary stated that the Petitioner's president, [redacted] is his brother-in-law. The Director indicated that the failure to acknowledge this familial relationship on the labor certification may have affected the outcome of the labor certification process by warding off a closer inspection of the job offer by the DOL to ascertain whether it was truly a *bona fide* job opportunity open to U.S. workers. The Director also indicated that the denial of the familial relationship on the labor certification appeared to constitute the willful misrepresentation of a material fact, and that such a finding would make the Petitioner and the Beneficiary ineligible for the immigration benefit sought in this proceeding.

In response to the NOIR the Petitioner asserted that while its president, [redacted] is the Beneficiary's brother-in-law, [redacted] has no ownership interest in the Petitioner, which is wholly owned by [redacted] a company based in Dubai, UAE, that is owned by two other individuals. The Petitioner submitted documentation which identified [redacted] as its president but not as an owner or co-owner of the company. According to the Petitioner this evidence showed that the proffered position was a *bona fide* job offer and that there was no misrepresentation of any material fact regarding the familial relationship between the Petitioner and the Beneficiary.

In the revocation decision, issued on January 26, 2021, the Director disagreed with the Petitioner's reading of the documentation submitted in response to the NOIR and stated that it showed [redacted] to be not only the Petitioner's president, but also its sole owner. The Director also cited the Florida Secretary of State's business registrations file, which allegedly showed the Petitioner to be owned 100% by [redacted] as of August 27, 2020. The Director concluded that due to its failure to disclose the familial relationship between the Petitioner's owner/president and the Beneficiary on the labor certification the Petitioner did not demonstrate that the proffered position was a *bona fide* job offer open to U.S. workers. In addition, the Director found that by denying their familial relationship on the labor certification the Petitioner and the Beneficiary willfully misrepresented a material fact, thus violating the Petitioner's affirmations on the labor certification and the petition that their contents were true and correct and making the Beneficiary ineligible for a visa or admission to the United States under section 212(a)(6)(C)(i) of the Act.

On appeal the Petitioner disputes the Director's interpretation of the Florida Secretary of State's business registrations file, and submits an entry from February 21, 2021, which identifies [redacted] as the Petitioner's president, but provides no information about who owns the Petitioner. We have consulted the same website and confirm that it identifies [redacted] as the Petitioner's president and contains no information about the Petitioner's ownership. *See* ownersearch.sunbiz.org/inquiry/CorporationSearch (last visited June 14, 2022). Accordingly, we agree with the Petitioner that [redacted] is its president, but not its owner.

That fact does not alter the Director's finding, however, that the Petitioner willfully misrepresented a material fact in its answer of "No" to the question at section C.9 of the labor certification because the second part of the question asks: "is there is a familial relationship between the owners, stockholders, partners, corporate officers, incorporators, and the alien?" [redacted] is the Petitioner's president, and therefore a corporate officer who has a familial relationship with the Beneficiary. Accordingly, the correct answer to the question at C.9 was "Yes."

A misrepresentation is an assertion or manifestation that is not in accord with the true facts. For an immigration officer to find a willful and material misrepresentation of fact, he or she must determine that (1) the petitioner or beneficiary made a false representation to an authorized official of the U.S. government, (2) the misrepresentation was willfully made, and (3) the fact misrepresented was material. *See Matter of M-,* 6 I&N Dec. 149 (BIA 1954); *Matter of Kai Hing Hui,* 15 I&N Dec. 288, 289 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). A "material" misrepresentation is one that "tends to shut off a line of inquiry relevant to the alien's eligibility." *Matter of Ng,* 17 I&N Dec. 536, 537 (BIA 1980). Any alien who seeks an immigration benefit by fraud or willfully misrepresenting a material fact is ineligible for a visa or admission to the United States. *See* section 212(a)(6)(C)(i) of the Act.

In accord with the Director's decision we find that the Petitioner made a false representation on the labor certification by denying that there is a familial relationship between its president and the Beneficiary, that the misrepresentation was willfully made, and that the misrepresented fact was material to the question of whether the proffered position was a *bona fide* job opportunity open to U.S. workers, as the Petitioner certified at section N.8 the labor certification.

A petition may be approved only after an investigation of the facts in each case to ensure that the facts stated in the petition, which necessarily includes the labor certification, are true. Section 204(b) of the Act, 8 U.S.C. § 1154(b). USCIS is responsible for reviewing the Form I-140, and the labor certification is incorporated into the Form I-140 by statute and regulation. *See* section 203(b)(3)(C) of the Act, 8 U.S.C. § 1153(b)(3)(C); 8 C.F.R. § 204.5(a)(2); 8 C.F.R. §103.2(b)(i). USCIS is only required to approve an employment-based immigrant visa petition when it determines that the facts stated in the petition, which incorporates the labor certification, are true, and the foreign worker is eligible for the benefit sought. Section 204(b) of the Act, 8 U.S.C. § 1154(b).

Based on the foregoing analysis we conclude that the Petitioner is not entitled to the immigration benefit sought in this proceeding because all of the facts stated in the labor certification accompanying the petition are not true. Specifically, the Petitioner willfully misrepresented a material fact at section C.9 of the labor certification by denying any familial relationship between the Petitioner and the Beneficiary, when in fact a corporate officer of the petitioner, its president, is the Beneficiary's brother-in-law. Therefore, in accord with the provisions of section 204(b) of the Act, we will dismiss the appeal.

ORDER: The appeal is dismissed.