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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 25

WAC 04 099 51268

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b) (3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b) (3)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, [redacted], is a wholesale/retail floor covering firm. It seeks to employ the beneficiary, [redacted], permanently in the United States as a carpet installer. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director concluded that the petitioner had failed to demonstrate that the petition was based on a bona fide job offer and denied the petition accordingly.

On appeal, the petitioner maintains that the job offer is genuine and requests approval of the petition.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB,* 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS,* 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The filing date or priority date of the petition is the initial receipt in the DOL's employment service system. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on December 13, 1999.[1]

It is noted that the Immigrant Petition for Alien Worker (I-140) contained the signature of the petitioner's sole shareholder, [redacted] and was prepared by [redacted] Esq. of [redacted] of Van Nuys, California. Part 5 of the I-140, filed on February 23, 2004, states that the petitioner was established in 1998 and currently employs 15 to 20 workers.

With the I-140, the petitioner submitted a letter, dated February 2, 2004, signed by [redacted] It requests that the current beneficiary, [redacted] be substituted for the original beneficiary, [redacted] who was sponsored on the original application for labor certification. A copy of the approval notice of Mr. [redacted] I-140 was also provided. The copy of the original labor certification[2] application, submitted with the petition, reflects that it was signed by [redacted] and the original beneficiary, [redacted] with both authorizing [redacted] of [redacted] Encino, California as their agent.

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[1] If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date, including a prospective U.S. employer's ability to pay the proffered wage is clear.

[2] It is unclear where the original labor certification is located. Even if eligible, this petition would not be approvable without the original labor certification. *See* 8 C.F.R. § 204.5(g).

The petitioner also submitted an amended Part B of the Form ETA 750, signed by the current beneficiary, [redacted], on February 17, 2004, which identified [redacted] Esq. as his agent.

The director issued a request for evidence on November 18, 2004, requesting the petitioner to provide additional documentation related to its ability to pay the proffered wage of $23.80 per hour or $49,504 per annum. Although the record contains some financial documentation submitted with the petition, there is no indication whether the petitioner ever responded to this request.[3]

On June 28, 2007, the director issued a notice of intent to deny the petition informing the petitioner that pursuant to 8 C.F.R. § 103.2(b)(16)(i), obliging Citizenship and Immigration Services (CIS) to advise a petitioner of derogatory information relevant to his petition and offering an opportunity to present information on his/her own behalf before a decision rendered, the director informed the petitioner that the I-140 had been returned to the Service Center from the CIS district office in Los Angeles. It had been returned because of the probable connection with other suspected fraudulently filed I-140 petitions and the investigation called into question the bona fides of the instant I-140. Referring to the United States Immigration and Customs Enforcement (ICE) investigator's report, the director stated:

> .In April of 2002, [an] ICE Special Agent...of the Office of Resident Agent in Charge (RAC), received information from the Immigration and Naturalization Service (INS), California Service Center (CSC) alleging the [redacted] and others were filing fraudulent employment-based immigration application for foreign nationals seeking to enter and/or remain in the United States....
>
> ...ICE Special Agents interviewed one of the prospective beneficiaries of an employment based immigrant petition filed by [redacted] owner of West Coast Flooring Outlets, Inc. During the interview the prospective beneficiary stated among other things, the following:
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> ...He asked for the opportunity to work since he had his work permit based on [redacted] applications and [redacted] told him to find another company to appl for his een card. [redacted] i further told him that any of the files that anybody had with [redacted] and Associates law firm (counsel for the petitioner of instant petition), was absolutely out of the question...He would have to get job somewhere else... [redacted] further states: Anybody who had obtained work permits through West Coast Flooring would be ignored until the case was over, adding that his attorney told him not to talk to anyone...

Based on the above, the director questioned the validity of the I-140 purportedly signed by [redacted] represented by [redacted] and questioned the bona fides of the underlying labor certification which also carried the signatures of [redacted] on behalf of the employer and [redacted] as the agent. The director requested that the petitioner provide proof that the [redacted] had actually hired [redacted]) to obtain a labor certification and afforded the petitioner thirty (30) days to provide additional information.

[3] The director cited the regulation at 8 C.F.R. § 204.5(g)(2) in his decision to deny the petition, but did not make any findings on this issue. The AAO's decision in this case is rendered on the basis of its finding that the underlying labor certification is fraudulent.

In response to the notice of intent to deny, a letter, dated July 25, 2007, signed by [redacted] as president of the petitioning corporation replied:

> I would like to inform you that this specific application is not a fraudulent case since 'West Coast Flooring outs Inc' has taken advantage of [redacted] for his experts in construction. He possesses Class 'B,' General Building Contractor from Contractor State License Board in California. And in some Jobs we are required to submit such a license to get the job.

also submitted Class B California general building contractor's license that was issued on November 15, 2005.

The director denied the petition on August 22, 2007, noting that the petitioner's July 25, 2007, letter was not responsive to the request for proof that had actually hired to obtain the underlying labor certification. The director also noted that job offered as stated on the labor certification is a carpet installer and not a general contractor.

[redacted] filed the appeal on behalf of the petitioner. He states:

> 3-In response to Fraudulent issue, again I would like to state without any bias, that the beneficiary has been victimized by [redacted], who without my knowledge / approval had filed applications. As I stated in presence of Grand Jury and also in investigations, [redacted]s firm had forged signatures and to add insult to injury had notorized them too.(sic) This claim is strongly obvious through documents in possession of ICE.
>
> 5-In reference to I-140 filed by whoever, as I indicated, he had been a victim of fraudulent acts. TO MY UNDERSTANDING, HE IS A SUBSTITUTE FOR AN APPLICANT WHOM I-140 WAS FILED AND APPROVED.
>
> (Original Emphasis)

Relevant to his desire to employ the beneficiary, [redacted] states:

> 2-The beneficiary will be employed in a permanent full-time position as a holder of 'Licence B-General Building Contractor' from C.S.L.B. who performs duties regarding not only Carpet layer and installer but also Wood, Tile, Granite, and all kinds of floorings as well as home improvements.
>
> 4-West Coast Flooring Outlets, Inc. is strongly in need of an expert like [redacted] the beneficiary who had been a floor layer. His skills justify my persistence in having such a person.

Based on the above, [redacted] disclaims signing any application for a labor certification filed by Mr. [redacted] "who without my knowledge / approval filed applications" and also disclaims signing the I-40 "filed by whoever," yet apparently still wants to seek approval of the petition in order to hire the beneficiary in a position that involves duties that are different from that of a carpet layer.

It is observed that [redacted]s signatures on the response to the intent to deny and the notice of appeal appear to be similar, whereas his signatures on other documents including the letters requesting the substitution of the current beneficiary for the original beneficiary, as well as the copy of the original labor certification and even the 2001 and 2002 tax returns contained in the record are similar to each other but different from the response to the intent to deny and the notice of appeal.[4]

The regulation at 20 C.F.R. § 656.30 provides in pertinent part:

> (d) *Invalidation of labor certifications.* After issuance, a labor certification may be revoked by ETA using the procedures described in § 656.32. Additionally, after issuance, a labor certification is subject to invalidation by the DHS or by a Consul of the Department of State upon a determination, made in accordance with those agencies' procedures or by a court, of fraud or willful misrepresentation of a material fact involving the labor certification application. . .

Based upon our review of the record, we conclude that the director had sufficient cause to find that the offer of employment was not bona fide. Although the extent of [redacted]'s involvement in this scheme is unclear, it may be concluded that based on the director's investigation and [redacted]'s admissions set forth on the notice of appeal, that the I-140 in this matter was filed based on a fraudulent labor certification. Pursuant to 20 C.F.R. § 656.30(d), the labor certification is declared invalid based on fraud. The petitioner may not sponsor any beneficiary based on this labor certification.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

FURTHER ORDER: The labor certification is invalid.

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[4] It is further observed that on September 6, 2006, [redacted] pleaded guilty to conspiracy, two counts of immigration fraud and two counts of money laundering and was sentenced to 30 months in federal prison on March 16, 2007. *See* http://www.usdoj.gov//usao/cac/pressroom/pr2006/131.html and http://www.renewamerica.us/columns/kouri/070319 **(accessed 8/25/08). Electronic records also indicate that** [redacted] pleaded guilty to conspiracy to commit immigration fraud and one count of immigration fraud. As of April 11, 2007, she was expelled from the practice of law. She was one of the principals associated with [redacted] in the Law Offices of Hoffman, Rahmaty and Assoc.