U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27459711

Date: JAN. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a pharmacy, sought to employ the Beneficiary as a manager of research services. It requested classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center revoked the approval of the petition, and invalidated the accompanying labor certification from the U.S. Department of Labor (DOL), concluding that the Petitioner willfully misrepresented material facts in the petition. Specifically, on the labor certification the Petitioner concealed the familial relationship between its principal and the Beneficiary. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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 will dismiss the appeal.

I. LAW

Immigration as a member of the professions holding an advanced degree usually follows a three-step process. First, the prospective employer must obtain a labor certification approval from the U.S. Department of Labor (DOL) to demonstrate that there are not sufficient U.S. workers who are able, willing, qualified, and available for the offered position. Section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5).

Second, the employer must submit the approved labor certification with an immigrant visa petition to USCIS. Section 204 of the Act, 8 U.S.C. § 1154. The immigrant visa petition must establish that the foreign worker qualifies for the offered position, that the foreign worker and the offered position are eligible for the requested immigrant visa category, and that the employer has the ability to pay the proffered wage. *See* 8 C.F.R. § 204.5. Finally, if USCIS approves the immigrant visa petition, the

foreign worker may apply for an immigrant visa abroad or, if eligible, for adjustment of status in the United States. 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 the record, the erroneous nature of a petition's approval justifies its revocation. See *Matter of Ho,* 19 I&N Dec. 592, 590 BIA 1988).

USCIS may issue a notice of intent to revoke (NOIR) a petition's approval if the unexplained and unrebutted record at the time of the NOIR's issuance would have warranted the petition's denial. *Matter of Estime,* 19 I&N Dec. 450, 451 (BIA 1987). If a petitioner's NOIR response does not overcome the revocation grounds stated in the notice, USCIS properly revokes a petition's approval. *Id.* at 451-2.

II. ANALYSIS

The Petitioner filed its I-140 petition on behalf of the Beneficiary in October 2016, and it was initially approved in November 2016. In March 2022, the Director issued a notice of intent to revoke (NOIR) based upon the Petitioner's willful misrepresentation of material facts in the petition concerning a familial relationship between its principal and the Beneficiary. In responding to the NOIR, the Petitioner disputed that it had willfully misrepresented material facts relating to the petition, but acknowledged the familial relationship and requested that the petition be withdrawn. The Director acknowledged the withdrawal request, but stated that the petition could not be withdrawn "to avoid a finding of misrepresentation." She also noted that since the petition had been approved for more than 180 days, per 8 C.F.R. § 205.1(a)(3)(iii)(C) it would remain approved unless revoked on other grounds. The Director concluded that the Petitioner had willfully misrepresented the familial relationship, and therefore invalidated the labor certification and revoked the approval of the petition.

A. Withdrawal of the Petition

The regulation at 8 C.F.R. § 103.2(b)(6) states that "[a]n applicant or petitioner may withdraw a benefit request at any time until a decision is issued by USCIS or, in the case of an approved petition, until the person is admitted or granted adjustment or change of status, based on the petition." A petitioner's right to withdraw a visa petition is also supported in *Matter of Cintron*, 16 I&N Dec. 9 (BIA 1976).

However, as noted by the Director, the regulation at 8 C.F.R. § 205.1(a)(3)(iii)(C) applies to employment-based petitions and states that where a petitioner has submitted a written notice of withdrawal, "[a] petition that is withdrawn 180 days or more after its approval, or 180 days or more after the associated adjustment of status application has been filed, remains approved unless its approval is revoked on other grounds." While the job offer from that petitioner is rescinded, the petition's approval remains subject to revocation, including where the petition was erroneously approved. As such, although we acknowledge the Petitioner's withdrawal of the approval of its petition, the matter of the petition's revocation due to the willful misrepresentation of material facts will also be addressed below.

B. Willful Misrepresentation of a Material Fact

The next issue on appeal is whether the Director properly revoked the approval of the petition on the ground that the Petitioner made a willful misrepresentation of a material fact.

A finding of material misrepresentation requires the following elements: the petitioner procured or sought to procure a benefit under U.S. immigration laws; they made a false representation; and the false representation was willfully made, material to the benefit sought, and made to a U.S. government official. *Id.*; *see generally* 8 *USCIS Policy Manual* J.2(B), https://www.uscis.gov/policymanual. Under Board precedent, a material misrepresentation is one which "tends to shut off a line of inquiry which is relevant to the [noncitizen's] eligibility and which might well have resulted in a proper determination that he be excluded."[1] A willful misrepresentation requires that the individual knowingly make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled.[2] Material misrepresentation requires only a false statement that is material and willfully made. The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise.[3]

Here, the Director determined that the Petitioner willfully misrepresented a material fact when it answered "no" in Part C.9 of the ETA Form 9089, Application for Permanent Employment Certification (labor certification) to the following question:

> Is the employee 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?

In its response to the Director's NOIR, the Petitioner admitted that its principal is the Beneficiary's uncle, and does not dispute that it failed to disclose that relationship on the labor certification. But it argues on appeal that the finding of willful misrepresentation of a material fact was done pursuant to section 212(a)(6)(C)(i) of the Act, which pertains to the inadmissibility of "aliens," and thus cannot be applied to corporations or other entities petitioning on behalf of beneficiaries.

We initially note that while the Director's NOIR cited to this section of the Act and noted the potential consequences to the Beneficiary of a finding that he willfully misrepresented material facts relating to the petition, the decision does not cite to section 212(a)(6)(C)(i) of the Act and specifically excludes the Beneficiary from its conclusion. In addition, even if the Director had found that the Beneficiary had willfully misrepresented the familial relationship, which she did not, the issue of his inadmissibility under section 212(a)(6)(C)(i) or other sections of the Act would only be considered in any future proceedings.[4]

---

[1] *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

[2] *Sergueeva v. Holder*, 324 Fed. Appx. 76 (2d Cir. 2009) (citing *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975).

[3] *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979).

[4] The Petitioner need not establish his admissibility with the instant petition. The Act authorizes officers of the U.S. Departments of State and Homeland Security to make admissibility findings on applications for: immigrant visas at consulates, *see* section 101(a)(13)(A) of the Act, 8 U.S.C. § 1101(a)(13)(A); admissions at ports of entry, *see* section

Also, USCIS will deny a visa petition if the petitioner submits evidence which contains false information. *See* section 204(b) of the Act. A petition includes its supporting evidence - including a labor certification. 8 C.F.R. § 103.2(b)(1). Therefore, the issue of whether the Petitioner willfully misrepresented the familial relationship is separate from the Beneficiary's admissibility, but relevant to whether the Director revoked the petition for good and sufficient cause.

The Petitioner also asserts that the misrepresentation of the familial relationship was not done willfully, and points to two typographic errors made by the preparer on the labor certification as evidence that any misrepresentations were inadvertent. We note that the errors were minor and immaterial, apparently relating to confusion between the words "country" and "county." Further, as noted by the Director, by signing the petition the Petitioner declared, under penalty of perjury, that the application had been reviewed and that the information therein was true and accurate. *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 8 C.F.R. § 103.2(a)(2). The signature of the Petitioner's signatory "establishes a strong presumption" they knew and assented to the contents. *See Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018). The Petitioner's assertion of a typographic error falls short of overcoming that strong presumption, as does the signatory's written statement claiming ignorance of the question at part C.9 of the labor certification.

The remaining elements showing willful misrepresentation of a material fact were also addressed by the Director in her decision. By filing a labor certification and Form I-140 on the Beneficiary's behalf, the Petitioner sought to procure a benefit under U.S. immigration law, through which it intended to gain his services. And the Petitioner's misrepresentation regarding the familial relationship between the its principal and the Beneficiary cut off a line of inquiry which was relevant to the Beneficiary's eligibility. *Matter of S-and B-C-,* 9 I&N Dec. 436, 447 (BIA 1961). As indicated above, DOL must certify that "there are not sufficient workers who are able, willing, qualified . . . and available" for an offered position. Section 212(a)(5)(A)(i)(I) of the Act. A family relationship between an employer's principal and a sponsored noncitizen creates a presumption that an offered position is not clearly available to U.S. workers. *See* 20 C.F.R. § 656.17(l) (requiring a labor certification employer to demonstrate the bona fides of a job opportunity if a family relationship exists between an employer's principal and the alien). Therefore, under section 204(b) of the Act, the Director properly revoked the petition's approval based on the misrepresentation at part C.9 of the labor certification.

III. CONCLUSION

The Petitioner willfully misrepresented a fact bearing on a statutory labor certification requirement. So the Director properly revoked the petition's approval for good and sufficient cause.

ORDER: The appeal is dismissed.

202(a)(1)(B) of the Act, 8 U.S.C. § 1152(a)(1)(B); and adjustments of status at USCIS offices, *see* section 245 of the Act, 8 U.S.C. § 1255. Thus, these I-140 petition proceedings are not the appropriate forum to determine the Beneficiary's admissibility. *See Matter of O-*, 8 I&N Dec. 295, 296-98 (BIA 1959). Nor would a finding of his inadmissibility warrant the I-140 petition's denial.