U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-M-A-, LLC

DATE: MAY 25, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a fashion model agency, seeks to classify the Beneficiary, a fashion model, as a foreign national of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i). This O-1 classification makes nonimmigrant visas available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation.

The Director, Vermont Service Center, denied the petition. The Director concluded, after issuing two notices of intent to deny (NOIDs), that the petition was not approvable due to the Petitioner's submission of a falsified document. The Director did not address the issue of the Beneficiary's eligibility as a foreign national of extraordinary ability in the arts.

The matter is now before us on appeal. In its appeal, the Petitioner seeks to reverse the Director's finding and submits additional evidence and a brief.

We will withdraw the Director's decision, and remand the matter to the Director for further proceedings.

I. LAW

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified beneficiary who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. The implementing regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines extraordinary ability in the field of science, education, business, or athletics as "a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor."

Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), provides:

> Misrepresentation. (i) In general. Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

II. ANALYSIS

A. Introduction

The Petitioner filed the instant Form I-129, Petition for a Nonimmigrant Worker, on behalf of the Beneficiary. The record reflects that the Beneficiary is a fashion model who was previously granted O-1 classification with a different petitioner. In support of the petition, the Petitioner provided several testimonial letters including a letter dated January 27, 2015, containing the signature of of in Italy, attesting to the Beneficiary's extraordinary ability as a fashion model.

Subsequently, the Director issued two NOIDs to inform the Petitioner of derogatory information and to provide an opportunity to rebut the information. The NOIDs advised the Petitioner that when USCIS attempted to verify the authenticity of letter, and representatives of confirmed that he had not worked for since July 2012 and, therefore, did not authorize the letter. Based on this information the Director concluded that the Petitioner had submitted a "falsified document," and requested evidence to establish the veracity of the remaining testimonial letters affirming the Beneficiary's extraordinary ability as a fashion model and the contracts regarding the Beneficiary's proposed employment as a model in the United States.

In the Petitioner's response to the first NOID dated on April 27, 2015, the Petitioner requested to withdraw letter from consideration because it could not contact him, and denied any falsification.[1] The Petitioner submitted letters from the authors of the remaining testimonial letters confirming their veracity, and additional testimonials attesting to the Beneficiary's extraordinary ability as a fashion model. The Petitioner further provided letters from the Beneficiary's prospective employers in the United States, verifying the proposed employment contracts. The Petitioner's response to the second NOID dated June 15, 2015, included a letter from the Petitioner's Director and of describing the practice by which the Petitioner obtained recommendation letters from on behalf of beneficiaries through a vetting system that allowed the Petitioner to stamp cleared letters with the signature of a employee. Specifically, the Petitioner explained that its representatives contacted for authorization to issue the letter and mistakenly stamped the letter as signed by rather than the current employee at who has the same first name as and is authorized to issue letters on behalf.

After considering the responses, the Director denied the petition, finding that the Petitioner did not provide independent and objective evidence to overcome the determination that the Petitioner

[1] The Petitioner also requested to withdraw from consideration a testimonial letter from of in France, because it was unable to contact her to confirm the veracity of her letter.

submitted a falsified document. On appeal, the Petitioner challenges the Director's finding and files a brief and additional material. As discussed below, we find that the Petitioner has satisfactorily resolved the Director's concerns.

B. Discussion

We find that the Petitioner has resolved the Director's concerns regarding the submission of a falsified letter and that the record does not support a finding of willful misrepresentation of a material fact. A misrepresentation is an affirmation or manifestation that is not in accord with the true facts of the case. A misrepresentation can be made to a government official in an oral interview, on the face of a written application or petition, or by offering evidence containing false information. *See* INS Genco Op. No. 91-39, 1991 WL 1185150 (April 30, 1991). The law provides for a wide range of potential consequences for material misrepresentation, including the denial of the visa petition, a finding of fact that may render an individual foreign national inadmissible to the United States, or criminal prosecution. *See* 18 U.S.C. §§ 1001, 1546; *see also*, *U.S. v. O'Connor*, 158 F.Supp.2d 697 (E.D. Va. 2001).

An immigration officer will deny a visa petition if the petitioner submits evidence which contains false information. In general, a few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, if a petition includes serious errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after an officer provides an opportunity to rebut or explain, then the inconsistencies will lead USCIS to conclude that the facts stated in the petition are not true. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Beyond the adjudication of the visa petition, a misrepresentation may also lead USCIS to enter an administrative finding that a petitioner or individual sought to procure a visa or other documentation by willful misrepresentation of a material fact. *See* section 212(a)(6)(C) of the Act.

As outlined by the Board of Immigration Appeals, a material misrepresentation requires someone to willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term "willfully" means knowingly 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). To be considered material, the misrepresentation must be one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he be excluded." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980). Accordingly, for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, he or she must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Kai Hing Hui*, 15 I&N Dec. at 288.

After careful review, we conclude that the Director's decision that the Petitioner submitted a falsified letter is not supported by the entirety of the evidence in the record. In the two NOIDs, the Director identified conflicting information in the record of proceedings: the fact that letter was stamped with his name on a date when he no longer worked for In response to the NOIDs, the Petitioner confirmed that the letter bore the signature stamp of an individual no longer employed at but argued that the discrepancy resulted from the Petitioner's accidental use of the wrong signature stamp due to confusion over who had authorized the letter, rather than

The Director's decision rejected the Petitioner's rebuttals, noting that although the Petitioner claimed its mistakes were unintentional, letter in response to the second NOID "does not indicate he was contacted prior to the submission of the January 27, 2015, letter from On appeal, the Petitioner provides an additional letter from dated July 27, 2015, stating *inter alia*, that, "I was contacted by [the Petitioner] in January 2015 to authorize the letter in question that was mistakenly 'rubber stamped' with the signature of my former colleague, and confirming that " **firmly stands behind the letters written to date on behalf of [the Petitioner]**." (Emphasis in original.) Upon review, we conclude that the evidence the Petitioner offered in response to the NOIDs and includes on appeal is sufficient to overcome the Director's conclusions and establish that the discrepancy was not willful. Accordingly, we will withdraw the Director's decision and remand the petition to the Director for entry of a new decision.

At this time, we take no position on whether the Beneficiary qualifies for the classification sought. Rather, we remand the matter to the Director to make the initial determination on that issue.

III. CONCLUSION

As discussed above, we find that the Petitioner has overcome the Director's finding regarding its submission of a falsified document. As this finding was the sole basis for denial of the petition, we will remand the matter for a new decision regarding eligibility for the classification sought. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The decision of the Director, Vermont Service Center, is withdrawn. The matter is remanded to the Director, Vermont Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of F-M-A-, LLC*, ID# 16597 (AAO May 25, 2016)