U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32462814

Date: MAY 2, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an oilfield services company, seeks to employ the Beneficiary as a snubbing superintendent. It requests classification of the Beneficiary under the third-preference, immigrant classification for skilled workers. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based category allows a U.S. business to sponsor a foreign national for lawful permanent resident status based on a job offer requiring at least two years of training or experience.

The Texas Service Center Director denied the petition, concluding that the Petitioner did not establish that the Beneficiary possessed the minimum experience required for the offered position. The matter is 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

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 foreign national 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 foreign national 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.

II. ANALYSIS

A petitioner must establish a beneficiary's possession of all the education, training, and experience specified on an accompanying labor certification by a petition's priority date.[1] 8 C.F.R. §§ 103.2(b)(l), (12); *see also Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). The priority date in this case is April 24, 2020.

The regulation at 8 C.F.R. § 204.5(l)(3) provides:

> (ii) *Other documentation*—
>
> > (A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

The underlying labor certification states that the position's minimum requirements are 96 months of experience in a related snubbing services position, with no education. On the labor certification at Part H.14, Specific Skills or Other Requirements, the Petitioner states:

> Must have experience with or knowledge of: (i) horizontal drilling, high pressure snubbing, and workover operations for/in the oil and gas industry; (ii) managing and supervising oil and gas well programs; (iii) coordinating technical high-pressure snubbing, well invention, and work-over and completion operations; (iv) setting-up oil and gas operations in domestic and multi-geographical regions; (v) managing an Operational Budget as well as rig Profit and Loss Management; and (vi) snubbing unit design and commissioning.
>
> Must also have a valid driver's license and meet minimum driving requirements for company insurance purposes.
>
> Must be able to work weekends and evenings as well as travel to various customer offices and worksites (sometimes remote and abroad/international) 10% of the time.
>
> Must successfully pass a pre-employment background check and drug screen.

On the labor certification, the Petitioner asserts that the Beneficiary qualifies for the offered position based on the following experience:

- As a snubbing supervisor with [redacted] from February 2, 2016 to July 15, 2016;
- As a snubbing superintendent with [redacted] from March 13, 2013 to July 1, 2015;

[1] The "priority date" of a petition is the date the underlying labor certification is filed with the DOL. *See* 8 C.F.R.§ 204.5(d).

- As a snubbing/workover superintendent with [redacted] from November 20, 2011 to April 4, 2013;
- As a project manager/HWU supervisor with [redacted] from August 4, 2011, to November 11, 2011;
- As a drilling rig manager/snubbing with [redacted] from January 3, 2010 to June 10, 2011;
- As a snubbing/workover superintendent with [redacted] from September 1, 2008 to September 1, 2010;
- As a snubbing/HWO supervisor with [redacted] from September 15, 2006 to August 19, 2008; and,
- As a senior operator with [redacted] from September 1, 2000 to September 14, 2006

The record includes letters describing the Beneficiary's work experience, including:

- A letter dated July 7, 2021, signed by [redacted] former Workover and Operations Manager with [redacted] – Ukraine Operations. Mr. [redacted] states that he directly supervised the Beneficiary during his full-time employment with [redacted] as "snubbing/Workover Superintendent" in Ukraine, from November 20, 2011 to April 4, 2013.[2]
- A letter dated July 6, 2021, signed by [redacted] former Senior Supervisor with [redacted] Mr. [redacted] states that he directly supervised the Beneficiary during his full-time employment with [redacted] in Dubai, as "Snubbing/Workover Superintendent," from September 1, 2008 to September 1, 2010.

The record also includes three letters dated July 2, 2021, each signed by [redacted] Mr. [redacted] states that he was employed with [redacted] as a Southern District Operations Manager from 2007 to 2014, as a Technical Sales Representative from 2014 to 2017 and as a Snubbing General Manager from 2017 to 2018. In the letters Mr. [redacted] states that the Beneficiary was a full-time employee of [redacted] during the following periods:

- As a "Project Manager/HWU Supervisor," from August 4, 2011 to November 11, 2011;
- As a "Snubbing/HWU Supervisor," from September 15, 2006 to August 19, 2008, and;
- As a "Senior Operator," from September 1, 2000 to September 14, 2006.

The Director issued a request for evidence (RFE) informing the Petitioner that the letters were not sufficient to demonstrate that the Beneficiary possesses the required 96 months of experience for the offered position. The Director determined that, because the letters were issued by former employees of the Beneficiary's former employers and not by the former employers directly, the letters were not

[2] The Beneficiary's claimed qualifying experience with [redacted] in Ukraine through April 2013 overlaps with his claimed employment on the labor certification with [redacted] from March 2013 in Gabon. While not a basis for our decision, the Petitioner must resolve this inconsistency in any further filings. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, at 591-92.

"probative or credible." The Director specifically noted that, pursuant to 8 C.F.R. § 103.2(b)(2)(i), if a required document is unavailable, a petitioner must demonstrate this and submit secondary evidence pertinent to the facts at issue.

In response to the RFE, the Petitioner submitted a letter from counsel but did not provide additional evidence. The Petitioner's counsel asserted that all of the letters attesting to the Beneficiary's experience "provide the name, address, and title of the employer/supervisor as well as a description of the [Beneficiary's] experience." The Petitioner's counsel stated that both Mr. [ ] and Mr. [ ] stated in their letters that they supervised the Beneficiary during his employment. Addressing the letters from Mr. [ ] the Petitioner's counsel stated, "While it is correct that Mr. [ ] is a former employee of [ ] he was in fact employed there with [the Beneficiary]."

After reviewing the Petitioner's response to the RFE the Director denied the petition. For the reasons explained in the RFE, she again determined that the letters were insufficient to demonstrate the Beneficiary's qualifying experience. She, therefore, concluded that the Petitioner had not established that the Beneficiary met the minimum experience requirements for the offered position.

On appeal, the Petitioner again asserts that the letters in the record are sufficient to establish that the Beneficiary possesses the required 96 months of experience for the offered position. The Petitioner submits a brief from its counsel and no additional evidence. In its brief, counsel asserts that the letters were issued by the most qualified source, as the authors of the letters "supervised [the Beneficiary] in his previous positions and thus had firsthand knowledge of his experience and qualifications."

In adjudicating immigration benefit requests, USCIS regularly reviews affidavits, testimonials, and letters from both laypersons and recognized experts. To be probative, a document must generally provide: (1) the nature of the affiant's relationship, if any, to the affected party; (2) the basis of the affiant's knowledge; and (3) a specific - rather than merely conclusory - statement of the asserted facts based on the affiant's personal knowledge. *Matter of Chin*, 14 I&N Dec. 150, 152 (BIA 1972); *see also* 8 C.F.R. § 103.2(b)(2)(i) (requiring affidavits in lieu of unavailable required evidence from "persons who are not parties to the petition who have direct personal knowledge of the event and circumstances"); *Matter of Kwan*, 14 I&N Dec. 175, 176-77 (BIA 1972); *Iyamba v. INS*, 244 F.3d 606, 608 (8th Cir. 2001); *Dabaase v. INS*, 627 F.2d 117, 119 (8th Cir. 1980). A petitioner may submit a letter or affidavit that contains hearsay or biased information, but such factors will affect the weight to be accorded the evidence in an administrative proceeding. *See Matter of D-R-*, 25 I&N Dec. 445, 461 (BIA 2011) (citations omitted). Probative evidence beyond a letter or affidavit may be considered when submitted to resolve inconsistencies or discrepancies in the record. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Ultimately, to determine whether a petitioner has established eligibility for a requested benefit by a preponderance of the evidence, USCIS must examine each piece of evidence - both individually and within the context of the entire record - for relevance, probative value, and credibility. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The Petitioner's counsel notes in its brief that "while letters from the employer are the preferred form of evidence for employment verification, 'other documentation ... will be considered if they are unavailable' ... *provided that the petitioner explains why when submitting an alternative*." (emphasis added). But the Petitioner has not provided an explanation for submitting alternative evidence in this matter. The Petitioner's counsel states that "letters from current leadership at [ ]

and [redacted] would be less probative than those from past supervisors because that new leadership did not personally observe [the Beneficiary's] work." However, the Petitioner does not provide support for this statement. The Petitioner does not assert that letters from the Beneficiary's former employers are unavailable. It has not stated or provided evidence that the Beneficiary's former employers are no longer operating or are otherwise unable to provide documentation of his employment. We acknowledge that, in some instances, a former supervisor may be the most qualified source to attest to an individual's work experience, or specific skills obtained. This does not, however, exempt the Petitioner from complying with the regulation at 8 C.F.R. § 103.2(b)(2)(i) and demonstrating the unavailability of required evidence.

The Petitioner's counsel states in the appeal brief that each of the letters in the record "was still from a 'former employer' (in the sense that Mr. [redacted] Mr. [redacted] and Mr. [redacted] did employ him in their own previous jobs)." However, counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). In his letters, Mr. [redacted] does not state that he supervised the Beneficiary. Nor does he explain how he has knowledge of the Beneficiary's experience. Although Mr. [redacted] lists the dates of employment and positions he held with [redacted] his employment with the company began in 2007. Mr. [redacted] does not explain how he has information about or can attest to the Beneficiary's employment with the company from September 1, 2000, when his own employment did not begin until 2007. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, at 591-92. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

Here, the Petitioner relies only on testimonial evidence from the Beneficiary's former coworkers in attempt to establish his claimed employment experience, without providing independent, objective evidence in support of this testimony. Because the letters do not fully explain how the author had knowledge of the information stated, further evidence is required. The record does not include other documentation to corroborate the Beneficiary's claimed employment, such as income tax or payroll records. The Petitioner does not assert that these records are unavailable for any reason. 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 Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012).

The Petitioner has not established with independent, objective evidence that the Beneficiary possesses the required 96 months of experience in a related snubbing services position, as required by the labor certification. The Beneficiary has not overcome the basis of the Director's denial.

Although not raised by the Director, we also determine that the Petitioner has not established that the Beneficiary meets all the minimum requirements for the offered position. As noted above, the labor certification states that the offered position requires a valid driver's license and the individual must meet minimum driving requirements for company insurance purposes. The record does not include documentary evidence that the Beneficiary has a valid driver's license or meets the driving requirements. As the Petitioner was not aware of this deficiency, this does not form the basis of our decision in this matter. However, this must be addressed in any further filings.

III. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's qualifications for the offered job or the requested immigrant visa category. We will therefore affirm the petition's denial. 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. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.