U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22678724

Date: FEB. 7, 2024

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, an exporter of kitchen equipment, sought to permanently employ the Beneficiary as its vice president under the first preference immigrant classification for multinational executives or managers. See Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in a managerial or executive capacity.

The Director of the Texas Service Center approved the petition but then revoked that approval, concluding that the Petitioner had not established: (1) a qualifying relationship between the claimed foreign and U.S. employers; (2) the Petitioner's ability to pay the Beneficiary's proffered wage; (3) that the Beneficiary's foreign and U.S. employers continue doing business; (4) that the Beneficiary was employed abroad in a managerial or executive capacity; and (5) that the Petitioner would employ the Beneficiary in the United States in a managerial or executive capacity. The Director also concluded that the Petitioner and the Beneficiary had willfully misrepresented material facts. The Beneficiary filed a combined motion to reopen and reconsider, which the Director dismissed. 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. We will also withdraw the finding of willful misrepresentation.

I. LAW

An immigrant visa is available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

The Form I-140, Immigrant Petition for Alien Worker, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding

the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3).

The approval of a petition may be revoked at any time for good and sufficient cause. Section 205 of the Act, 8 U.S.C. § 1155. By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *See Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

II. ANALYSIS

The petitioning U.S. employer filed an immigrant petition on the Beneficiary's behalf in August 2013. The Director of the Texas Service Center approved the petition in January 2014, but issued a notice of intent to revoke (NOIR) that approval in May 2017, citing five evidentiary deficiencies. The Director revoked the approval of the petition in October 2021, stating that the Petitioner had not overcome any of the issues raised in the NOIR. The Director also found that the Petitioner and the Beneficiary has willfully misrepresented material facts. In December 2021, the Beneficiary filed a motion to reopen and reconsider, contesting the finding of misrepresentation but not the determination of ineligibility.[1] The Director dismissed the combined motion in January 2022. The matter is now before us on appeal.

Because the Director did not reopen the proceeding or reconsider the decision to revoke the approval of the petition, the matter before us on appeal is the dismissal of the combined motion, not the underlying revocation. Therefore, our appellate review is limited to the question of whether the Director properly dismissed the motion.

As noted above, the Director cited five different grounds for revocation. On motion and on appeal, the Beneficiary does not directly address or contest all of those grounds. For instance, the Beneficiary's brief does not mention or dispute the Director's determination that the Petitioner had not shown its ability to pay the Beneficiary's proffered wage from the petition's filing date until the Beneficiary becomes a lawful permanent resident, as required by 8 C.F.R. § 204.5(g)(2). By not raising these issues, the Beneficiary has abandoned them. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

[1] The petitioning U.S. employer dissolved in 2017. The Director determined that the Beneficiary has standing to file an appeal in this matter in accordance with *Matter of V-S-G-, Inc.* Adopted Decision 2017-06 (AAO Nov. 11, 2017). We further note that the record identifies the Beneficiary as a shareholder of the petitioning entity. The Beneficiary's appeal essentially duplicates the earlier combined motion, with the addition of further exhibits such as new affidavits.

By waiving or abandoning some of the stated grounds for revocation, the Beneficiary has, in effect, conceded that he is not eligible for the benefit sought. For this reason, we will dismiss the appeal.

But the Beneficiary has contested a separate finding that he and the Petitioner willfully misrepresented material facts regarding his employment history. We will withdraw that finding.

Under Board of Immigration Appeals precedent, a material misrepresentation is 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 S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961). 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. *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). Material misrepresentation requires only a false statement that is material and willfully made. *See* 9 FAM 40.63 N2; *see also Matter of Tijam*, 22 I&N Dec. 408, 424 (BIA 1998) (*en banc*) (Rosenberg, concurring). 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).

An individual found to have willfully misrepresented material facts in seeking immigration benefits is permanently inadmissible into the United States unless the individual qualifies for a waiver of inadmissibility. Section 212(a)(6)(C)(i) and (iii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) and (iii). When making an inadmissibility determination, USCIS officers should keep in mind the severe nature of the penalty for fraud or willful misrepresentation. *See generally* 8 *USCIS Policy Manual* J.2(E), https://www.uscis.gov/policy-manual.

The Director's allegation of misrepresentation lacks key details. In the NOIR, the Director stated:

> The petitioner and beneficiary misrepresented the beneficiary's position with the petitioner's affiliate abroad and the U.S. Petitioner by submitting documentary evidence in the form of business letters, organizational charts, invoices, and photographs in an attempt to classify the beneficiary for a benefit he was ineligible for, which misrepresents a material fact.

This vague and general statement does not convey any specific information as to how the Petitioner and the Beneficiary misrepresented the Beneficiary's employment. Other portions of the Director's notices refer to inconsistent descriptions of the Beneficiary's duties, and a footnote in the revocation notice alleges discrepancies in the dates of the Beneficiary's claimed employment abroad. The Director did not specify how these discrepancies were material to the proceeding or establish how they appeared to constitute willful misrepresentation rather than inadvertent error.

Elsewhere in the NOIR, the Director noted various perceived discrepancies, such as organizational charts that contain differing information, but the Beneficiary sought to address those discrepancies, for example by asserting that the structure of the company had changed after the preparation of the first version of the chart. Discrepancies of this kind are not necessarily or presumptively hallmarks of willful misrepresentation in the absence of further derogatory information. Because the discussion of

the finding of misrepresentation itself lacks detail, we cannot determine whether the Director based the finding on discrepancies within the record, contradictory information from outside the record, or a combination of both.

Given the severe consequences for willful misrepresentation of material facts in an immigration proceeding, USCIS must explain in detail which claims and evidence USCIS believes to be false, and how USCIS arrived at that conclusion. The NOIR and the revocation notice, which basically repeats the language in the NOIR, do not provide such an explanation.

In the course of future proceedings involving this beneficiary, USCIS, following proper notice and an opportunity to respond, may enter a finding of willful misrepresentation of a material fact if additional evidence and information should surface to warrant such a finding. But in the case now before us, the general assertion that the Petitioner and the Beneficiary misrepresented the Beneficiary's employment history cannot suffice. Therefore, the finding of willful misrepresentation of material facts, as stated in the NOIR and the revocation notice, cannot stand.

III. CONCLUSION

We will dismiss the appeal, because the Beneficiary's combined motion to reopen and reconsider did not fully address the substantive grounds for revocation, and, therefore, the Beneficiary did not overcome all of those grounds. But we withdraw the Director's finding that the Petitioner and the Beneficiary willfully misrepresented material facts regarding the Beneficiary's employment history.

ORDER: The appeal is dismissed.