U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-&E-L-, INC.

DATE: JUNE 22, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a furniture retailer, seeks to employ the Beneficiary as an accountant. It seeks 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 residence.

The Director of the Texas Service Center initially approved the petition, but subsequently revoked the approval based on a finding that the Beneficiary entered into a fraudulent marriage for the purpose of evading the immigration laws.

The Petitioner appealed the decision to us. We remanded the case back to the Director for further consideration of the fraudulent marriage issue, and also to determine whether the Beneficiary met the educational and experience requirements of the labor certification and the advanced degree professional classification.

The Director again revoked the approval of the petition, affirming the prior determination that the Beneficiary entered into a fraudulent marriage for the purpose of evading the immigration laws, and also concluded that the Beneficiary did not meet the educational and experience requirements of the labor certification and the advanced degree professional classification.

The matter is now before us on appeal. The Petitioner submits additional evidence and a brief. The Petitioner asserts that the Beneficiary's marital history is irrelevant to this proceeding and that the Director erred in basing his revocation decision in part on findings of a fraudulent marriage and associated inconsistencies in the divorce decrees and dates of travel. The Petitioner also asserts that the evidence of record establishes that the Beneficiary has the requisite education and experience.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Employment-based immigration is generally a three-step process. First, a prospective U.S. employer must obtain an approved ETA Form 9089, Application for Permanent Employment Certification

(labor certification), from the U.S. Department of Labor. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). Next, the employer files Form I-140, Immigrant Petition for Alien Worker, with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, if USCIS approves the petition, the foreign national may 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.

Section 203(b)(2) of the Act provides that employment-based immigrant classification may be granted "to qualified immigrants who are members of the professions holding advanced degrees or their equivalent."

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that:

> The petition must be accompanied by (A) an official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree, or (B) an official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

Regarding the issue of marriage fraud, section 204(c) of the Act, 8 U.S.C. § 1154(c), provides that:

> Notwithstanding the provisions of subsection (b) of this section [Preference Allocation for Employment-Based Immigrants] no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws, or (2) the [Secretary of Homeland Security] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

Section 205 of the Act, 8 U.S.C. § 1155, provides that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204 [Procedure for Granting Immigrant Status]." The associated regulation, 8 C.F.R. § 205.2, provides that any USCIS officer who is "authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner."

II. ANALYSIS

A. Marriage Fraud

According to the documentation of record, the Beneficiary and [redacted] (nee [redacted], both Indian nationals, were married in 1986, first entered the United States in 2000, and divorced pursuant to an *ex parte* decree of an Indian court on [redacted], 2007. The Beneficiary then married another Indian national, [redacted], on [redacted] 2007, also in India. An *ex parte* divorce decree was granted to [redacted] by an Indian judge on [redacted], 2010. The Beneficiary then remarried [redacted] in [redacted] Texas, on [redacted] 2010.

The record indicates that on May 13, 2007, the Beneficiary entered the United States as a nonimmigrant in H-1B status. In October 2007 the Petitioner filed a Form I-140, Immigrant Petitioner for Alien Worker, on the Beneficiary's behalf, and the Beneficiary concurrently filed an application for adjustment to permanent resident status, Form I-485.

In [redacted] 2010 an immigration officer in [redacted] Texas, interviewed the Beneficiary in connection with his application to adjust status. The Beneficiary testified that he had not departed the United States since entering on his H-1B visa in May 2007, that his first wife and his second wife are distant cousins, that his first wife had been living in the Beneficiary's house for the past year and a half, and that his second wife lived with her parents in India and had so continuously since their marriage in 2007.

The record of proceedings also indicates that the Beneficiary's second wife first applied to enter the United States under the alias [redacted] in 2005, but was denied a visitor's visa by the U.S. Consulate in [redacted]. In June 2007, following her marriage to the Beneficiary, [redacted] was interviewed at the U.S. Consulate in [redacted] in connection with an application for an H-4 visa as a derivative spouse of a temporary worker. The interview revealed that [redacted] had no personal information about the Beneficiary, and the visa application was denied. In July 2008 the U.S. Consulate in [redacted] denied another visa application by [redacted] on the ground that she and the Beneficiary were involved in a fraudulent marriage whose sole purpose was to provide [redacted] a way to enter the United States.

Meanwhile, in June 2007, despite the divorce decree in [redacted] 2007, the Beneficiary and his first wife, [redacted] (nee [redacted]), jointly purchased a home in [redacted] Texas. In August 2009 [redacted] re-entered the United States with an A-2 visa and identified the residence in [redacted], Texas, as her destination address. This information was consistent with the Beneficiary's testimony at the U.S. Consulate the following year that his first wife had been living in his home for the past year and a half.

The second revocation decision discussed the fact that the Beneficiary did not address, and provided no explanation for, the finding by the U.S. Consulate in [redacted] in its interview of [redacted] in [redacted] 2010 that she had little personal knowledge about the Beneficiary despite having married him the month before. In addition, while the Beneficiary acknowledged that his first and second

wives were related – he referred to them as "distant cousins" – both this office and the Director stated that the record suggested a much closer familial relationship between the two women – that they were in fact sisters. No further information was provided by the Beneficiary to clarify the relationship between [redacted] (nee [redacted]) and [redacted]. Furthermore, while USCIS records showed that [redacted] entered the United States on November 3, 2005, with an A-2 nonimmigrant visa that was valid until July 31, 2007, the *ex parte* divorce decree she received on January 31, 2007, identified her as a resident of [redacted] in India,[1] and appeared to indicate that she had resided in India with her parents since 2004 and had never resided in the United States. The Beneficiary has provided no further information or evidence to explain these inconsistencies regarding [redacted] residential history. Based in part on the foregoing, the Director determined that the Beneficiary misrepresented his divorce from his first wife and his marriage to his second wife as part of a scheme to evade U.S. immigration laws and provide [redacted] a way to enter the United States. The Director concluded that the Beneficiary's fraudulent marriage to [redacted] warranted the revocation of the previously approved petition.

On appeal the Petitioner asserts that the issue of whether the Beneficiary conspired to enter into a fraudulent marriage with [redacted] is the subject matter of the Beneficiary's removal proceedings before the Immigration Court in [redacted] Texas, and therefore irrelevant to this employment-based immigrant petition. We do not agree. As previously stated, section 204(c)(2) of the Act, 8 U.S.C. § 1154(c)(2) provides that no employment-based immigrant petition shall be approved if the beneficiary has attempted or conspired to enter into a marriage for the purpose of evading U.S. immigration laws. As a corollary, section 205 of the Act and the associated regulation at 8 C.F.R. § 205.2 provide that USCIS may revoke the previous approval of a petition for good and sufficient cause. Thus, the Director was not precluded from making a finding as to whether the Beneficiary committed marriage fraud for the purpose of obtaining an immigration benefit, and determining the Beneficiary's eligibility in the instant proceeding based on that finding.

In our remand decision we referred to the many inconsistencies in the record and recommended that the Director request additional evidence regarding the marriage fraud issue. In accord with our suggestion and the requirement of 8 C.F.R. § 205.2 for USCIS to give notice to the Petitioner of an intent to revoke the approval of the petition, the Director issued a notice of intent to revoke (NOIR) that included a request for additional evidence to resolve the inconsistencies in the record regarding the Beneficiary's relationships with [redacted] and [redacted] and the relationship of [redacted] and [redacted] to each other. The NOIR identified specific types of evidence that should be submitted.

The Petitioner's response to the NOIR did not directly address these evidentiary inconsistencies and did not include any of the requested evidence. Instead, the Petitioner asserted that the issue of marriage fraud was irrelevant in this proceeding. In his decision, therefore, the Director reviewed

[1] This information about [redacted] place of residence conflicts with a photocopied lease agreement in the record which indicates that she leased residential premises in [redacted] Texas, for a six-month period from January 15 to July 14, 2007, though the address of the premises was not identified on the document.

the evidence of record, noted that the Petitioner had not resolved specific evidentiary inconsistencies, did not submit evidence specifically requested in the NOIR, and determined that the Beneficiary entered into a fraudulent marriage for the purpose of evading the immigration laws.

The Petitioner has not remedied the evidentiary shortcomings on appeal. No further evidence has been submitted to resolve the inconsistencies discussed in the remand decision of this office, in the Director's NOIR, and in the Director's second revocation decision concerning the relationship between the Beneficiary and each of his wives, and of the wives with each other. It is incumbent upon the Petitioner to resolve any inconsistencies in the record by independent objective evidence. The Petitioner must submit competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may also lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The regulation at 8 C.F.R. § 103.2(b)(14) expressly provides that the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denial.

Therefore, we affirm the Director's decision that the Beneficiary engaged in marriage fraud for the purpose of evading U.S. immigration laws and gaining entry to the United States for

B. Educational and Experience Requirements

As previously stated, to be eligible for classification as an advanced degree professional the Beneficiary must have either (1) a U.S. master's degree or a foreign equivalent degree, or (2) a U.S. bachelor's degree or a foreign equivalent degree and at least five years of post-baccalaureate experience in the specialty. *See* 8 C.F.R. § 204.5(k)(3)(i). Furthermore, in order for the petition to be approved the Beneficiary must meet all of the educational, training, and experience requirements of the labor certification by the priority date of the petition. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg'l Comm'r 1977). The priority date of the petition is the date the underlying labor certification application (ETA Form 9089, Application for Permanent Employment Certification), was received for processing by the Department of Labor (DOL). *See* 8 C.F.R. § 204.5(d). In this case, the priority date is December 21, 2005.

In section H of the labor certification the Petitioner specified the following with respect to the education, training, and experience required to qualify for the job of accountant:

4.	Education: Minimum level required:	Bachelor's degree
4-B.	Major Field of Study:	Accounting or Banking
5.	Is training required in the job opportunity?	No
6.	Is experience in the job offered required?	Yes
6-A.	How long?	60 months
7.	Is an alternate field of study acceptable?	No
8.	Is an alternate combination of education and experience acceptable?	No
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	Yes

10-A. How long? 60 months
10-B. Job titles of alternate occupations: Bank Officer, Bank Manager/Senior Manager

In section J of the labor certification the Beneficiary stated that he completed baccalaureate-level education in 1986 in the fields of commerce and accounting at the [redacted] and [redacted] in India. In section K of the labor certification the Beneficiary stated that he gained more than five years of qualifying experience in a series of banking positions with the [redacted] in [redacted] India, and in [redacted] during the years 1984-2004.

As evidence of the Beneficiary's education the record includes copies of diplomas and transcripts showing that he was awarded (1) a bachelor of commerce degree from the [redacted] on April 16, 1983, after completing a three-year academic program, and (2) a postgraduate diploma (PGD) in business administration from [redacted] on December 14, 1986. The record includes three educational equivalency evaluations of the above credentials, all of which concluded that the Beneficiary's bachelor of commerce and PGD in business administration are equivalent to a U.S. bachelor's degree in business administration. Only one of the evaluations adds that the business administration equivalency includes a specialization in accounting.

Evaluations of academic credentials by evaluation services are utilized by USCIS as advisory opinions. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). In accord with the Director's analysis in the second revocation decision, we find that the inconsistent educational evaluations submitted by the Petitioner are not sufficient to establish that the Beneficiary's education is equivalent to a bachelor's degree in accounting or banking.

The Beneficiary's transcripts from the [redacted] and [redacted] it does not appear that his degrees included enough coursework in accounting or banking for a major in one of those two fields. Of the 10 courses listed for the bachelor of commerce degree, only three clearly focus on accounting (financial accounting, cost accounting, and auditing and income tax) and only one clearly focuses on banking ("Money, Income and Financial Institutions"). Of the four courses listed for the PGD in business administration, only one (financial management) mayhave involved significant accounting or banking content.

On appeal the Petitioner cites two letters from 2004 as evidence that the Beneficiary's education at the [redacted] and [redacted] was equivalent to a U.S. bachelor's degree in accounting. One is a letter from [redacted] Admissions Officer of the [redacted] at [redacted] to the [redacted] dated July 9, 2004, evaluating the Beneficiary's educational credentials. [redacted] stated that the Beneficiary had earned the equivalent of a bachelor's degree with a total of 184 semester hours of college study, of which 20 hours were core accounting courses and 10 hours were additional accounting courses "beyond Principles I and II required by the Board," and 20 hours were related business coursework. The other letter is from the

to the Beneficiary, dated July 21, 2004, approving his application to take the Uniform CPA Examination.

Neither of these two letters evaluated the Beneficiary's educational credentials as equivalent to a U.S. bachelor's degree in accounting. The letter stated that the Beneficiary had the equivalent of a bachelor's degree, but did not state that it was in the field of accounting or any other specific field. confirmed that the Beneficiary's coursework included certain accounting courses and related business courses, but did not indicate that these courses amounted to a bachelor's degree in the field of accounting. The letter from the informed the Beneficiary that he qualified to take the Uniform CPA Examination, which may have been due in part to the information conveyed about his accounting and related coursework in India. The letter did not state that the Beneficiary had the educational equivalent of a bachelor's degree in accounting. It simply indicated that the Beneficiary qualified to take the CPA exam, without specifying any particular requirements.

For the reasons discussed above, we find that the Petitioner has not established that the Beneficiary has a foreign equivalent degree to a U.S. bachelor's degree in the field of accounting or banking, as required to meet the educational requirement of the labor certification.

As for the Beneficiary's experience, the regulation at 8 C.F.R. § 204.5(g)(1) states the evidentiary requirements as follows:

> Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

The Petitioner asserts that the Beneficiary gained qualifying experience during the years 1984-2004 in the following five different positions with the

- Bank officer in , India, form August 29, 1984 to July 31, 1992;
- Bank manager in India, from August 1, 1992 to March 7, 2000;
- Bank/senior manager in from March 8, 2000 to May 23, 2003;
- Bank officer in India, from September 6, 2003 to January 4, 2004; and
- Bank manager in India, from January 5, 2004 to September 12, 2004.

As evidence of the Beneficiary's qualifying experience the record includes the following documentation relating to the job positions with the

- A letter from the general manager of personnel in dated August 23, 1984, offering the Beneficiary an appointment as an "Officer in Generalists' cadre."

- A letter from the assistant general manager in "to whom it may concern," dated August 29, 2016, stating that the Beneficiary worked at the international business branch in – June 4, 1993 to October 1998, and December 31, 1999 to February 29, 2000 – in the "nostro reconciliation, exchange dealings, money market placement departments."
- A letter from the Beneficiary to the general manager (international) in dated July 28, 1998, supporting his application for an overseas posting as a dealer with a listing of his job and training history with the bank from 1984 to 1998.
- A letter from the general manager (international operations) in dated November 22, 1999, advising the Beneficiary that he would be posted as a "Dealer" to .
- A letter from the assistant general manager in dated February 29, 2000, advising the Beneficiary that his services in were terminated that day in view of his scheduled posting to the branch.
- A letter from the chief manager in to the general manager (international operations) in dated March 14, 2000, advising that the Beneficiary had reported to work in on March 9, 2000.
- A letter from the chief executive in , dated May 15, 2003, advising the Beneficiary that his posting in would terminate on May 23, 2003, and that he would be repatriated to India for a new assignment.
- A letter from the assistant general manager (international) in dated July 18, 2003, advising the Beneficiary that after completion of his overseas leave he would be posted to
- Letters from the chief executive in and the chief executive of U.S. operations in dated June 20, 2007 and August 1, 2016, respectively, certifying that the Beneficiary was a bank employee posted to the branch as "Senior Manager (Funds)" from March 9, 2000 to May 23, 2003. Attached to the June 2007 letter was a list of the Beneficiary's job responsibilities.
- A letter from the deputy general manager in dated September 8, 2004, acknowledging receipt of the Beneficiary's resignation letter of June 12, 2004.
- A letter from the assistant general manager in "to whom it may concern," dated August 6, 2016, certifying that the Beneficiary joined the bank as a junior management officer on August 29, 1984, and resigned from his final position as a senior manager of the treasury branch in on September 8, 2004.
- A letter from the executive manager in "to whom it may concern," dated August 27, 2016, stating that he worked with the Beneficiary at the bank and, based on his senior management experience, would recommend the Beneficiary for a position in accounting, banking, or financial management.

None of the foregoing letters provides "a specific description of the duties performed" by the Beneficiary in his jobs with the as required by 8 C.F.R. § 204.5(g)(1). While the letter from the chief executive in , dated June 20, 2007, is accompanied by a separate sheet of paper with a detailed list of job responsibilities allegedly performed by the Beneficiary during his tenure at the branch from March 9, 2000 to May 23, 2003, that separate sheet does not bear the signature of the chief executive, or an office stamp, or any other mark of

authentication. Therefore, we do not accept the list of job responsibilities as reliable evidence of the Beneficiary's job duties in . Furthermore, even if we accepted the list as reliable evidence of qualifying experience, the record indicates that the Beneficiary's job in lasted only three years, two and a half months. Thus, the qualifying experience in would fall short of the five year minimum requirement in the labor certification.

The Petitioner cites the final sentence of 8 C.F.R. § 204.5(g)(1), which authorizes USCIS to consider "other documentation relating to the [Beneficiary's] experience" if letters from current or former employers are "unavailable." In this case, however, the Petitioner has not shown that letters from the Beneficiary's former employer are unavailable. In fact, the record includes letters from officials over a long period of time – 1984 to 2016 – which indicate that the Beneficiary was employed at the bank in various offices and in various capacities during the 20-year time period from 1984 to 2004. However, none of the letters complies with the regulatory requirement of providing "a specific description of the duties performed" by the Beneficiary. Nor has the Petitioner submitted any other documentation with a detailed description of the Beneficiary's job duties for any of his positions with the

For the reasons discussed above, we find that the Petitioner has not established that the Beneficiary has at least five years of qualifying employment, as required to meet the experience requirement of the labor certification and the requested advance degree professional classification.

III. CONCLUSION

The Petitioner has not overcome the Director's finding that the Beneficiary committed marriage fraud for the purpose of evading U.S. immigration laws. In addition, the Petitioner has not established that the Beneficiary has the requisite education and experience to qualify for the job opportunity under the terms of the labor certification and for classification as an advanced degree professional.

ORDER: The appeal is dismissed.

Cite as *Matter of B-&E-L-, Inc.*, ID# 330966 (AAO June 22, 2017)