U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-G-, INC.

DATE: SEPT. 10, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a garment manufacturer, seeks to employ the Beneficiary as a business development specialist. It requests his classification under the second-preference, immigrant category as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, "EB-2" category allows a U.S. business to sponsor a foreign national for lawful permanent resident status to work in a job requiring at least a master's degree, or a bachelor's degree followed by five years of experience.

The Director of the Nebraska Service Center denied the petition. The Director concluded that the omission of counsel's handwritten signature from the Form I-140, Immigrant Petition for Alien Worker, resulted in the petition's improper filing.

On appeal, the Petitioner submits additional evidence. It asserts that neither Department of Homeland Security (DHS) regulations nor U.S. Citizenship and Immigration Services (USCIS) policy required counsel's handwritten signature on the petition. Even if the attorney's stamped signature on the form violated regulations or policy, the Petitioner argues that the Director should have provided the company with a chance to cure the defect.

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

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as an advanced degree professional generally follows a three-step process. 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)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for an offered position, and that 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 labor certification 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 determines whether a beneficiary meets the requirements of a DOL-certified position and the requested visa classification. If USCIS grants a

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. ATTORNEY SIGNATURE REQUIREMENTS

Petitioners properly file employment-based immigrant petitions if they meet the requirements of 8 C.F.R. § 103(a). 8 C.F.R. § 204.5(a)(1). Unless regulations otherwise specify or USCIS received benefit requests electronically, these provisions require petitions to contain handwritten signatures. 8 C.F.R. § 103.2(a)(2). "USCIS will not accept signatures created by a typewriter, word processor, stamp, auto-pen, or similar device." USCIS Policy Memorandum PM-602-0134.1, *Signatures on Paper Applications, Petitions, Requests, and Other Documents Filed with U.S. Citizenship and Immigration Services* 3 (Feb. 15, 2018), https://www.uscis.gov/legal-resources/policy-memoranda (last visited July 26, 2019).

The provisions of 8 C.F.R. § 103(a) also incorporate form instructions. 8 C.F.R. § 103.2(a)(1). For example, Part 9 of the Form I-140 submitted by the Petitioner instructed "all preparers, including attorneys and authorized representatives" to sign a declaration. The declaration stated that "I prepared this petition at the request of the petitioner, that it is based on all the information of which I have knowledge, and that the information is true to the best of my knowledge."

Attorneys or accredited representatives appearing on behalf of petitioners must also file Forms G-28, Notices of Entry of Appearance, with USCIS. 8 C.F.R. § 292.4(a). Signatures of attorneys/representatives on Forms G-28 constitute representations that the attorneys/representatives are authorized and qualified under USCIS regulations to represent the petitioners. *Id.*

Here, the Director found, and counsel admits, that the Form I-140 and accompanying Form G-28 contained stamped signatures of the attorney. Without first issuing a written request for additional evidence (RFE) or a notice of intent to deny (NOID), the Director declined to recognize counsel as the Petitioner's attorney in the proceedings and denied the petition.

As the Director found, because counsel did not hand sign the Forms I-140 and G-28, his signatures on the documents were invalid. *See* 8 C.F.R. § 103.2(a)(2); USCIS Policy Memorandum PM-602-0134.1, *supra*, at 3. Based on counsel's deficient signature on the Form G-28, the Director properly declined to recognize the attorney as the Petitioner's legal representative. *See* 8 C.F.R. § 103.2(a)(3) (stating: "Where a notice of representation is not properly signed, the benefit request will be processed as if the notice had not been submitted").

Similarly, counsel's invalid signature on the Form I-140 properly resulted in the petition's denial. Under applicable USCIS policy, the Agency should reject a petition containing an invalid signature. USCIS Policy Memorandum PM-602-0134.1, *supra*, at 3. "If USCIS accepts a request for adjudication and later determines that it has a deficient signature, USCIS will deny the request." *Id.*

On appeal, the Petitioner argues that it met USCIS' filing requirements based solely on the handwritten signature of its chief executive officer on the Form I-140. *See* 8 C.F.R. § 103.2(a) (2) (requiring petitioners to sign their benefit requests); *see also* USCIS Policy Memorandum PM-602-

0134.1, *supra*, at 5 (allowing executive officers, among others, to sign petitions on behalf of their corporations). As previously discussed, however, the instructions to the Form I-140, dated January 17, 2017, also required "all preparers, including attorneys and authorized representatives" to sign the declaration in Part 9 of the form. *See* 8 C.F.R. § 103.2(a)(1) (incorporating form instructions into the regulations). The instructions also stated: "**Signature.** Each petition must be properly signed and filed. For all signatures on this petition, USCIS will not accept a stamped or typewritten name in place of a signature." Counsel's stamped signature on the Form G-28 disqualified him as the Petitioner's attorney or authorized representative. But the record still indicates that he prepared the Form I-140. Thus, when counsel omitted his handwritten signature from the Form I-140 that he prepared, he violated form instructions that were incorporated into the regulations.

The Petitioner also argues that, notwithstanding counsel's deficient signature, USCIS should have provided the company with an opportunity to cure the defect on the Form I-140. The Petitioner submits an amended Form I-140 containing counsel's handwritten signature. The company also notes that, unless "no possibility" existed that additional evidence could cure a defect, applicable USCIS policy required an adjudicator to issue an RFE or NOID. *See* USCIS Policy Memorandum PM-602-0085, *Requests for Evidence and Notices of Intent to Deny* 2 (June 3, 2013), https://www.uscis.gov/legal-resources/policy-memoranda (last visited July 30, 2019). The policy limited the circumstances under which USCIS could deny benefit requests, without first issuing RFEs or NOIDs, to statutory grounds - such as where applicants or petitioners requested nonexistent benefits. The policy, which USCIS has since rescinded, covers petitions filed between June 3, 2013, and September 12, 2018, including this petition. *See* USCIS Policy Memorandum PM-602-0163, *Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.5(a), Chapter 10.5(b)* 1 (July 13, 2018), https://www.uscis.gov/legal-resources/policy-memoranda (last visited July 30, 2019).

USCIS, however, cannot issue an RFE or NOID under 8 C.F.R. § 103.2(b) unless the Agency first receives a properly filed benefit request under 8 C.F.R. § 103.2(a). *Compare* 8 C.F.R. § 103.2(a) (regulating "Filing" of benefit requests) *with* 8 C.F.R. § 103.2(b) (controlling "Evidence and processing" of benefit requests that were filed). Here, counsel's deficient signature on the Form I-140 resulted in the petition's improper filing under 8 C.F.R. § 103.2(a). USCIS should have rejected the petition. But, upon realizing that the Form I-140 contained an invalid signature, USCIS properly denied the petition without first issuing an RFE or NOID under 8 C.F.R. § 103.2(b). *See* USCIS Policy Memorandum PM-602-0134.1, *supra*, at 3 (stating that, upon realizing mistaken acceptance of a benefit request with an invalid signature, "USCIS *will deny the request*") (emphasis added). USCIS policy also states: "If a request or other document is not properly signed at the time of submission, USCIS will not provide an opportunity to correct (sometimes referred to as "to cure") the signature." *Id.* Thus, contrary to the Petitioner's argument, the deficient signature on the invalidly filed Form I-140 did not implicate USCIS policy on RFEs and NOIDs.

III. ABILITY TO PAY THE PROFFERED WAGE

Although unaddressed by the Director, the record also does not establish the Petitioner's ability to pay the proffered wage of the offered position. A petitioner must demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent

residence. 8 C.F.R. § 204.5(g)(2). For petitioners with less than 100 employees, like the Petitioner here, evidence of ability to pay must include copies of annual reports, federal tax returns, or audited financial statements. *Id.*

Here, the labor certification states the proffered wage of the offered position of business development specialist as $113,048 a year. The petition's priority date is October 10, 2017, the date DOL accepted the labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

The Petitioner submitted a copy of its federal income tax returns for 2016. Contrary to 8 C.F.R. § 204.5(g)(2), however, the record lacks required evidence of the Petitioner's ability to pay in 2017, the year of the petition's priority date, or 2018. The record therefore does not demonstrate the Petitioner's ability to pay the proffered wage from the petition's priority date.

Also, USCIS records indicate that, after submitting this petition, the Petitioner filed at least one other immigrant petition for a different beneficiary.[1] A petitioner must demonstrate its ability to pay the proffered wage of each petition it files until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). The Petitioner here must therefore demonstrate its ability to pay the combined proffered wages of this and any of its other petitions that were pending or approved as of this petition's priority date of October 10, 2017, or filed thereafter. *See Patel v. Johnson*, 2 F.Supp.3d 108, 124 (D. Mass. 2014) (affirming our revocation of a petition's approval where, as of the filing's grant, a petitioner did not demonstrate its ability to pay the combined proffered wages of multiple petitions).[2]

Thus, in any future filings in this matter, the Petitioner must submit copies of annual reports, federal tax returns, or audited financial statements for 2017 and, if available, 2018. The Petitioner must also provide the proffered wage and priority date of its other immigrant petition. The Petitioner may also submit additional evidence of its ability to pay, including proof of any payments it made to the relevant beneficiaries in 2017 and 2018, and materials supporting the factors stated in *Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

IV. THE REQUIRED EXPERIENCE

Also unaddressed by the Director, the record does not establish that the Beneficiary met the minimum experience requirements of the offered position. A petitioner must demonstrate a beneficiary's possession of all DOL-certified job requirements of an offered position by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). In evaluating a beneficiary's qualifications, USCIS must examine the job-offered portion of an accompanying labor certification to determine a position's minimum requirements. USCIS may

[1] USCIS records identify the receipt number of the Petitioner's other petition as [redacted]

[2] The Petitioner need not demonstrate its ability to pay proffered wages of petitions that it withdrew, or, unless pending on appeal, that USCIS denied, rejected, or revoked. The Petitioner also need not demonstrate its ability to pay proffered wages before the priority dates of corresponding petitions, or after corresponding beneficiaries obtained lawful permanent residence.

neither ignore a certification term, nor impose additional requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

Here, the labor certification states the minimum requirements of the offered position of business development specialist as a master's degree in business, marketing, or a related field of study, plus two years of experience in the job offered, or in a marketing or marketing-related occupation. On the labor certification, the Beneficiary attested that, by the petition's priority date, he gained more than 14 years of full-time, qualifying experience in the Philippines. He stated that he worked as a district manager for a provider of power products and services from 1996 to 2009, and as a product manager for a computer/communications company from 1995 to 1996.

To support the Beneficiary's claimed, qualifying experience, the Petitioner submitted letters from the Beneficiary's former employers in the Philippines. *See* 8 C.F.R. § 204.5(g)(1) (requiring a petitioner to submit letters from employers supporting a beneficiary's claimed experience). Contrary to 8 C.F.R. § 204.5(g)(1), however, the letters do not include "a specific description of the duties performed by the alien." Without confirmation of the Beneficiary's job duties, the letters do not demonstrate his requisite experience in the job offered, or in a marketing or marketing-related occupation. The record therefore does not establish the Beneficiary's possession of the minimum experience required for the offered position. In any future filings in this matter, the Petitioner must submit additional evidence that, by the petition's priority date, the Beneficiary met the position's minimum experience requirements.

V. CONCLUSION

Under DHS regulations and USCIS policy, counsel's stamped signature on the Form I-140 resulted in the petition's improper filing. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.

Cite as *Matter of C-G-, Inc.*, ID# 5610245 (AAO Sept. 10, 2019)