U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF F-, INC.

DATE: DEC. 21, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a supermarket, seeks to employ the Beneficiary as a cashiers' supervisor. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(B)(3)(A)(i). This employment-based immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires at least two years of training or experience.

The petition was initially approved. However, the Director of the Nebraska Service Center subsequently revoked the approval, finding that the Petitioner and the Beneficiary had not adequately explained evidentiary inconsistencies concerning the Beneficiary's past employment and had willfully misrepresented the Beneficiary's work history. As a result, the Director found that the evidence of record did not establish that the Beneficiary had two years of experience as a cashier, as required by the underlying labor certification to qualify for the proffered position and for classification as a skilled worker.

On appeal the Petitioner submits a brief and copies of previously submitted documents. The Petitioner asserts that the evidentiary issues cited by the Director have been resolved, that the evidence establishes the Beneficiary's qualifying experience as a cashier, and that it refutes the Director's willful misrepresentation finding. The Petitioner requests that we reinstate the approval of the petition.

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

## I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL).[1] *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, DOL

[1] The date the labor certification is filed is called the "priority date." *See* 8 C.F.R. § 204.5(d). The Petitioner must establish that all eligibility requirements for the petition have been satisfied from the priority date onward.

certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national applies 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 205 of the Act, 8 U.S.C. § 1155, provides that the Secretary of Homeland Security may "for good and sufficient cause, revoke the approval of any petition." By regulation this revocation authority is delegated to any USCIS officer who is authorized to approve an immigrant visa petition "when the necessity for the revocation comes to the attention of [USCIS]." 8 C.F.R. § 205.2(a). USCIS must give the petitioner notice of its intent to revoke the prior approval of the petition and the opportunity to submit evidence in opposition thereto, before proceeding with written notice of revocation. *See* 8 C.F.R. § 205.2(b) and (c).

## II. ANALYSIS

### A. Required Experience

A beneficiary must meet all of the education, training, experience, and other requirements of the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977). In this case, the petition was accompanied by a labor certification, with a priority date of April 30, 2001. The labor certification stated that the minimum experience required to perform the duties of the proffered position was two years as a cashiers' supervisor or as a cashier/clerk. The Beneficiary stated on the labor certification that she met this requirement by virtue of her work as a cashier for an auto parts and accessories retailer, [redacted] in [redacted] South Korea, from January 1983 to May 1985. As evidence of the Beneficiary's employment at [redacted] the Petitioner submitted a "certificate of experience" from the company's president, [redacted] dated July 3, 2006.

However, as was noted by the Director in two notices of intent to revoke (NOIRs), the Beneficiary's employment, as claimed on the labor certification, conflicts with information on the Beneficiary's nonimmigrant visa application forms (DS-156, DS-157, DS-158) submitted to the Department of State. Specifically, on the nonimmigrant visa application forms the Beneficiary made no mention of employment with [redacted] and claimed that the she was a book store owner during that time period. The Director further informed the Petitioner that USCIS had contacted [redacted] by telephone, and had not obtained convincing verification of the Beneficiary's employment there. The Director also alerted the Petitioner that the Beneficiary admitted to having drafted the employment verification letter and mailing it to [redacted] for the owner's signature and return to the Beneficiary. The discrepancies between the employment histories reported on the labor certification and the Beneficiary's nonimmigrant visa application forms, in conjunction with the Beneficiary's

delayed acknowledgement that she was the author of the employment verification letter from raise doubts as to the veracity of the Beneficiary's claimed employment.

In response to the NOIRs the Petitioner submitted a letter from the Beneficiary stating the she ran a bookstore in South Korea, at the same time she was employed by According to the Beneficiary, she did not provide information about her bookstore, on the labor certification because she thought USCIS would consider her experience at "more objectively" and "wanted to avoid any possible misunderstanding" due to her overlapping employment periods with and

The Petitioner asserts that the Beneficiary provided a logical explanation in her NOIR response letter for the omission of her employment with in the nonimmigrant visa application forms. In her letter the Beneficiary states that when she applied for a J-1 visa on Forms DS-156, DS-157, and DS-158 she thought that listing her ownership of the bookstore in her employment history would suffice because the time period there (1981-1984) overlapped with the time period she allegedly worked with (1983-1985) and therefore rendered the experience unimportant.[2] The Form DS-157, however, clearly asked the Beneficiary to list her last two employers, one of which would have been if she worked for that company, as claimed, in the years 1983-1985. Furthermore, Form DS-158 provided three separate blocks for the Beneficiary to list her present and previous employers. The Beneficiary listed the (October 1981 to November 1984) in block 1 and the advertising company (January 1998 to 2001) in block 2, but left block 3 blank. Considering the formats and specific requests in the employment history sections of these DS forms, the Beneficiary's rationale for omitting from her employment history is unconvincing. If she was actually employed by in the years 1983-1985, as first claimed on her labor certification substitution form in 2006, there was no valid reason to omit that experience from her nonimmigrant visa application forms in 2002.

The Petitioner's response to the NOIR also included letters from an alleged co-worker of the Beneficiary's at and from two former patrons of the bookstore who stated that they remember the Beneficiary working there in the early 1980s. The letter from the co-worker at asserts that he was the company's general manager in the years 1982-1990 and that the Beneficiary was employed as a bookkeeper from January 1983 to May 1985. letter was not supported by any independent evidence of his own employment by The letter did not indicate whether the Beneficiary worked full-time or part-time, and referred to the Beneficiary's work as "bookkeeping tasks" without further explanation. Thus, the letter from does not confirm that the Beneficiary gained experience as a cashier or as a clerk, as required to qualify for the proffered position of cashiers' supervisor. As for the letters from the bookstore patrons, and they both asserted that they knew the

[2] The Beneficiary claims to have owned and operated the in from October 1981 to November 1984, which overlapped the time period she allegedly worked for from January 1983 to May 1985. In her NOIR response letter the Beneficiary claimed that she juggled work hours between the two jobs, seven days a week, for almost two years.

Beneficiary personally, that she owned and operated a bookstore called [redacted] in the early 1980s, that they were both regular customers of [redacted] that the Beneficiary turned the bookstore over to her sister after running it for a year or two, and that the Beneficiary then went to work at another company. [redacted] stated that she later learned that the Beneficiary continued to attend to the bookstore after completing her day work at the other company. Neither [redacted] nor [redacted] identified, or provided any information about, the other company where the Beneficiary allegedly worked, what kind of job the Beneficiary held at that other company, whether her work was full time, or how long she worked there. Thus, the letters of [redacted] and [redacted] do not confirm that the Beneficiary was employed by [redacted] or that she gained any qualifying experience there. For the reasons discussed above, the letters from [redacted] and [redacted] have little probative value as evidence that the Beneficiary gained at least two years of experience as a cashier or a clerk at [redacted]

The Petitioner's response to the NOIR also included another letter from [redacted] CEO and owner, [redacted] which stated that the original employment verification letter he signed had been drafted at his request by the Beneficiary's lawyer in the United States and reiterated that his company employed the Beneficiary as a cashier and bookkeeper from January 1983 to May 1985. However, the Petitioner has not submitted any primary evidence of the Beneficiary's employment by [redacted] in the years 1983-1985, such as pay statements, tax records, or other employment-related documents from those years. Absent such evidence, the Petitioner's claims about the Beneficiary's employment at [redacted] have little evidentiary weight, especially in view of the inconsistent employment histories provided by the Beneficiary. It is incumbent on the Petitioner to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

On appeal, the Petitioner asserts that USCIS was confused as to the identity of the person it contacted by telephone at [redacted] to ascertain the Beneficiary's employment history with the company. According to the Petitioner, while USCIS thought the person it contacted at [redacted] was the owner's father, it was actually the owner's son. In support of its contention that USCIS spoke with the owner's son, not his father, the Petitioner submits a family registry showing that the owner's son has the same name as the individual noted in the Director's NOIR, who was referred to as the owner's father. The family registry, however, does not report the name of the owner's father. The Petitioner claims that the Director drew erroneous conclusions about the history of [redacted] and about the veracity of the employment verification letters from [redacted] based on a mistaken identity of the person contacted in Korea. Regardless of whom USCIS contacted by telephone at [redacted] which cannot be verified from the evidence submitted, the information provided by that company representative about the history of the company and the alleged employment of the Beneficiary was inconsistent with the information stated in the employment verification letters provided by the Petitioner's owner and CEO. Accordingly, we do not agree with the Petitioner's assertion that the Director's decision hinged on mistaken identity.

Rather, the salient facts are that (1) when [redacted] was contacted to verify the Beneficiary's alleged employment, inconsistent information was reported; (2) the Beneficiary admits to authoring the initial employment verification letter herself; and (3) the Beneficiary did not identify [redacted]

as a former employer on her nonimmigrant visa application forms that she completed in 2002 for the Department of State.

These inconsistencies, coupled with the lack of documentary evidence of employment, raise doubt about the Beneficiary's claimed employment. The Petitioner has not resolved these inconsistencies with objective evidence. Unresolved material inconsistencies may also lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Based on the foregoing analysis, we find that the Petitioner has not established that the Beneficiary was employed by as a cashier from January 1983 to May 1985, which was the only qualifying experience claimed on the labor certification.

The Petitioner alternatively asserts that the Beneficiary gained cash management experience as owner of the bookstore, and could just as easily have relied on that experience as qualifying her for the proffered position. The only evidence of the bookstore experience, however, are the letters from two old friends of the Beneficiary who assert that they patronized the store when it was owned and operated by the Beneficiary during the early 1980s, as well as the Beneficiary's self-serving letter in response to the NOIR. None of these documents indicates that the Beneficiary was performing the duties of a supervising cashier or a cashier/clerk. Moreover, the bookstore experience was not listed on the labor certification, which lessens the credibility of the evidence and facts asserted in the Beneficiary's letter and the third party statements. *See Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976). For the reasons discussed above, we find that the record does not establish that the Beneficiary gained any qualifying experience with the bookstore.

Due to the inconsistencies and omissions in the documentation of record, we conclude that Petitioner has not established that the Beneficiary was employed by either or the bookstore, and has not established that she gained at least two years of qualifying experience at either business. Since the evidence does not establish that the Beneficiary has two years of qualifying employment, she does not meet the experience requirement of the labor certification.

B. Eligibility for Classification as a Skilled Worker

Although not addressed by the Director, we find that the record does not establish the Beneficiary's eligibility for classification as a skilled worker. Section 203(b)(3)(A)(i) of the Act allows for classification as a skilled worker if a beneficiary has at least two years of training or experience. As discussed above, the Petitioner has not established that the Beneficiary was employed at either or the bookstore for any period of time. As such, the record does not demonstrate her eligibility for the classification requested.

C. Willful Misrepresentation of a Material Fact

Although the record does not demonstrate the Beneficiary's eligibility for the benefit sought, we do not find that the evidence in the record supports the Director's finding that the Petitioner and the

Beneficiary willfully misrepresented a material fact pertinent to the Form I-140 petition. A misrepresentation is an assertion or manifestation that is not in accord with the true facts. For an immigration officer to find a willful and material misrepresentation of fact, he or she must determine that (1) the petitioner or beneficiary made a false representation to an authorized official of the U.S. government, (2) the misrepresentation was willfully made, and (3) the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289 (BIA 1975). 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). A "material" misrepresentation is one that "tends to shut off a line of inquiry relevant to the alien's eligibility." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

In his revocation decision, the Director found that the Petitioner and the Beneficiary willfully misrepresented a material fact by providing an employment history for the Beneficiary in the current proceeding which is inconsistent with the employment history provided in the Beneficiary's prior nonimmigrant visa applications, without a convincing explanation for the inconsistency. After reviewing and discussing the inconsistent documentation at issue, together with the evidence submitted in this proceeding for the purpose of attempting to explain the inconsistencies, we find that the record does not support a finding that the Petitioner or the Beneficiary willfully misrepresented a material fact in this petition. Accordingly, we will withdraw the Director's finding.

## III. CONCLUSION

The Petitioner has not established that the Beneficiary has at least two years of qualifying experience as a cashiers' supervisor or as a cashier/clerk. Accordingly, the Beneficiary does not meet the minimum experience requirement of the labor certification, and does not qualify for classification as a skilled worker. However, we withdraw the Director's finding that the Petitioner and the Beneficiary willfully misrepresented a material fact.

**ORDER**: The appeal is dismissed.

Cite as *Matter of F-, Inc.*, ID# 536921 (AAO Dec. 21, 2017)