U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-B-O-N-S-

DATE: AUG. 31, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an international bank, seeks to employ the Beneficiary as a senior project administrator. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. *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 Director of the Texas Service Center denied the petition, finding that the Beneficiary did not possess the minimum education required by the terms of the labor certification. We dismissed the Petitioner's subsequent appeal on this same basis.

The matter is again before us as a motion to reconsider. On motion, the Petitioner reasserts its prior arguments regarding the Beneficiary's academic qualifications. Upon review, we will deny the motion to reconsider.

I. REGULATORY REQUIREMENTS FOR A MOTION TO RECONSIDER

The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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. We do not consider new facts or evidence in a motion to reconsider. A motion to reconsider must also be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy.

II. ANALYSIS

A petitioner must establish that a beneficiary satisfies all of the educational, training, and experience requirements of the offered position set forth on the labor certification by the priority date of the visa petition.[1] 8 C.F.R. § 103.2(b)(1). *See 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).

Here, the labor certification requires the Beneficiary to have a high school diploma and 10 years of experience in the offered position. At section H.9 of the labor certification, which asks whether a foreign educational equivalent degree is acceptable, the Petitioner answered "No."

The record contains a copy of the Beneficiary's academic transcript from in Argentina, which reflects that she was awarded a *titulo de bachiller* in 1990. On appeal, we found that the Petitioner established that the Beneficiary's Argentine *titulo de bachiller* is the foreign equivalent of a U.S. high school diploma. Nevertheless, we determined that the Beneficiary did not meet the educational requirements of the labor certification because the labor certification explicitly stated at section H.9 that a foreign educational equivalent is not acceptable.

On motion, the Petitioner asserts that we erred in considering the Beneficiary's *titulo de bachiller* to be the foreign equivalent of a U.S. high school degree. It argues that DOL's "silence" on degree equivalency issues with respect to high school diplomas suggests that there is no difference between a high school diploma awarded in a foreign country and a U.S. high school diploma. The Petitioner claims that this argument is supported by the fact that the DOL approved the labor certification.

The Petitioner also contends that in light of the extensive regulations and case law relating to degree equivalency requirements for the two professional classifications under sections 203(b)(2) and (3) of the Act, the absence of such requirements with respect to high school equivalency suggests that there is no such "category" and, therefore, that the term "foreign educational equivalent" is not relevant in skilled worker cases. Noting that our dismissal of the appeal stated no statutory basis for equivalency requirements for high school degrees, the Petitioner asserts that its negative response to the question in section H.9 of the labor certification, "Is a foreign educational equivalent acceptable?" was, in fact, correct since "there is no applicable definition for the foreign equivalent of a U.S. high school diploma."

The Petitioner further maintains that in a process designed to allow U.S. businesses to sponsor foreign nationals for permanent employment in the United States, an employer is unlikely to intentionally limit the education required for its job opportunity solely to education obtained at a U.S. institution. It states that, in the absence of regulatory guidance regarding a degree equivalency for a high school diploma, it assumed that acceptance of a high school diploma from any country

[1] The priority date of a visa petition is the date on which the Petitioner filed the underlying labor certification with the U.S. Department of Labor.

was implicit and that it did not need to indicate affirmatively that a foreign equivalent high school diploma was acceptable.

We are not persuaded by the Petitioner's arguments as to why we should ignore its negative response to the question at section H.9 of the labor certification. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C.Cir.1983). We must examine the language of the labor certification job requirements in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer exactly as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). Our interpretation of the job's requirements must involve reading and applying the plain language of the alien employment certification application form. *Id.* at 834.

Here, the Petitioner checked the box labeled "High School" in section H.4 of the labor certification as the minimum level of education required for the offered position, and checked the box labeled "No" in section H.9 when asked whether it would accept a foreign educational equivalent. Therefore, the plain language of the labor certification explicitly states that the Petitioner would not accept a foreign equivalent high school diploma. The Petitioner's claim that its answer to section H.9 should not be given effect is not supported by statute, regulation, case law, or USCIS policy.

The Petitioner also argues that we should defer to DOL's approval of the labor certification in this matter, which, it asserts, reflects DOL's assessment that the Beneficiary meets the educational requirements of the labor certification. It contends that, in previous decisions, we have previously advised such deference on the part of USCIS adjudicators.

In support of its argument, the Petitioner maintains that, in approving a labor certification, DOL examines the requirements for the job opportunity, as well as a beneficiary's stated qualifications, and that where it is not clear that a beneficiary satisfies these requirements, DOL has typically audited the labor certification. As DOL ordered no audit in the present case, the Petitioner asserts that DOL "understood that [it] was not expressly required to indicate that a foreign equivalent to a U.S. high school diploma was acceptable," and that DOL would not have approved the labor certification had it found that the Beneficiary's *titulo de bachiller* did not satisfy the educational requirement of a high school diploma stated in section H.4 of the labor certification. The Petitioner does not identify or submit copies of AAO decisions in which we have previously USCIS adjudicators to defer to DOL when considering employment-based visa petitions.

As proof that USCIS' powers to review a beneficiary's qualifications are "not in fact exclusive," and that deference is owed DOL labor certification approvals, the Petitioner points to the decisions in *Grace Korean United Methodist Church v. Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005) and *SnapNames.com, Inc. v. Chertoff*, 20006 WL 3491005 *5 (D. Or. Nov. 30, 2006).

Although the Petitioner presents *Grace Korean United Methodist Church v. Chertoff* and *SnapNames.com, Inc.* v. *Chertoff* as controlling case law in this matter, these decisions, as indicated on appeal, are federal district court decisions, which are not binding precedent. Further, while the Petitioner points to the limits on USCIS' authority discussed in *SnapNames.com, Inc. v. Chertoff*, we note that this same decision also reflects the court's conclusion that although a labor certification may be prepared with a beneficiary in mind, USCIS has an independent role in determining whether that beneficiary meets labor certification requirements. *See Snapnames.com, Inc.* at *7.

Therefore, the Petitioner has not established that we lack the authority to find that a beneficiary does not meet the requirements of an offered position if the DOL approves the underlying labor certification. *Madany v. Smith*, 696 F. 2d 1008, 1012, 1012-13 (D.C. Cir. 1983); *see also K.R.K. Irvine, Inc. v. Landon*, 699 F. 2d 1006, 1008-09 (9th Cir. 1983); *Tongatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984).

For these reasons, we will affirm our findings on appeal. On motion, the Petitioner did not establish that the Beneficiary satisfied the educational requirements of the labor certification, which is required for classification as a skilled worker. Accordingly, we will deny the motion to reconsider.

III. CONCLUSION

The motion to reconsider will be denied because the Petitioner has not demonstrated that our decision was based on an incorrect application of law or policy. The Petitioner has also not established that the Beneficiary meets the educational requirements of the labor certification.

ORDER: The motion to reconsider is denied.

Cite as *Matter of T-B-O-N-S-*, ID# 456515 (AAO Aug. 31, 2017)