U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35052747

Date: DEC. 2, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Advanced Degree)

The Petitioner, a pulp and paper company, seeks to employ the Beneficiary as a software developer. The company requests his classification under the employment-based, second-preference (EB-2) immigrant visa category as a member of the professions holding an "advanced degree." *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). Businesses may sponsor noncitizens for U.S. permanent residence in this category to work in jobs requiring at least master's degrees or bachelor's degrees followed by five years of progressive experience. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree").

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the Beneficiary's qualifying experience for the offered job. On appeal, the company contends that the Director disregarded the job's alternate experience requirement on the accompanying certification from the U.S. Department of Labor (DOL).

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the labor certification's plain language supports the Director's interpretation of the job's requirement. We will therefore dismiss the appeal.

I. LAW

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 DOL certification that: insufficient U.S. workers are able, willing, qualified, and available for an offered position; and a noncitizen's employment in the job would not harm wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D).

If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). Among other things, USCIS determines whether a

beneficiary meets the requirements of the DOL-certified position and the requested immigrant visa category. 8 C.F.R. § 204.5(k)(3)(i), (4)(i).

Finally, if USCIS approves a petition, a noncitizen may apply abroad for an immigrant visa or, if eligible, "adjustment of status" in the United States. *See* section 245(a) of the Act, 8 U.S.C. § 1255(a).

II. ANALYSIS

A petitioner must demonstrate a beneficiary's possession of all DOL-certified job requirements of an offered position by a petition's priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). This petition's priority date is February 21, 2023, the date DOL accepted the Petitioner's labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

When assessing a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine the job's minimum requirements. USCIS may neither disregard certification terms nor impose unstated 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).

The Petitioner's labor certification states the primary educational requirements of the offered job of software developer as a U.S. bachelor's degree, or a foreign equivalent degree, in computer science, information systems, technology, engineering and operations management, or a related field. The certification states the job's primary experience requirements as at least five years' experience in the job offered or as a data analyst (intern), computer systems analyst, information security engineer, or a related occupation.

The labor certification also states the Petitioner's acceptance of an alternate combination of education and experience: a master's degree and at least three years' experience. Further, in its entirety, part H.14 of the certification – "Specific skills and other requirements" – states:

> 5 years of Cyberark experience, including:
>
> - Powershell
> - Documentation, development, and implementation of Cyberark
> - Automation of daily tasks
> - Managing privileged accounts in a Windows and Linux environment
> - Database credential management
> - Splunk, Rapid7, Digital Command Centre, CA SDM, BluePrism, UIPath, Azure, Radius, Secure ID, Sailpoint, Radiant Logic, Stealthbits, Active Directory, Microsoft Suite, SQL Developer, and FireEye.
>
> Must be on 24/7 call during one week every quarter.

The Petitioner claims that the Beneficiary qualifies for the offered job based on its alternate requirements of a master's degree and three years' experience. The Beneficiary's educational qualifications are not at issue.

Based on the five-year experience requirement in the labor certification's part H.14, the Director interpreted the offered job as requiring at least five years' experience with the duties and technologies listed in part H.14. Because the Petitioner demonstrated the Beneficiary's possession of only a little more than three such years' experience, the Director found the Beneficiary ineligible for the offered job.[1]

On appeal, the Petitioner describes its drafting of the labor certification's part H.14 as "inartful." But the company states that part H.14's five-year experience requirement refers to the job's primary five-year experience requirement. The company contends that the job's alternate three-year experience criterion also requires experience with the duties and technologies listed in part H.14. The company states, however, that part H.14 "does not repeat the alternative [experience] requirement language but rather presumes that USCIS will apply the alternative[] where applicable."

The Petitioner argues the labor certification part H.14 is a "catch-all" space for additional job information, including detailed explanations of experience requirements. The company contends that its language in part H.14 does not "override" the alternate experience requirement in part H.8, stating: "USCIS should not ignore the terms of the labor certification and impose additional requirements based on the petitioner's annotation at H.14. [The Agency] should use the language added at H.14 to better interpret the rest of the application."

The Director, however, did not ignore the terms of the Petitioner's labor certification. Rather, consistent with *Madany*, the Director "examine[d] the certified job offer *exactly as it is completed* by the prospective employer." *Rosedale Linden Park Co. v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). Part H.14 of the labor certification states a five-year experience requirement with certain duties and technologies. Nothing in part H.14's plain language links that requirement to the job's primary or alternate experience criteria.

The Petitioner provides copies of job recruitment materials and other labor certification documents. The company states that this evidence supports its claimed intent to accept, in conjunction with a master's degree, three years of experience with the duties and technologies listed in part H.14.

If the job requirements in the labor certification's part H.14 were ambiguous, we could consider additional evidence of the Petitioner's intent in drafting that language. But, again, USCIS must "examine the certified job offer *exactly as it is completed* by the prospective employer." *See Rosedale Linden Park*, 595 F. Supp. at 833 (emphasis added). Part H.14's plain language does not link its experience requirement to the job's primary or alternate experience criteria. Thus, no ambiguity exists,

[1] The Beneficiary also claims more than two years' experience with the Petitioner before the petition's priority date. But the company does not assert its reliance on the experience that he gained with it, and DOL regulations generally bar such reliance. *See* 20 C.F.R. § 656.17(i)(3)(i), (ii) (providing for exceptions if noncitizens gained such experience in jobs substantially different than the offered ones or the employers can demonstrate the impracticality of training U.S. workers for the offered jobs).

and we cannot consider additional evidence. Even if we considered the Petitioner's evidence, it does not sufficiently support the company's interpretation.

The Petitioner also argues DOL's approval of the labor certification indicates the agency's agreement with the company's interpretation of the job's requirements and the Beneficiary's qualifications for the job. The immigration service, however, bears primary authority to make preference classification decisions, including beneficiaries' qualifications. Section 204(b)(1) of the Act; *Madany*, 696 F.2d at 1012-13. Thus, DOL's labor certification approval does not bar USCIS from determining the Beneficiary's qualifications for the offered job. As one federal court has held:

> [US]CIS has an independent role in determining whether the [noncitizen] meets the labor certification requirements, and where the plain language of those requirements does not support the petitioner's asserted intent, the agency does not err in applying the requirements as written.

SnapNames.com, Inc. v. Chertoff, No. CV 06-65-MO, 2006 WL 3491005, *7 (D. Or. Nov. 30, 2006).

The labor certification's plain language does not support the experience requirements that the Petitioner urges. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.