U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32252257

Date: DEC. 23, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a publicly-funded charter school, seeks to permanently employ the Beneficiary as an "upper elementary" teacher who would instruct fourth-, fifth- and sixth-grade students. The school requests her classification under the employment-based, third-preference (EB-3) immigrant visa category as a "professional." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). Organizations may sponsor noncitizens in this category for U.S. permanent residence to work in jobs requiring at least bachelor's degrees. *Id.*

The Director of the Nebraska Service Center denied the petition. The Director concluded that, contrary to job requirements on the accompanying certification from the U.S. Department of Labor (DOL), the Petitioner did not demonstrate the Beneficiary's possession of a bachelor's degree in elementary education. On appeal, the Petitioner contends that the Director improperly imposed the field of study as a job requirement. The school submits additional evidence, alternatively arguing that she has the equivalent of a baccalaureate in education.

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 decline to consider the school's appellate evidence and conclude that the school unambiguously listed elementary education on the labor certification as the offered job's exclusive, required field of study. We will therefore dismiss the appeal.

I. LAW

Immigration as a professional generally follows a three-step process. First, a prospective employer must apply for DOL certification that: there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and a noncitizen's employment in the position would not harm wages and working conditions of U.S. workers with similar jobs. Section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

Second, an employer must submit an approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204(a)(1)(F) of the Act, 8 U.S.C.

§ 1154(a)(1)(F); 8 C.F.R. § 204.5(l)(3)(i). Among other things, USCIS determines whether a noncitizen beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l)(3)(ii)(C).

Finally, if USCIS approves a petition, a beneficiary 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.

II. ANALYSIS

A petitioner must demonstrate that, by a petition's priority date, a beneficiary met all DOL-certified requirements of an offered job. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). This petition's priority date is March 17, 2022, 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 a job's minimum requirements. *See* 20 C.F.R. § 656.17(i)(1) (requiring job criteria on a labor certification to represent an employer's "actual minimum requirements for the job opportunity"). The Agency may neither ignore a certification term nor impose unstated requirements. *See 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 Director found that the Petitioner's labor certification states the following minimum requirements of the offered job of upper elementary teacher: a U.S. bachelor's degree, or a foreign equivalent degree, in elementary education and two years of experience in the job offered. The Director also found that the certification states the school's non-acceptance of any other field of study.

The Director acknowledged that the labor certification further indicates the Petitioner's acceptance of an alternate combination of education and experience. But, because the alternate criteria also require a bachelor's degree and two years of experience, the Director found that the primary and alternate job requirements match. The Beneficiary's experience is not at issue.[1]

On the labor certification, the Beneficiary attested that, by the petition's priority date, a Mexican university awarded her a master's degree in information design. The Petitioner submitted a 2011 "certificate of total studies" indicating her completion of the graduate program.

The Petitioner also submitted evidence that another Mexican university previously awarded the Beneficiary a bachelor's degree in graphic design. An independent, professional evaluation states that her 2001 credential equates to a U.S. bachelor's degree in graphic design.

Contrary to the Director's interpretation of the offered job's educational requirements, the Petitioner's evidence did not demonstrate the Beneficiary's possession of a bachelor's degree in elementary education. The Director therefore denied the petition.

[1] The labor certification also states that the job requires the ability to speak Spanish.

On appeal, the Petitioner contends that the Director misinterpreted the offered job's requirements as including a bachelor's degree in elementary education. Rather, the school asserts its alternate acceptance of a baccalaureate in *any* field of study, arguing that, by marking "Yes" to Question H.8 on the labor certification ("Is there an alternate combination of education and experience that is acceptable?") and, as in the primary requirement, including two years of experience in the alternate requirement, the school necessarily indicated a change in the alternate educational criterion. And, because the certification application form lacks a specified place to list acceptable alternate educational fields, the school argues that the undescribed education field indicates the school's acceptance of a bachelor's degree in any field.

The Petitioner, however, has not explained why it listed a baccalaureate in "elementary education" as a primary job requirement. If the Petitioner intended to accept a bachelor's degree in any field, the school could and should have simply listed one primary job requirement including a bachelor's degree in "any" field.

The Petitioner maintains that, since the start of the labor certification process for the offered job, the school intended to accept a bachelor's degree in any field. As proof on appeal, the school submits copies of its application for a prevailing wage determination (PWD), *see* 20 C.F.R. § 656.40, and its recruitment materials during the labor certification process, *see* 20 C.F.R. § 656.17(e).

If labor certification terms are ambiguous, USCIS may look beyond the certifications' plain language and consider other evidence of petitioners' intended job requirements. *See SnapNames. Com v. Chertoff*, No. CV 06-65-MO, 2006 WL 3491005, *10 (D. Or. Nov. 30, 2006) (allowing us to consider the Act and regulations when interpreting a petitioner's educational qualifications for an offered job in the EB-3 professional category). But, regarding the offered job's required field of study, the Petitioner's labor certification is unambiguous. Question H.4-B states the required baccalaureate degree's "Major field of study" as "Elementary Education." Also, asked in Question H.7 "Is there an alternate field of study that is acceptable?" the Petitioner checked the box marked "No." Because the labor certification unambiguously indicates the offered job's need for a bachelor's degree in elementary education, we need not and decline to consider other evidence of the Petitioner's claimed intent.

Also, we consulted with DOL regarding this petition. *See* section 204(b) of the Act (requiring USCIS' "consultation with the Secretary of Labor" on EB-3 petitions). Noting that the Petitioner's labor certification requirements omit the phrase "any field of study," DOL agreed with our interpretation of the job's educational criteria as requiring a bachelor's degree in elementary education. DOL also noted that, even though the labor certification did not list the requirements, the Petitioner rejected a U.S. worker for the job because they lacked a state teaching license and a Montessori teaching credential. *See* 20 C.F.R. § 656.17(i)(1) (requiring job criteria on a labor certification to represent an employer's "actual minimum requirements for the job opportunity").

Further, if a petitioner received both notice of required evidence and an opportunity to provide it, we do not generally consider proof on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). The record shows that the Director's request for additional evidence gave the Petitioner an opportunity to explain the offered job's educational requirements. For this additional reason, we decline to consider the school's appellate evidence.

Even if we considered the Petitioner's evidence on appeal, the materials would not sufficiently demonstrate the school's claimed intent to accept a bachelor's degree in any subject. The school's PWD application states the offered job's educational requirements as a bachelor's degree in "Education or [a] closely related [field]."

Also, the Petitioner's appellate evidence does not clearly relate to the offered job. The school's PWD application and recruitment documentation state other job requirements – including a state teaching license, Montessori certification, and "2+ years of teaching experience in a Montessori classroom and/or at a 90/10 dual-language program" – that the labor certification omits. The Petitioner's appellate materials therefore would not reliably demonstrate the school's claimed intent to accept a baccalaureate in any field for the offered position.

The Petitioner argues that the Director's interpretation of the labor certification as containing the same primary and alternate job requirements "makes no sense." If the school's alternate requirements do not differ from its primary requirements, it states that – at Question H.8 on the certification – it could have simply indicated no alternate requirements for the job.

But the Petitioner's claimed alternate job requirement for a bachelor's degree in any field suffers from a similar defect. If the school intended to accept a bachelor's degree in any subject, it could have stated "any" field of study at Question H.4-B or at Question H.7 of the labor certification application. The school also could have stated "any field" when listing its alternative education at Question H.8-B. *See Matter of Wienerschnitzel No. 287*, 2010-PER-01367 (BALCA Nov. 2, 2011) (listing alternate requirements of "any BS + 5 yrs of progressive exp." in Question H.8-B of the labor certification application). Further, the Petitioner could have explained its educational requirements as accepting any field at Question H.14, which requests "Specific skills or other requirements." While claiming to accept any field of study for the offered job, the school has not explained why, on the labor certification, it affirmatively listed elementary education as the exclusive, required field.

The Petitioner also submits another independent, professional evaluation of the Beneficiary's foreign educational credentials, concluding that she has the equivalent of a U.S. bachelor of arts degree in education. As previously indicated, however, because the terms of the labor certification are unambiguous and the Petitioner received a prior opportunity to submit evidence, we will not consider the school's evidence submitted for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. at 766.

Also, even if we considered the new educational evaluation, it would not demonstrate the Beneficiary's qualifying education. The labor certification states that the offered job requires a U.S bachelor's degree or a foreign equivalent degree based solely on education. *See also* Final Rules for Employment-based Immigrants, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) ("[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification . . ., a [noncitizen] must have at least a bachelor's degree.") The new evaluation bases its bachelor-of-arts equivalency finding on a combination of the Beneficiary's education and experience. Also, the evaluation finds her education and experience equivalent to a bachelor's degree in "Education," not "Elementary Education" as the labor certification specifies. Thus, the new evaluation would not demonstrate her qualifications for the offered job or the requested immigrant visa category.

We recognize the Petitioner's statement of the offered job's requirements on the labor certification and our lack of authority to define the particular job. But, as the *SnapNames.com* court found, USCIS:

> 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. . . . To require the agency to go beyond the certification's plain language, where such exists, would not only be inconsistent with this obligation, it would undermine the agency's role in independently determining whether the [noncitizen] meets the specified requirements.

SnapNames.com, 2006 WL 3491005 at *7.

III. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's qualifying education for the offered job. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.