U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 07629906

DATE: FEB. 7, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for a Professional

The Petitioner, an accounting, auditing, tax, and consulting company, seeks to employ the Beneficiary as an advisory senior consultant. It requests professional classification for the Beneficiary under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based "EB-3" immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition on the ground that the record did not establish that the Beneficiary met the minimum experience requirement of the labor certification. The Director found that the Beneficiary could not use a prior position with the Petitioner as qualifying experience because the evidence failed to demonstrate that it was not substantially comparable to the proffered position, as claimed on the labor certification. The Director concluded that the Beneficiary was not considered qualified for the proffered position, and therefore was ineligible for classification as a professional.

On appeal the Petitioner asserts that the documentation of record establishes that the Beneficiary gained the qualifying experience required by the labor certification in a prior position with the Petitioner that was not substantially comparable to the job opportunity in this proceeding, and thus comported with the terms of the labor certification. The Petitioner asserts that Beneficiary meets all requirements for classification as a professional, and requests that the petition be approved.

Upon *de novo* review of the record, including the Petitioner's appeal brief and accompanying materials, we will sustain the appeal.

To qualify for classification as a professional a beneficiary must have a U.S. baccalaureate degree or a foreign equivalent degree and be a member of the professions. 8 C.F.R. § 204.5(l)(3)(ii)(C). A beneficiary must also meet the specific educational, training, experience, or other requirements of the labor certification. 8 C.F.R. § 204.5(a)(2). All such requirements must be met by the petition's priority date,[1] which in this case is November 12, 2018. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

[1] The priority date of a petition is the date the underlying labor certification is filed with the Department of Labor. *See* 8 C.F.R. § 204.5(d).

The education, training, experience, and other requirements for the proffered position are set forth in section H of the labor certification (ETA Form 9089). They include a bachelor's degree or a foreign educational equivalent in computer science or a related discipline in the field of science, mathematics, or engineering, plus 18 months of experience in a job involving cyber risk and regulatory compliance in the public sector. In section J of the labor certification the Petitioner asserted that the Beneficiary met the educational and experience requirements of section H and that the Beneficiary did not gain any of his qualifying experience in a position that was substantially comparable to the job opportunity in this proceeding.

The record shows that the Beneficiary earned a bachelor of science degree in electrical engineering from [redacted] University in [redacted] Pennsylvania, in 2011, and therefore meets the minimum educational requirement of the labor certification. With respect to experience, the Petitioner claims that the Beneficiary met the 18-month requirement of the labor certification by virtue of his prior job with the Petitioner as an advisory consultant from February 1, 2015 to August 20, 2016. The Director found that the Petitioner failed to establish that the Beneficiary's prior position was not substantially comparable to the advisory senior consultant position at issue in this proceeding.

Based on all of the evidence in the record, including detailed descriptions and comparisons of the job duties, with time percentages, of the advisory consultant and advisory senior consultant positions provided by the Petitioner in the labor certification, in the employment verification letter submitted with the petition, in response to the Director's request for evidence, and in the Petitioner's brief on appeal, we conclude that the Petitioner has established, by a preponderance of the evidence, that the Beneficiary's prior position with the Petitioner was not substantially comparable to the proffered position in this proceeding. We also conclude that the Beneficiary's prior experience as an advisory consultant was qualifying experience for the job offered under the terms of the labor certification.

The Petitioner has established that the Beneficiary meets the educational and experience requirements of the labor certification and is eligible for the requested visa classification as a professional. Accordingly, we will sustain the appeal.

ORDER: The appeal is sustained.