U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 07304440

DATE: FEB. 14, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for a Skilled Worker

The Petitioner, an IT and engineering services company, seeks to employ the Beneficiary as a systems analyst. It requests skilled worker classification for the Beneficiary under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based "EB-3" 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. The Director found that the Petitioner did not establish that the Beneficiary met the minimum educational and experience requirements of the labor certification and did not have the requisite experience to qualify for skilled worker classification.

On appeal the Petitioner asserts that the documentation of record establishes that the Beneficiary has the requisite education and experience to meet the terms of the labor certification and to qualify for the requested visa classification.

Upon de novo review, we will withdraw the Director's decision. We will remand the case for further consideration and the issuance of a new decision.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification (ETA Form 9089) from the U.S. Department of Labor (DOL). See section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL 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 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

To qualify for classification as a skilled worker a beneficiary must have at least two years of training or experience. 8 C.F.R. § 204.5(l)(3)(ii)(B). A beneficiary must also meet the specific educational, training, experience, or other requirements of the labor certification. Id. All such requirements must be met by the petition's priority date,[1] which in this case is November 29, 2018. *See Matter of Wing's* Tea House, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

A. Requirements of the Labor Certification

The education, training, experience, and other requirements for the proffered position are set forth in section H of the ETA Form 9089. In this case section H has the following relevant entries with respect to the proffered position of systems analyst:

4.	Education: Minimum level required:	Bachelor's degree
4-B.	Major Field of Study:	Computer Science
5.	Is training required in the job opportunity?	No
6.	Is experience in the job offered required?	Yes
6-A.	How long?	24 months
7.	Is an alternate field of study acceptable?	Yes
7-A.	If Yes, what field of study	See H.14
8.	Is an alternate combination of education and experience acceptable?	Yes
8-A.	What level of education"	Other
8-B.	If Other, what level?	See H.14
8-C.	How much experience?	2 years
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	Yes
10-A.	How long?	24 months
10-B.	What job title(s)	Related IT or Engineering role

11. Job duties –

Under close supervision, assist with the analysis of user requirements. Define systems strategy and develop systems requirements. Responsible for designing prototyping, testing, and defining support procedures. Involved with the implementation of custom technology solutions. Assist with the full cycle implementation. Perform functional and systems analysis, including feasibility and design studies. Evaluate and recommend new/improved processes and technological innovations as per the client's specifications. Travel and work at client sites as assigned.

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

14 Specific skills and other requirements:

> Requires Bachelor's degree* or foreign equivalent in Computer Science, Engineering (any), Information Technology, Computer Applications, Computer Technology, Computer Information Systems, Management Information Systems, or related field plus two (2) years experience in the job offered, or related IT or engineering role. *Employer will accept a combination of education and experience as determined by a qualified evaluation service as equivalent to a Bachelor's degree. Travel and work at client sites as assigned.

Thus, with respect to education the labor certification requires a U.S. bachelor's degree or a foreign educational equivalent in computer science or a related field of study such as engineering, information technology, computer applications, computer technology, computer information systems, or management information systems. Alternatively, the labor certification allows the educational requirement to be met with a combination of education and experience that is equivalent to a bachelor's degree.

With respect to experience the labor certification requires two years as a systems analyst or, alternatively, two years in a related occupation in the information technology or engineering fields.

B. Beneficiary's Qualifications

The Petitioner claims that the Beneficiary meets the alternate educational requirement and the alternate occupational experience requirement of the labor certification.

The evidence of record shows that the Beneficiary has two credentials from institutions of higher education in India, including a three-year bachelor of commerce degree from [redacted] University in [redacted], awarded in 2001, and a two-year post-graduate diploma in business administration from the Institute for Technology and Management in [redacted] awarded in 2003. The Petitioner does not contend that these two credentials, either individually or together, constitute the foreign educational equivalent of a bachelor's degree in computer science or one of the related fields of study identified in the labor certification. What the Petitioner does assert in section J.11 and J.11-A of the labor certification is that the Beneficiary's three-year bachelor of commerce plus relevant work experience is equivalent to a bachelor's degree in computer information systems and business administration, which would meet the labor certification's alternative educational requirement.

As for the Beneficiary's work experience, the documentation of record includes copies of employment verification letters from two companies in India. They include [redacted] in [redacted] India, which states that the Beneficiary was employed as an assistant manager from June 2003 to August 2010 and describes his job duties, and [redacted] in [redacted] India, which states that the Beneficiary was employed as an associate business manager (with an internal designation of systems analyst) from August 2010 to February 2015 and describes his job duties. Both of these jobs are listed in section K or the labor certification in accordance with its instruction to list any "experience that qualifies the [Beneficiary] for the job opportunity" at issue in this proceeding. The record also indicates that the Beneficiary has been employed by the Petitioner as a

systems analyst since February 2015, but the labor certification indicates at section J.21 that this employment is not being claimed as qualifying experience in this proceeding.

In support of its claim that the Beneficiary meets the alternative educational requirements of the labor certification the Petitioner has submitted two evaluations of the Beneficiary's education and experience, the first by The Trustforte Corporation (Trustforte evaluation) and the second by a professor at the [redacted] University of [redacted] evaluation). Both evaluations conclude that the Beneficiary's three-year bachelor of commerce degree from [redacted] University is equivalent to three years of academic coursework toward a bachelor of business administration in the United States. Both evaluations considered his employment with [redacted] featuring job duties in the field of computer information systems and associated technologies, were equivalent to one year of academic coursework in computer information systems,[2] and that the combination of the three-year bachelor of commerce degree and years of work at [redacted] would be the equivalent to a bachelor of science degree with a dual major in computer information systems (or information technology) and business administration from a U.S. college or university.

The Trustforte evaluation focused on the years June 2003 to June 2006 and described the Beneficiary's [redacted] experience: "he was entrusted with ensuring banking transactions were accurately processed . . . ; serving as the Subject Matter Expert in International Trade Finance;" and other banking functions. It also states that he "obtained hands-on experience with various banking systems" and performed other IT functions. Thus, the evaluation discusses a mixed experience with both business duties and IT functions, but concludes that the experience was sufficient to reach the dual major concentration. As the evaluation states mixed experience, it is not clear that all three of the years discussed would represent sufficient IT experience to reach a formulation of a dual major to include a major in information technology.

The [redacted] evaluation notes the Beneficiary's seven years of experience, but later opines that only "three years of qualifying professional experience" would be required to reach the additional year for the bachelor's equivalency. Another part of the evaluation discusses the Beneficiary's "approximately seven years and two months of progressively responsible duties in macros development, troubleshooting, process improvement, automation, implementation validation, information technology, and related areas." He further notes, "his demonstrated progressively responsible experience, completed over the course of seven years and two months, provides a suitable basis for a finding of a major equivalency in the field of Information Technology."[3]

The first evaluation appears deficient in ascribing a full equivalent year in Information Technology based on mixed business and IT duties. Without knowing what percent of the Beneficiary's work was IT related compared to business related, the first evaluation seems deficient. While the second evaluation appears to hinge on the full amount of experience, although acknowledging the three to one experience to education formula, it would not appear to allow any experience left to meet the separate experience requirement if it relies on the full seven years of experience to reach sufficient IT related job duties.

---

[2] While the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), applicable for H-1B nonimmigrant petitions, allows three years of specialized training and/or work experience to be considered the equivalent of one year of college or university study, there is no similar regulation for employment-based immigrant petitions.

[3] Neither evaluation addressed the Beneficiary's four and one-half years of experience with [redacted] in the years 2010-2015.

In his decision the Director listed some of the Beneficiary's job duties with [redacted] in the years 2010-2015, drawn from the initial employment verification letter, and stated without much analysis that they did not appear to indicate that the Beneficiary worked as a systems analyst or in a related IT or engineering role for the company. We note that the Director did not discuss a second letter from [redacted] submitted in response to the Director's notice of intent to deny (NOID) that provided a more detailed description of the Beneficiary's job duties. The Director then referred to the Trustforte evaluation, which evaluated the Beneficiary's post-secondary education in India and his work experience with [redacted] as equivalent to a U.S. bachelor's degree with a dual major in computer information systems and business administration, and concluded that this evaluation was not supported by the evidence because "[a]s previously stated, the [B]eneficiary's professional experience also appears to be in business administration." The only professional experience specifically discussed in the Director's decision, however, was the Beneficiary's experience with [redacted] from 2010 to 2015. That experience was not included in the Trustforte (or the [redacted] evaluation, and was not separately analyzed by the Director. Therefore, the Director's statement that the Trustforte evaluation's opinion is not supported by the evidence is incorrect insofar as the Director has not addressed or made any specific determination about whether the Beneficiary performed the functions of a systems analyst or a related IT or engineering job with [redacted] and whether those job duties were qualifying experience for the job offered.

C. Recruitment Documentation

The Director referred in his decision to recruitment documents having been submitted which show that the Petitioner required a bachelor's degree or a combination of education and experience determined by a qualified evaluation service to be equivalent to a bachelor's degree. There are no such documents in the file, however, so it is unclear what the Director meant. In any event, recruitment documents – including copies of all posted job advertisements and all resumes received – could indeed help to establish what the Petitioner actually required with respect to education and experience to qualify for the job offered, how those requirements were expressed to U.S. workers, and whether workers with combinations of education and experience were considered.

III. CONCLUSION

For the reasons discussed above, we will remand this case for further consideration. The Director shall request additional evidence from the Petitioner in the form of all posted job advertisements and resumes received to determine how the Petitioner's actual educational and experience requirements for the systems analyst position were expressed and considered. The Director shall also review the Trustforte and [redacted] evaluations, in conjunction with the documentation in the record concerning the Beneficiary's educational credentials and employment experience, and determine whether they establish that the Beneficiary's education in combination with his experience at [redacted] would qualify him for the proffered position of systems analyst under the terms of the labor certification. The Director should also reconsider whether the Beneficiary's employment with [redacted] was qualifying experience in view of the second employment verification letter submitted by [redacted] which was not addressed in the decision.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.