U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-C-E-, INC.

DATE: FEB. 21, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an electrical contractor, seeks to employ the Beneficiary as a low voltage system installer. It requests classification of the Beneficiary as a skilled worker. *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 2 years of training or experience.

The Director, Nebraska Service Center, denied the petition, concluding that because the position offered does not require a minimum of at least 2 years of experience, the labor certification does not support the immigrant classification of a skilled worker.

The matter is now before us on appeal. The Petitioner submits a brief and additional evidence, asserting that the position does qualify as a skilled worker position.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

A. Overview of the Employment-Based Immigrant Petition Process

A United States employer may sponsor a foreign national for lawful permanent residence, which is a three-part process. First, the employer must obtain an ETA Form 9089, Application for Permanent Employment Certification (labor certification), from the U.S. Department of Labor (DOL) for certification that "there are not sufficient [U.S.] workers who are able, willing, qualified, and available" to perform the position offered where the beneficiary will be employed, and that the employment of the beneficiary will not "adversely affect the wages and working conditions of workers in the United States similarly employed." Section 212(a)(5)(A)(i) of the Act. The date the labor certification is accepted for processing by the DOL establishes the priority date, which determines when a visa is available for the beneficiary to adjust to lawful permanent status. *See* 8 C.F.R. § 204.5(d).

Second, the employer files a Form I-140, Immigrant Petition for Alien Worker, with the approved labor certification, to U.S. Citizenship and Immigration Services (USCIS). To demonstrate eligibility, the petitioner must establish that the beneficiary meets the requirements of the offered position certified by the DOL and that the beneficiary qualifies for the requested classification. The petitioner must also demonstrate that the proffered position supports the requested classification and that it is otherwise eligible for the requested classification, including establishing its ability to pay the proffered wage.

Third, if USCIS approves the Form I-140 and a visa is available based upon the priority date, the beneficiary may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States.

B. Skilled Worker Classification

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), defines "skilled workers" as "qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States."

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) states the following:

> If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

II. ANALYSIS

At issue on appeal is whether the offered position described on the labor certification supports the skilled worker classification. The labor certification states that the offered position has the following minimum requirements:

H.4. Education: Other.
H.4-A. If Other is indicated in question 4, specify the education required: "Vocational HS."
H.4-B. Major field of study: "Electro-Technic or any related field."
H.5. Training: None required.
H.6. Experience in the job offered: None required.
H.7. Alternate field of study: None accepted.
H.8. Is there an alternate combination of education and experience that is acceptable: Yes.
H.8-A. If Yes, specify the alternate level of education required: None.
H.8-C. If applicable, indicate the number of years experience acceptable in question 8: 2.

H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: None accepted.
H.14. Specific skills or other requirements: Left blank.

As indicated above, Part H.4 of the labor certification states that the Beneficiary must have completed vocational high school with a major field of study in electro-technic or any related field. Part H.8 states that 2 years of related experience is acceptable as an "alternate combination of education and experience."

The regulation at 8 C.F.R. § 204.5(l)(2) states that a skilled worker position is one "requiring at least two years training or experience." At issue is whether the requirement to complete vocational high school with a major field of study in electro-technic or any related field constitutes a requirement of at least 2 years of training or experience in order to demonstrate that the minimum terms of the labor certification support skilled worker classification. We note that the regulation at 8 C.F.R. § 204.5(l)(2) states, "Relevant post-secondary education may be considered as training for the purposes of this provision." The regulations do not allow secondary education to likewise be considered training as a matter of practice.

On appeal, the Petitioner asserts that the vocational nature of the required secondary education should be considered as training. Specifically, the Petitioner asserts that completion of secondary school of a vocational nature would include 2 years of "training." In support of its claims, the Petitioner cites the Job Zone descriptions on O*NET, which is the current occupational classification system used by DOL.[1] O*NET incorporates the Standard Occupational Classification (SOC) system, which is designed to cover all occupations in the United States. *See* Standard Occupational Classification, http://www.bls.gov/soc/socguide.htm. The record reflects that DOL classified the offered position as a Job Zone Three occupation. The Petitioner submits an O*NET Online overview of the Job Zones which states under Job Zone Three, "Employees in these occupations usually need one or two years of training involving both on-the-job experience and informal training with experienced workers." First, we note that this statement allows for less than 2 years of experience for Job Zone Three occupations, which does not establish the Petitioner's claim that the type of position offered requires a minimum of 2 years of training or experience. Second, O*NET states general requirements for positions that are classified within a particular Job Zone, but the question before us is whether the specific terms of the labor certification allow for less than 2 years of training or experience.

The Petitioner further asserts that a review of the Beneficiary's education would establish that the Beneficiary has at least 2 years of training gained through his completion of a vocational secondary school. However, the issue is not whether the Beneficiary has 2 years of training, but rather whether the position, as described on the labor certification, requires at least 2 years of training or experience.

[1] Located online at http://online.onetcenter.org, O*NET is described as "the nation's primary source of occupational information, providing comprehensive information on key attributes and characteristics of workers and occupations."

Finally, the Petitioner also cites *Hoosier Care, Inc. v. Chertoff*, 482 F.3d 987 (7th Cir. 2007), for the premise that "it is the employer, under 8 C.F.R. § 204.5(l)(4) who sets the requirements as validated by the DOL's certification." However, *Hoosier Care* stands for the limited interpretation of what constitutes "relevant" post-secondary education and whether it may be considered training under the skilled worker regulation. Here we are not considering the relevance of post-secondary education such that it may be considered training and therefore, the Petitioner's reliance on this case is misplaced. We further emphasize that it is up to USCIS to determine whether the offered position qualifies for the requested preference classification. *See Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983); *see also K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9th Cir. 1983); *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984).

It is the petitioner's burden to demonstrate the labor certification requires a minimum of 2 years of training or experience. Here, the Petitioner has not provided evidence to substantiate its claims. While vocational high school may consist of 2 years of vocational training, the Petitioner has not established that completion of vocational high school would necessarily require the completion of 2 years of training, as training is defined under pertinent regulations. In other words, it is not sufficient that the labor certification state requirements that might, under certain circumstances, fit the skilled worker definition. The terms of the labor certification must clearly require at least 2 years of training or experience. Here, by allowing an individual to qualify for the proffered position with only completion of vocational secondary school, which may not include at least 2 years of training, the Petitioner has not demonstrated that the position offered requires 2 years of training or experience. Thus, the labor certification does not support the requested classification of skilled worker.

III. CONCLUSION

In summary, we conclude that the terms of the labor certification do not support classification as a skilled worker. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of I-C-E-, Inc.*, ID# 122801 (AAO Feb. 21, 2017)