U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12305025

Date: JAN. 04, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Professional

The Petitioner seeks to employ the Beneficiary as an architectural draftsman. It requests classification of the Beneficiary under the third-preference, immigrant classification for professional workers. 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" category 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 and dismissed a subsequent motion to reopen and reconsider, concluding that the record did not establish that the Petitioner's job offer to the Beneficiary is *bona fide*. The Director found that the Petitioner did not establish that it desires and intends to employ the Beneficiary in the offered position or that the offered position was clearly open to U.S. workers.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The AAO reviews the questions in this matter *de novo*. *See Matter of Christo's Inc*., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will withdraw the decision of the Director. The matter is remanded for the entry of a new decision consistent with the following analysis.

I. EMPLOYMENT-BASED IMMIGRATION

Employment-based immigration 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 certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position. *Id*. Labor certification also indicates that the employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id*.

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 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a beneficiary meets the requirements of a certified position and a requested immigrant visa classification. If USCIS approves

the petition, a foreign national may finally 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. *BONA FIDE* JOB OFFER AND OPPORTUNITY

Pursuant to the statutory framework for the granting of immigrant status, any United States employer desiring and intending to employ a foreign worker entitled to immigrant classification under the Act may file a petition for classification. Section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F); *see* 8 C.F.R. § 204.5(c). Such petitions must be accompanied by a labor certification from the DOL. *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5); *see also* 8 C.F.R. § 204.5(l)(3)(i). The Petitioner must intend to employ a beneficiary under the terms and conditions of an accompanying labor certification. *See Matter of Izdebska*, 12 I&N Dec. 54, 55 (Reg'l Comm'r 1966) (affirming denial where, contrary to an accompanying labor certification, a petitioner did not intend to employ a beneficiary under the terms of the labor certification). Additionally, a labor certification employer must attest that "[t]he job opportunity has been and is clearly open to any U.S. worker." 20 C.F.R. § 656.20(c)(8).

Because the filing of a labor certification establishes a priority date[1] for any immigrant petition later based on the labor certification, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977).

The Director requested that the Petitioner submit evidence that a *bona fide* job offer and opportunity exist.

After issuing a NOIR and receiving the Petitioner's response to the NOID the Director denied the petition concluding it was not bona fide.

The Director subsequently dismissed the Petitioner's motion to reopen and reconsider.

On appeal the Petitioner asserts that the Director erred in his analysis of a *bona fide* job offer and opportunity and of its recruitment efforts.

Based on evidence in the record, including evidence submitted with the appeal, we withdraw the Director's decision. However, we cannot not affirmatively find that the Petitioner has established eligibility for the requested benefit in other respects.

III. BENEFICIARY'S QUALIFICATIONS

Although not discussed by the Director, the record does not contain sufficient evidence that the Beneficiary met the minimum education for the proffered position as stated on the labor certification.

[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). The Petitioner must establish that all eligibility requirements for the petition have been satisfied as of the priority date.

The accompanying labor certification states that the offered position requires a bachelor's, or foreign equivalent, degree in architecture and 24 months of experience in the offered job of architectural draftsman. Experience in an alternate occupation is not accepted. On the labor certification, the Petitioner asserts that the Beneficiary earned a bachelor's degree in Colombia in 1985, and that he gained experience with two universities and a design services business in Colombia.

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

> If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

The record includes an academic equivalency evaluation asserting that the Beneficiary's five years of advanced bachelor's-level coursework resulting in the Title of Architect awarded by the [redacted] in Colombia is equivalent to a bachelor of architecture degree from an accredited U.S. college or university. While it appears that the Beneficiary's degree meets the requirements of the offered position as stated on the labor certification, the record includes only the Beneficiary'sEnglish translation of a degree of architect and grade transcripts, but the translation is not attached to a copy of the originally issued university document. The English translation does not appear to have been issued by the university. Therefore, the record lacks an official university record as required by the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C).

Additionally, the translation of the Beneficiary's degree did not comply with the terms of 8 C.F.R. § 103.2(b)(3):

> *Translations.* Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As the Petitioner did not submit the degree in its original foreign language, we are unable to verify the accuracy of the English translation and whether the evidence supports the Petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3).

Therefore, on remand the Director should request evidence that the Beneficiary possesses the required education for the offered position in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study, accompanied by a proper translation, if required.

IV. CONCLUSION

Considering the above discussed deficiencies, we are withdrawing the Director's decision. However, the record does not demonstrate affirmatively that the Petitioner is eligible for the benefit sought, including whether the Beneficiary meets the education requirement as stated on the labor certification. Therefore, we will remand this case to the Director for further consideration of the Petitioner's eligibility for the requested benefit.

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