U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-F- INC.

DATE: JAN. 8, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an operator of agricultural equipment and farms, seeks to employ the Beneficiary as a grain and livestock farmworker. It requests his classification under the third-preference, immigrant classification as a skilled worker. 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" category allows a U.S. business to sponsor a foreign national for lawful permanent resident status to work in a position requiring at least two years of training or experience.

The Acting Director of the Nebraska Service Center denied the petition and the Petitioner's following motion to reopen. Like the Director, we concluded on appeal that the Petitioner did not demonstrate the Beneficiary's possession of the minimum education required for the offered position. *See Matter of B-F- Inc.*, ID# 1641284 (AAO July 31, 2018). We also found that the Petitioner did not establish the Beneficiary's qualifying experience for the offered position or the position's qualifications for the requested classification. *Id.*

The matter is again before us on the Petitioner's motion to reopen. The Petitioner asserts that, because the Beneficiary gained more than two years of experience before coming to the United States, he meets the position's experience requirements and is a skilled worker. The Petitioner also contends that the Beneficiary has a foreign agricultural diploma that exceeds the position's minimum educational requirement.

Upon review, we will deny the motion.

I. MOTION CRITERIA

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider, on the other hand, must establish that a prior decision misapplied law or policy based on the evidence at that time. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must also cite a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security (DHS) policy. *Id.* We may grant motions meeting these requirements and establishing a petition's approvability.

II. ANALYSIS

Here, the Petitioner's motion to reopen does not state new facts. We must therefore deny it. In the brief accompanying the motion, the Petitioner also asks us to reconsider our prior decision. Because the Petitioner's Form I-290B, Notice of Appeal or Motion, designates the filing solely as a motion to reopen, we cannot treat it as a motion to reconsider. Moreover, the record on reconsideration would not demonstrate eligibility for the benefit sought for the following reasons.

A. Requested Classification

On motion, the Petitioner states that, because the Beneficiary gained more than two years of experience before coming to the United States, the company considers him to be a skilled worker. The Petitioner's owner argues: "I really think that as the employer, I would be best able to determine whether [a beneficiary] is in a skilled or unskilled capacity."

The Petitioner, however, misunderstands the criteria for skilled-worker classification. The classification requires more than showing that a foreign national has at least two years of training or experience. Rather, the offered position itself must also require at least two years of training or experience. A certification from the U.S. Department of Labor (DOL) for a skilled-worker position must state minimum job requirements of at least two years of training or experience. 8 C.F.R. § 204.5(l)(3)(ii)(B). "The determination of whether a worker is a skilled or other worker will be based on the requirements of training and/or experience placed on the job by the prospective employer, as certified by the [DOL]". 8 C.F.R. § 204.5(l)(4).

Here, on the labor certification application, the Petitioner listed the minimum requirements of the offered position of farmworker as: a U.S. high school education or foreign equivalent; six months of experience in the job offered or as a commercial truck driver; and possession of, or ability to obtain, a commercial driver's license (CDL). For skilled-worker classification purposes, a requirement of post-secondary education may be considered as training. 8 C.F.R. § 204.5(l)(2) (defining the term "skilled worker"). But the Petitioner requires only secondary education for this position and a total of six months of experience. Thus, contrary to skilled-worker classification requirements, the offered position requires less than two years of training or experience.

The Petitioner's owner states that the offered position actually requires six months of experience as a farmworker, *plus* six months of experience as a commercial driver. These requirements would agree with the Petitioner's indication in part H.15 of the labor certification application that the job opportunity includes a combination of occupations (farmworker and commercial driver). But, in parts H.6 and H.10 of the application, the Petitioner indicated a primary experience requirement of six months in the job offered *or* "alternate" experience of six months as a commercial truck driver. The plain language of the labor certification therefore does not support the Petitioner's claim that the position requires a total of one year of experience: six months as a farmworker *and* six months as a commercial driver. *See Rosedale & Linden Park Co. v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (holding that, in determining an offered position's minimum requirements, immigration officials

"must examine the certified job offer exactly as it is completed by the prospective employer"). Moreover, even if the position requires one year of total experience, the job would not meet the two-year threshold for skilled-worker classification. For the foregoing reasons, the Petitioner has not demonstrated that the offered position qualifies for skilled-worker classification.

B. Education Required for the Offered Position

The Petitioner maintains that the Beneficiary earned an agricultural diploma in South Africa that exceeds the minimum educational requirements of the offered position. A petition for a skilled worker, however, must include documentary evidence establishing that a beneficiary meets all of a position's DOL-certified job requirements, including any educational requirements. 8 C.F.R. § 204.5(l)(3)(ii)(B). Here, the Beneficiary's resume and letters from him and the Petitioner's owner state the Beneficiary's possession of an agricultural diploma. But the Petitioner has not submitted objective proof of the diploma or the equivalency of the Beneficiary's foreign credentials to at least a U.S. high school education. Thus, the record does not establish the Beneficiary's educational qualifications for the offered position.

C. Experience Required for the Offered Position

Similarly, the Petitioner has not submitted required evidence of the Beneficiary's claimed qualifying experience. The Petitioner and the Beneficiary contend that he worked about five years as a driver in South Africa. Contrary to 8 C.F.R. § 204.5(l)(3)(ii)(A), however, the Petitioner has not submitted a letter from the Beneficiary's purported former employer, containing the employer's name, address, and title, and describing the Beneficiary's experience. The record therefore does not establish the Beneficiary's possession of the minimum experience required for the offered position.

On reconsideration, we also note that the record does not establish the Beneficiary's possession of, or ability to obtain, a CDL as of the petition's priority date. A petitioner must establish that a beneficiary met all DOL-certified job requirements by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). This petition's priority date is October 28, 2016, the date the DOL accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date). The Petitioner, however, submitted a copy of a CDL indicating its issuance to the Beneficiary in 2017, after the petition's priority date. Thus, in any future filings in this matter, the Petitioner must also demonstrate that the Beneficiary had, or could have had, a CDL by October 28, 2016.

III. CONCLUSION

Contrary to regulations, the motion to reopen neither states new facts nor demonstrates eligibility for the benefit sought.

ORDER: The motion to reopen is denied.

Cite as *Matter of B-F- Inc.*, ID# 2201619 (AAO Jan. 8, 2019)