U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 07051175

DATE: JAN. 24, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner, a manufacturer and seller of trucks, parts, and industrial equipment, seeks to employ the Beneficiary as a senior software engineer. 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 Nebraska Service Center denied the petition on the ground that due to discrepancies in the labor certification the Petitioner did not establish that the Beneficiary met the minimum experience requirements of the labor certification. On appeal the Petitioner asserts that the Director misinterpreted the terms of the labor certification and that the evidence of record establishes that the Beneficiary meets the minimum experience requirements indicated on that document.

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

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, and other requirements of the labor certification. *Id.* All requirements must be met by the petition's priority date.[1] *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

In this case the labor certification presents an issue of requirements interpretation. While stating that the minimum educational requirement is a bachelor's degree (U.S. or foreign equivalent) in computer science, information systems or a related field of study and that the minimum experience requirement is 48 months (four years) of relevant experience, it also states that an individual may qualify for the proffered position with an alternate level of experience and no educational credential. See section H, subsections 4, 6, 7, 8, 9, and 10 of the labor certification. In section H.14 of the labor certification the Petitioner elaborates on the alternative job requirements, restating the primary requirements of a bachelor's degree and four years of relevant experience but also specifying that in lieu of a bachelor's

[1] The "priority date" of a petition is the date the underlying labor certification was filed with the Department of Labor. *See* 8 C.F.R. § 204.5(d). The priority date in this case is November 9, 2018.

degree two years of additional experience in an IT-related position was acceptable. Thus, the labor certification appears to contain inconsistent alternative requirements between sections H.10 and H.14.

The Director requested additional evidence to explain the discrepancy between sections H.10 and H.14. In response the Petitioner submitted documentary evidence in the form of its application for prevailing wage determination with the Department of Labor and job advertisements for the proffered position, all of which described the requirements for the proffered position as either a bachelor's degree and four years of experience, or in lieu of a bachelor's degree two years of additional experience, making a total of six years of experience.

We find that the evidence of record, which is supplemented on appeal by a brief and one additional document, establishes by a preponderance of the evidence that the Petitioner intended to require either a bachelor's degree and four years of relevant experience or, alternatively, six years of relevant experience with no educational degree. This interpretation accords with all of the Petitioner's job advertisements, its application for prevailing wage determination, and the entries in section H.14 of the labor certification.

Based on the entire record, therefore, we find that the Petitioner has resolved the ambiguity on the face of the labor certification, and that the minimum alternative experience requirement is six years, as set forth with specificity and elaborated on in section H.14. The record shows that the Beneficiary has more than six years of qualifying experience. Accordingly, the Beneficiary meets the alternative experience requirement of the labor certification and qualifies for skilled worker classification under the Act.

ORDER: The appeal is sustained.