U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28181986

Date: JAN. 25, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Professional)

The Petitioner, an IT services company, seeks to employ the Beneficiary as a software developer. 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 category allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary possessed the minimum education for the offered position as described on the labor certification. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will sustain the appeal.

To be eligible for classification as a professional a beneficiary must have a U.S. baccalaureate degree or a foreign equivalent degree and be a member of the professions. *See* 8 C.F.R. § 204.5(l)(3)(ii)(C). Furthermore, the beneficiary must possess all of the specific educational, training, experience, and other requirements of the labor certification by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). The "priority date" of a petition is the date the underlying labor certification was filed with the Department of Labor (DOL). *See* 8 C.F.R. § 204.5(d). The priority date in this case is July 2, 2012.

When assessing a beneficiary's qualifications for an offered position, U.S. Citizenship and Immigration Services (USCIS) must examine the job-offer portion of an accompanying labor certification to determine the job's minimum requirements. USCIS may neither ignore a certification term nor impose unstated requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

The job-offer portion of the Petitioner's labor certification states the minimum educational requirement of the offered position of software developer as a master's degree in computer science or information technology. The labor certification states that the Petitioner will also accept an alternative combination of education and experience, stated as a bachelor's degree and five years of experience. Part H.9 of the certification specifies that the Petitioner will not accept "a foreign educational equivalent."

In this case, the Director determined that the Beneficiary did not have a degree in accordance with the terms of the labor certification. However, upon further review and evidence submitted on appeal, we conclude that the Petitioner has demonstrated the Beneficiary meets the terms of the labor certification allowing approval of the instant petition.

The Petitioner has established that the Beneficiary possessed the required education and experience before the priority date of July 2, 2012. Therefore, we conclude that the Beneficiary met the minimum requirements of the labor certification at the time it was filed and the Director's decision is withdrawn.

ORDER: The appeal is sustained.