U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17760564

Date: JUL. 2, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Professional

The Petitioner, a provider of financial services, seeks to employ the Beneficiary as a senior analyst. The company requests his classification in the third-preference, immigrant category as a professional. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii).

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the Beneficiary's possession of the technological skills or financial licenses required for the offered position.

The Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See* section 291 of the Act, 8 U.S.C. § 1361 (discussing the burden of proof); *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). Upon *de novo* review, we will dismiss the appeal.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as a professional generally follows a three-step process. First, a prospective employer must apply to the U.S. Department of Labor (DOL) for certification that: (1) there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and (2) the employment of a noncitizen in the position would not harm wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5).

Second, an employer must submit an approved labor certification 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 determines whether a noncitizen beneficiary meets the requirements of a certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l).

Finally, if USCIS approves a petition, a designated noncitizen may 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. THE REQUIRED TECHNOLOGICAL SKILLS

A petitioner must demonstrate a beneficiary's possession of all DOL-certified, job requirements of an offered position 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 August 20, 2019, the date 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).

In assessing a beneficiary's qualifications for an offered position, USCIS must examine the job-offer portion of an accompanying labor certification to determine the position's minimum requirements. USCIS may neither ignore a certification term nor impose additional requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983).

The accompanying labor certification states the minimum requirements of the offered position of senior analyst as a U.S. bachelor's degree, or a foreign equivalent degree, in finance, economics, or "biopharm[aceuticals]," plus two years of employment experience "in the job offered."[1] Also, part H.14 of the certification, "Specific skills or other requirements," states that the position requires: "Understanding of financial, mathematical and accounting techniques; excellent research skills; proficiency with Excel and databases; [and] Series 7, 63, 86 and 87 registration with FINRA."[2]

The Director concluded that the Petitioner did not demonstrate the Beneficiary's required "proficiency with Excel and databases." The Director found that "none" of the experience letters or university transcripts submitted by the Petitioner for the Beneficiary "mention 'Excel' or 'databases.'"

A letter from the Petitioner's senior director of human resources (HR), however, states that the Beneficiary "has experience with numerous computer programs and databases." A copy of a marks statement from the Indian university that issued the Beneficiary's bachelor's degree corroborates the senior HR director's assertion. The marks statement indicates the Beneficiary's completion in 2008 of a "database management systems" course and a "database management lab." Thus, a preponderance of evidence demonstrates the Beneficiary's proficiency in databases by the petition's 2019 priority date. We will therefore withdraw the Director's contrary finding.

We agree, however, that the Petitioner did not demonstrate the Beneficiary's required proficiency with Excel, a software spreadsheet application. The letter from the company's senior HR director describes the Beneficiary as "proficient in working with Microsoft Office," a software suite that includes Excel. Contrary to the job requirements in part H.14 of the labor certification, however, the letter does not specify the Beneficiary's proficiency with Excel. The letter also does not state where, when, or how

[1] Shortly before filing the appeal, the Petitioner changed its name. A press release on the company's website, however, indicates that the name-change did not accompany the creation of a new entity or the execution of structural, corporate changes. USCIS records also indicate that, under its new name, the Petitioner uses the same federal employer identification number as listed on the Form I-140 and accompanying labor certification. The labor certification therefore appears to remain valid. *See* 8 C.F.R. § 204.5(l)(3)(i) (generally requiring a petition for a professional to include a valid, individual labor certification); *see also* 20 C.F.R. § 656.30(c)(2) (stating that a labor certification remains valid only for the "particular job opportunity," the noncitizen, and the geographical area of intended employment stated on it).

[2] The record indicates that FINRA stands for the Financial Industry Regulatory Authority, a corporation that regulates U.S. brokerage firms and exchange markets. *See* FINRA, https://www.finra.org/#/ (last visited Jun. 28, 2021). Series 7, 63, 86, and 87 are licenses for financial brokers and research analysts. *Id.*

he developed the purported proficiency with Microsoft Office or the basis of the senior HR director's knowledge of his Microsoft Office skills. Lacking corroborating evidence, the letter does not demonstrate the Beneficiary's required proficiency with Excel.

A copy of the Beneficiary's resume also states his experience with Excel. The resume, however, does not indicate where, when, or how he obtained the purported experience. Also, as the Beneficiary's creation, the resume does not constitute independent, objective evidence of his qualifications. Thus, like the senior HR director's letter, the Beneficiary's resume does not reliably demonstrate his claimed proficiency with Excel.

In response to the Director's request for additional evidence (RFE), the Petitioner submitted additional letters from itself and purported, former employers of the Beneficiary. None of these letters, however, state the Beneficiary's proficiency with Excel.

On appeal, the Petitioner asserts that copies of the Beneficiary's university transcripts show his completion of courses that required proficiency with Excel. In addition to the database management course, the Petitioner cites the Beneficiary's completion of undergraduate classes in "basics of computer systems & prog.," "statistics for biology," and "data structure & algorithms," as well as graduate classes in "financial accounting" and "d[a]ta an[a]lys[is] h[ea]lth f[ie]lds." The transcripts, however, do not specify that these courses required proficiency with Excel.

The Petitioner further contends that, before it began employing the Beneficiary in 2018, he used Excel in prior positions. The company submits copies of research reports, purportedly embedded with Excel spreadsheets, that the Beneficiary prepared while working for one former employer. The Petitioner also submits a letter from an administrator at the U.S. university that issued the Beneficiary's master's degree. Citing information from the Beneficiary's purported former advisor/professor, the letter states the Beneficiary's "extensive experience" with Excel.

The Director's RFE, however, notified the Petitioner of the need for additional evidence of the Beneficiary's Excel skills and provided the company with a reasonable opportunity to respond. We therefore decline to consider the research reports or the administrator's letter on appeal. *See Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

The Petitioner has demonstrated the Beneficiary's proficiency with databases, but not with Excel. We will therefore affirm the petition's denial.

III. THE REQUIRED LICENSES

The RFE states that the Petitioner established the Beneficiary's possession of the required Series 7, 63, 86, and 87 licenses. But the decision reverses that finding, noting a 2018 gap in the Beneficiary's licensure period. *See* 8 C.F.R. § 103.2(b)(1) (requiring beneficiaries to meet eligibility requirements

as of petition priority dates and to "continue to be eligible [for requested benefits] through adjudication").[3]

In reconsidering the Beneficiary's licensing qualifications by the petition's priority date, the Director used an incorrect priority date. A prior employer of the Beneficiary obtained an approved, I-140 petition for him with a priority date of October 16, 2017. A beneficiary of multiple approved Form I-140 petitions may use the earliest of their priority dates in any of the approved, immigrant visa categories. 8 C.F.R. § 204.5(e). The Director interpreted the regulation to require use of the 2017 priority date to determine the Beneficiary's qualifications for the offered position.

This petition's priority date, however, remains August 20, 2019. If USCIS approves this filing, the Beneficiary may apply the earlier priority date of his prior petition to this filing. *See* 8 C.F.R. § 204.5(e). But the priority date of this petition, while under adjudication, is the date DOL accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d). Thus, in determining the Beneficiary's qualifications for the position offered in this petition, the Director erred in applying the 2017 priority date.

Also, as the Petitioner argues, the Director did not notify the company of insufficient licensing evidence or afford it a reasonable opportunity to respond to the alleged deficiency. *See* 8 C.F.R. § 103.2(b)(16)(i) (requiring USCIS, before issuing an adverse decision, to notify a petitioner of derogatory information and afford the business an opportunity to respond). Further, on appeal, the Petitioner submits evidence demonstrating the Beneficiary's possession of the required licensing, without interruption, from the petition's priority date of August 20, 2019, onward. We will therefore withdraw the Director's contrary finding.

IV. THE REQUIRED EXPERIENCE

Although the Director found otherwise, the record does not establish the Beneficiary's possession of the minimum experience required for the offered position.

As previously indicated, the accompanying labor certification states the minimum requirements of the offered position of senior analyst as a U.S. bachelor's degree, or a foreign equivalent degree, in finance, economics, or biopharmaceuticals, plus two years of employment experience "in the job offered." On a labor certification, the phrase "in the job offered" means experience performing the key duties of the offered position listed on the certification. *See, e.g., Matter of Symbioun Techs. Inc.*, 2010-PER-01422, *2 (BALCA Oct. 24, 2011).[4]

[3] The record indicates that the Beneficiary's licenses expired in March 2018 and that he did not regain full licensing until October 2018, about two months after the Petitioner began to employ him in the offered position. The Beneficiary's relicensing *after* his hiring by the Petitioner suggests that the position does not truly require the licenses. *See* 20 C.F.R. § 656.17(i)(3) (generally barring a labor certification employer from "requir[ing] domestic worker applicants to possess training and/or experience beyond what the alien possessed at the time of hire"). As previously indicated, however, DOL - not USCIS - determines the minimum job requirements of an offered position. *See, e.g., Madany*, 696 F.2d at 1015 (holding that "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

[4] Contrary to the requirement listed on the labor certification, the senior HR director's letter and a separate, written job description indicate that candidates for the offered position do not need experience in the job offered. Rather, the documents state the position's need for two years of experience "in equity research, investment banking, or a corporate

On the labor certification, the Beneficiary attested that, by the petition's August 2019 priority date, he gained more than three years of full-time, qualifying experience in the United States. He stated the following experience:

- A little more than one year in the offered position of senior analyst with the Petitioner, from August 2018 to August 2019; and
- About two years, five months as a senior manager with a pharmaceutical company, from February 2016 through July 2018.

The Beneficiary did not list any additional, qualifying experience on the labor certification application.

To demonstrate qualifying experience, a petitioner must submit letters from a beneficiary's employers. 8 C.F.R. § 204.5(l)(3)(ii)(A). The letters must include the names, titles, and addresses of the employers, and describe the beneficiary's experience. *Id.* If such letters are unavailable, USCIS will consider other documentation of the beneficiary's experience. 8 C.F.R. § 204.5(g)(1).

The Petitioner first submitted an employment verification letter from only itself. This letter documented less than the requisite two years of experience. Moreover, under a DOL regulation, a labor certification employer can't rely on experience that a noncitizen gained with the business, unless the noncitizen gained the experience in a position substantially different than the offered one or the employer can demonstrate the impracticality of training a U.S. worker for the job. 20 C.F.R. § 656.17(i)(3). The letter from the senior HR director indicates the Petitioner's employment of the Beneficiary in the offered position. Also, the Petitioner did not assert the impracticality of training a U.S. worker for the job. The record therefore does not demonstrate that the Beneficiary gained qualifying experience with the Petitioner.

In its RFE response, the Petitioner submitted two letters from the pharmaceutical company that purportedly employed the Beneficiary. A January 2018 letter from the company, however, does not demonstrate the Beneficiary's qualifying experience for the offered position. First, the letter states that the company began employing the Beneficiary as a senior manager of strategy and corporate development in March 2016. Thus, the January 2018 letter does not document his possession of the requisite two years of experience.

Also, the letter does not demonstrate the Beneficiary's experience "in the job offered." The letter states his following job duties at the pharmaceutical company:

- "Leading all cross-functional strategic projects (e.g., evaluation of an M&A [merger and acquisition] opportunity, new business proposals;"
- "Managing cross-functional due diligence process for acquisitions, licensing and other such business development initiatives and programs;"
- "Driving activities/work streams on strategic planning/management and annual strategy review processes;" and

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role focused on pharmaceutical or biotechnology industries." As previously indicated, however, USCIS must follow the DOL-certified job requirements on a labor certification. *See Madany*, 696 F.2d at 1015.

- "Taking on independent analyses of industry trends and developments focused on biological, genetic, and medical advances that may result in improving clinical care for patients suffering with grievous illnesses."

In contrast, the labor certification states the job duties of the offered position as:

- "Analyz[ing] and conduct[ing] diligence on publicly traded biotechnology companies;"
- "Conduct[ing] fundamental analysis and possess[ing] in-depth knowledge of assigned biopharmaceuticals industry group;"
- "Identify[ing] public companies to receive firm research coverage and develop[ing] investment ideas;"
- "Interview[ing] company executives and develop[ing] and maintain[ing] sources of information on companies covered;"
- "Writ[ing], prepar[ing] and finaliz[ing] publication of research reports;"
- "Build[ing] financial models and forecasts;"
- "Conduct[ing] valuation exercises to derive price targets for equities;"
- "Answer[ing] inquiries from clients, sales force and general public regarding individual securities and industry groups;"
- "Effectively manag[ing] stock ratings" to optimize stock picking efficacy; and
- "Support[ing] the investment banking team in identifying, evaluating and securing underwriting business."

The record indicates that both positions involve evaluating and analyzing biopharmaceutical companies. But the job duties of the Beneficiary's prior position indicate that he did not perform several tasks of the offered position. Specifically, the record does not establish that he: developed investment ideas; developed and maintained sources of information on covered companies; wrote, prepared, and finalized research reports; answered inquiries from clients, the Petitioner's sales force, and the general public; managed stock ratings; and evaluated and secured underwriting business. The January 2018 letter therefore does not demonstrate the Beneficiary's possession of qualifying experience in the job offered.

In a September 2020 letter, the pharmaceutical company stated its employment of the Beneficiary for more than two years, from March 2016 to September 2018. The later letter also indicates that, in addition to serving as senior manager of strategy and development, the Beneficiary worked as senior manager of strategic planning and operations in the company's oncology business unit.

As the Director noted, however, the September 2020 letter does not detail the Beneficiary's employment dates in each position. Moreover, like the January 2018 letter, the September 2020 letter does not demonstrate the Beneficiary's experience "in the job offered." The letter states that the Beneficiary's second position with the pharmaceutical company involved:

- "Leading the cross functional process for development of the US Local Product Strategy (LPS) for two cancer franchises;"
- Partnering with officials of other company departments to develop annual long-range plans, estimate forecasts, and quarterly business reviews;

- "Analyzing customer brand/competitive product utilization, contract performance, and market trends to identify further opportunities for growth" and "course correction where necessary;"
- Developing and tracking a "launch preparedness plan," including preparing "Launch Readiness Reviews for senior leadership review;" and
- Leading operational management of the budget for both brands.

Like the January 2018 letter, the September 2020 document indicates that the Beneficiary did not perform several duties of the offered position. The letter does not establish that he: developed investment ideas; developed and maintained sources of information on covered companies; wrote, prepared, and finalized research reports; answered inquiries from clients, the Petitioner's sales force, and the general public; managed stock ratings; and evaluated and secured underwriting business. Thus, the September 2020 letter also does not demonstrate the Beneficiary's possession of qualifying experience in the job offered.

Further, the Petitioner's RFE response included two letters each from two other purported former employers of the Beneficiary. Letters from one company state its employment of him as an equity research associate from November 2014 to March 2015. Letters from the other company state that, from November 2012 to October 2014, it employed him as a consultant.

The Director found these additional letters sufficient to document the Beneficiary's possession of the requisite two years of experience in the job offered. The accompanying labor certification application, however, required the Beneficiary to list "all jobs" he held during the three years before the application's August 2019 filing *and* "any other experience that qualifies the alien for the job opportunity for which the employer is seeking certification." The Beneficiary did not list the two additional purported former employers on the application, and the record does not explain the omissions, casting doubt on the claimed, qualifying experience. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies); *see also Matter of Leung*, 16 I&N Dec. 12, 14-15 (Distr. Dir. 1976), *disapp'd of on other grounds by Matter of Lam*, 16 I&N Dec. 432, 434 (BIA 1978) (finding testimony of qualifying experience by an applicant for adjustment of status to be unreliable where the labor certification application for him omitted the purported employment).

Also, the letters from the two additional purported former employers describe the Beneficiary's job duties nearly verbatim.[5] The virtually identical job descriptions from different employers suggest that the signatories did not base the letters on company records or their personal knowledge of the Beneficiary's employment. Rather, both documents appear to have the same author. Without independent corroborating evidence, the letters do not reliably establish the Beneficiary's claimed, qualifying experience in the job offered.

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary's possession of the minimum experience required for the offered position. We will therefore withdraw the Director's contrary finding.

[5] One letter from the company that purportedly began employing the Beneficiary in 2012 does not include a description of his experience.

The Director did not notify the Petitioner of this deficiency or afford the company an opportunity to respond. Thus, in any future filings in this matter, the Petitioner must explain the omissions of the two additional purported former employers from the labor certification and provide independent, objective evidence of the Beneficiary's qualifying experience for the offered position.

V. THE REQUIRED FIELDS OF STUDY

Finally, the Petitioner has not demonstrated the Beneficiary's possession of a bachelor's degree in a field of study required by the offered position. As previously indicated, the labor certification states that the position of senior analyst requires a U.S. bachelor's degree or a foreign equivalent degree in "Finance, economics or biopharm[aceuticals]."[6]

The Petitioner submitted a copy of a U.S. university transcript indicating the Beneficiary's receipt of a master of science degree in "Biotechnology and Management." The company also submitted a copy of an Indian university diploma indicating the Beneficiary's receipt of a bachelor of engineering degree in "Bio-technology."

The fields of study listed on the Beneficiary's university documents do not match the required fields of finance, economics, or biopharmaceuticals stated on the labor certification. The Beneficiary's graduate transcript indicates his completion of finance courses. But the record lacks sufficient evidence to demonstrate that he has the equivalent of a U.S. bachelor's degree in finance. His university transcripts do not specify his completion of economic or biopharmaceutical courses. In addition, asked in part H.7 of the certification "Is there an alternate field of study that is acceptable?" the Petitioner indicated "No." Thus, the record neither establishes the company's acceptance of a bachelor's degree in an alternate field of study nor the Beneficiary's possession of a baccalaureate in a required field.

In any further challenges to the petition's denial, the Petitioner must submit additional evidence of the Beneficiary's possession of a bachelor's degree in a required field of study.

VI. CONCLUSION

The Petitioner did not demonstrate the Beneficiary's possession of the software skills required for the offered position. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.

[6] The senior HR director's letter and the separate, written job description indicate the offered position's minimum educational requirement of a bachelor's degree in finance, economics, or "in a science background related to the analyst's role and to the biopharmaceuticals industry (*i.e.*, biology or chemistry)." As previously indicated, however, USCIS must follow the DOL-certified job requirements stated on the labor certification. *See Madany*, 696 F.2d at 1015.