U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32791963

Date: JULY 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a dance studio, seeks to employ the Beneficiary as a dance sport coach. The company requests his classification under the employment-based, third-preference (EB-3) immigrant visa category as a "skilled worker." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). Businesses may sponsor noncitizens for U.S. permanent residence in this category to work in jobs requiring at least two years of training or experience. *Id.*

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate that the offered job requires a skilled worker. On appeal, the Petitioner contends that the Director overlooked the job's relevant post-secondary educational requirements, which can count as training for skilled-worker purposes.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the offered job requires a skilled worker and that the Beneficiary qualifies for the job. We will therefore sustain the appeal.

I. LAW

Immigration as a skilled worker generally follows a three-step process. First, a prospective employer must obtain certification from the U.S. Department of Labor (DOL) that: there are insufficient U.S. workers able, willing, qualified, and available for an offered job; and a noncitizen's permanent employment in the job would not harm wages and working conditions of U.S. workers with similar jobs. Section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

Second, an employer must submit a DOL-approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204(a)(1)(F) of the Act. Among other things, USCIS determines whether a noncitizen beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l)(3)(ii)(D), (4).

Finally, if USCIS approves a petition, a beneficiary may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245(a) of the Act, 8 U.S.C. § 1255(a).

II. ANALYSIS

A skilled worker must be able to perform work requiring at least two years of training or experience. Section 203(b)(3)(A)(i) of the Act; 8 C.F.R. § 204.5(l)(2) (defining the term "skilled worker"). Thus, "[t]he minimum requirements for this classification are at least two years of training or experience." 8 C.F.R. § 204.5(l)(3)(ii)(B). Also, "[r]elevant post-secondary education may be considered as training for the purposes of this provision." 8 C.F.R. § 204.5(l)(2).

The Petitioner's Form I-140, Immigrant Petition for Alien Worker, requests the Beneficiary's classification as a skilled worker. The Director interpreted the accompanying labor certification as stating that the offered job of dance sport coach requires at least six months of experience as a dance sport instructor. The Director found that the labor certification listed neither education nor training as a job requirement. Determining that the job did not require at least two years of training or experience, the Director denied the petition.

As the Petitioner contends, however, the Director overlooked a job requirement. The labor certification states that the job requires not only six months of experience as a dance sport instructor, but also at least a U.S. associate's degree, or a foreign equivalent degree, in dance education or a related field. As previously indicated, relevant post-secondary education can count as training for skilled-worker purposes. *See* 8 C.F.R. § 204.5(l)(2) (defining the term "skilled worker"). An associate's degree generally requires two years of study. Combined with the job's required six months of experience as a dance sport instructor, the position's need for an associate's degree demonstrates that the job requires at least two years of training or experience. Thus, the job requires a skilled worker. We will therefore withdraw the Director's contrary conclusion.

The record also indicates the Beneficiary's satisfaction of the offered job's requirements. He has more than an associate's degree in dance education or a related field, plus at least six months of experience as a dance sport instructor. The Petitioner demonstrated that, by the petition's priority date, he gained the equivalent of a U.S. master of arts degree in dance education and almost eight, full-time years of experience as a dance sport instructor. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977) (requiring a petitioner to demonstrate a beneficiary's qualifications for an offered job by a petition's priority date).

III. CONCLUSION

The Petitioner has demonstrated the offered job's need for a skilled worker and the Beneficiary's qualifications for the job.

ORDER: The appeal is sustained.