U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-F- INC.

DATE: JULY 31, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an AGR equipment operator and farming business, seeks to employ the Beneficiary as a "farmworker grain/livestock." It requests classification of the Beneficiary as a skilled worker 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 the Beneficiary did not meet the minimum educational requirement of the labor certification. The Director granted a motion to reopen, but after reviewing the record affirmed her denial of the petition.

On appeal, the Petitioner asserts that the Beneficiary has the requisite education and experience to satisfy the requirements of the labor certification and qualify for the job offered.

Upon *de novo* review, we will dismiss the appeal. For the reasons discussed in this decision, we find that the evidence does not establish that the Beneficiary meets the specific educational and experience requirements of the labor certification. In addition, we find that the labor certification itself does not support the requested classification of skilled worker.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national 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. ANALYSIS

The Petitioner requests classification of the Beneficiary as a skilled worker. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) states that to qualify for skilled worker classification:

> . . . the petition must be accompanied by evidence that the [beneficiary] meets the educational, training or experience, and any other requirements of the individual labor certification . . . . The minimum requirements for this classification are at least two years of training or experience.

See also Matter of Wing's Tea House, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

A. Minimum Requirements of the Labor Certification

The labor certification in this case specifies the following with respect to the education, training, experience, and other requirements for the job of farmworker grain/livestock:

4.	Education: Minimum level required:	High School
5.	Is training required for the job?	No
6.	Is experience in the job offered required?	Yes
6-A.	How long?	6 months
7.	Is an alternate field of study acceptable?	No
8.	Is an alternate combination of education and experience acceptable?	No
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	Yes
10-B.	Job title of alternate occupation	Commercial Truck Driver
14.	Specific skills or other requirements	CDL License

The Beneficiary must meet all of the labor certification requirements by the petition's priority date,[1] which in this case is October 28, 2016.

In determining the minimum requirements of a proffered position, we must examine "the language of the labor certification job requirements." *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine the certified job offer exactly as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F.Supp. 829, 833 (D.D.C. 1984). Our interpretation of the job's requirements must involve reading and applying the plain language of the labor certification application form. *Id.* at 834.

[1] The priority date of a petition is the date the underlying labor certification was filed with the DOL. *See* 8 C.F.R. § 204.5(d).

1. Beneficiary Does Not Meet the Educational Requirement

As stated in the labor certification, the minimum level of education required for the job is high school or a foreign educational equivalent. While the labor certification states at Section J, box 11, that the Beneficiary achieved this level of education, no evidence of a high school education has been submitted. Documentation submitted in support of the Petitioner's motion to reopen included two resumes and a letter to USCIS in which the Beneficiary stated that he attended [redacted] in [redacted] South Africa, up to 1999, but acknowledged that he only completed 10th grade. No evidence has been submitted that a 10th grade education at a South African high school is equivalent to a complete high school education in the United States.

The Petitioner claims that the Beneficiary also earned a two-year "Diploma in Agriculture" in South Africa. In the above mentioned resumes and letter to USCIS the Beneficiary stated that he studied for his agricultural diploma at the [redacted] in [redacted] South Africa, in the years 2000-2002, but has been unable to obtain a copy of this credential. Even if the Beneficiary were able to obtain documentary evidence of such a diploma, it would not meet the labor certification requirement of a high school education unless proof was submitted that the diploma is the foreign educational equivalent of a high school education in the United States.
On appeal the Petitioner asserts that the Beneficiary's experience was more than equivalent to a high school education, and therefore meets the educational requirement of the labor certification. Regardless of whether the Beneficiary had sufficient experience to qualify for the job offered, the language of the labor certification plainly states that a high school education is required. The Petitioner did not state anywhere on the labor certification that experience could substitute for some or all of a high school education, or that some combination of experience and schooling would be acceptable as equivalent to a high school education. The Petitioner could have expressed this intent in the boxes at section H.8 of the labor certification, which ask whether an alternate combination of education and experience would be acceptable and, if so, what level of education and how many years of experience. However, the Petitioner answered "No" to the question of whether an alternate combination of education and experience was acceptable.

In accord with the plain language of the labor certification, we find that the minimum level of education required is a high school education or a foreign educational equivalent. Since the record does not establish that the Beneficiary has that level of education, the Beneficiary does not meet the minimum educational requirement of the labor certification. On this ground alone the petition cannot be approved.

2. Beneficiary Does Not Meet the Experience Requirement.

As stated in the labor certification, six months of experience in the job offered or as a commercial truck driver is required for the position of farmworker grain/livestock. In section K of the labor certification two prior jobs are listed for the Beneficiary. The first is with [redacted] in [redacted] South Africa, where according to the labor certification, the Beneficiary was employed as a driver 45

hours per week; however, no start or end dates were recorded on the labor certification. The regulation at 8 C.F.R. § 204.5(g)(1) provides that:

> Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

Here, the Petitioner has not furnished any letter from [redacted] verifying the Beneficiary's employment, the nature of his work, and his dates of employment. Accordingly, the record does not establish that the Beneficiary had any qualifying experience with [redacted]

The second job listed in the labor certification is with the Petitioner and states that the Beneficiary was employed as a farmworker grain/livestock 48 hours per week from April 2013 to November 2016. While the Petitioner has submitted written confirmation that it employed the Beneficiary, a beneficiary's experience with the petitioner cannot be used to qualify the beneficiary for the offered position unless the experience was "in a position not substantially comparable to the position for which certification is being sought." *See* 20 C.F.R. § 656.17(h)(4)(i)(3). "Substantially comparable" is defined in the DOL regulations at 20 C.F.R. § 656.17(i)(5)(ii) as "a job or position requiring performance of the same job duties more than 50 percent of the time. This requirement can be documented by furnishing position descriptions, the percentage of time spent on the various duties, organization charts, and payroll records." We note that the labor certification states at section J, box 21, that the Beneficiary did not gain any qualifying experience with the employer (Petitioner) in a substantially similar position to the job opportunity in this proceeding. However, the position offered and the Beneficiary's prior position with the Petitioner appear to be the same position, sharing the same job title and many of the same duties. As the Petitioner has not demonstrated that the Beneficiary's prior position was substantially different from the offered positon, the prior experience with the Petitioner cannot be used to meet the requirements of the labor certification. Therefore, none of the Beneficiary's experience working for the Petitioner can be counted as qualifying experience.

For the reasons discussed above, the Petitioner has not established that the Beneficiary gained any qualifying experience from the two jobs listed in the labor certification. Therefore, although the Director did not address this issue, we find that the Beneficiary does not have the requisite six months of experience as a farmworker grain/livestock or as a commercial truck driver to meet the terms of the labor certification. For this additional reason the petition cannot be approved.

B. Labor Certification Does Not Support Skilled Worker Classification

As previously indicated, section 203(b)(3)(A)(i) of the Act provides that classification as a skilled worker requires that the beneficiary have at least two years of training or experience. In accord with

this requirement the petition filed in February 2017 was identified in Part 2, box 1.f, as being filed for "A skilled worker (requiring at least 2 years of specialized training or experience)."

The labor certification that accompanied the petition, however, states in section H, box 6, that the minimum experience requirement for the position of farmworker grain/livestock is just six months. Since the labor certification does not require at least two years of qualifying experience, it does not support the petition's request for skilled worker classification. For this reason as well the petition cannot be approved.

III. CONCLUSION

The Petitioner has not established that the Beneficiary meets the minimum educational and experience requirements of the labor certification. Furthermore, the minimum experience requirement of the labor certification does not support the petition's request for classification of the Beneficiary as a skilled worker.

ORDER: The appeal is dismissed.

Cite as *Matter of B-F- Inc.*, ID# 1641284 (AAO July 31, 2018)