U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16764728

Date: JUN. 21, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner, a grain and livestock farm, seeks to employ the Beneficiary as a farmworker under the third-preference, immigrant 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).

The Director denied the petition and dismissed the Petitioner's following motion to reopen. We dismissed the Petitioner's appeal and its four later motions to reopen. Most recently, we found that the farm did not demonstrate the Beneficiary's educational qualifications for the offered position or the job's need for a skilled worker. *See In Re: 11812622*, (AAO Oct. 23, 2020).

We return to the matter on the Petitioner's motion to reopen. The farm 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 review, we will dismiss the motion.

I. MOTION CRITERIA

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that meets these requirements and establishes eligibility for the requested benefit.

II. THE REQUIRED EDUCATION

The Petitioner submits a copy of a letter indicating that, in October 2020, a South African agency received the Beneficiary's application for a replacement high school equivalency certificate.

Under the terms of the U.S. Department of Labor (DOL) certification accompanying the petition, the offered position of farmworker requires a U.S. high school education or its foreign equivalent. *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 possession of all DOL-certified job requirements by a petition's priority date). The letter indicates that the Beneficiary has requested a certificate proving his possession of the equivalent of a high school education in South Africa. But the letter does not demonstrate that he has the

equivalent South African education or that, as the offered position requires, the South African equivalency equates to a U.S. high school education.

Also, as our prior decision indicates, the Petitioner submitted a letter indicating that the Beneficiary bases his possession of the claimed South African high school equivalency on employment, rather than education. In part H.9 of the labor certification application, the Petitioner indicated its acceptance of a "foreign *educational* equivalent" of U.S. high school. (emphasis added). The labor certification does not state the farm's acceptance of a foreign equivalency based on employment or a combination of education and employment. *See, e.g., Madany v. Smith*, 969 F.2d 1008, 1015 (D.C. Cir. 1983) (requiring the immigration service to determine the minimum requirements of an offered position based on the plain language of an accompanying labor certification). Thus, even if the Beneficiary has a South African high school equivalency, it might not demonstrate his educational qualifications for the offered position.

The motion does not establish the Beneficiary's educational qualifications for the offered position. We will therefore dismiss that portion of the filing.

III. THE REQUESTED IMMIGRANT VISA CLASSIFICATION

The Petitioner asserts that DOL approved the labor certification in the requested skilled worker category. Contrary to the Petitioner's assertion, however, DOL does not determine whether an offered position qualifies for a requested immigrant visa category. Congress limited DOL's certifications to whether: (1) there are sufficient U.S. workers able, willing, qualified, and available for an offered position; and (2) the employment of a noncitizen in the position would harm wages and working conditions of U.S. workers with similar jobs. Section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). Rather, Congress authorized the immigration service to determine "that the alien in behalf of whom the petition is made . . . is eligible for preference under subsection (a) or (b) of section 203." Section 204(b) of the Act, 8 U.S.C. § 1154(b).

A labor certification accompanying a skilled-worker petition must demonstrate that the offered position requires at least two years of training or experience. 8 C.F.R. § 204.5(l)(3)(ii)(B). The Petitioner's labor certification states that the offered position requires no training and only six months of experience. The labor certification therefore does not support the requested immigrant visa classification.

For these additional reasons, we will dismiss the remaining portion of the motion.

IV. CONCLUSION

The Petitioner's motion neither establishes the Beneficiary's educational qualifications for the offered position nor the job's need for a skilled worker.

ORDER: The motion to reopen is dismissed.