U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-C-E-, INC.

DATE: JUNE 30, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an electrical contractor, seeks to employ the Beneficiary as a low voltage system installer. It requests classification of the Beneficiary 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). This employment-based 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 because the offered position does not require at least two years of experience or training as required for classification as a skilled worker. The Petitioner appealed the matter to us and we affirmed the Director's decision.

The matter is now before us on a motion to reopen. The Petitioner submits a brief and additional evidence, asserting that the Beneficiary qualifies as a skilled worker. Upon review, we will deny the motion to reopen.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer must obtain an approved labor certification from the U.S. Department of Labor (DOL).[1] *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. Section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer may file 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.

[1] The date the labor certification is filed, in cases such as this one, is called the "priority date."

II. ANALYSIS

A motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), defines "skilled workers" as "qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States."

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) states that "[t]he minimum requirements for [skilled worker] classification are at least two years of training or experience." The determination of whether the offered position is for a skilled worker is based on the requirements of position as set forth on the labor certification. 8 C.F.R. § 204.5(l)(4).

Section H.4 of the labor certification associated with this petition states as primary requirements that the Beneficiary must have completed vocational high school with a major field of study in electro-technic or any related field. We held in our prior decision that the primary requirements of the labor certification do not require a minimum of at least two years of training or experience. Although Section H.8 states that two years of related experience is acceptable as an "alternate combination of education and experience," because the labor certification as drafted permits an individual to qualify for the offered position with less than two years or training or experience, the petition cannot be approved in the skilled worked category.

Since the Petitioner has not established that the offered position is for a skilled worker, the motion to reopen will be denied.

III. CONCLUSION

The Petitioner has not established that the offered position is for a skilled worker.

ORDER: The motion to reopen is denied.

Cite as *Matter of I-C-E-, Inc.*, ID# 562369 (AAO June 30, 2017)