U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-P-S-

DATE: MAR. 1, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a public school district, seeks to employ the Beneficiary as an elementary Chinese immersion teacher. It requests her classification as a professional under the third preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This category allows a U.S. employer to sponsor a professional with a bachelor's degree for lawful permanent resident status.

The Director, Nebraska Service Center, denied the petition. The Director concluded that the record did not establish the Beneficiary's possession of the minimum education and required special skills of the offered position.

On appeal, the Petitioner asserts that the Beneficiary meets all of the position's requirements.[1]

Upon *de novo* review, we will dismiss the appeal.

I. LAW AND ANALYSIS

A. USCIS' Role in the Employment-Based Immigration Process

Employment-based immigration is generally a three-step process. First, a U.S. employer must obtain an approved ETA Form 9089, Application for Permanent Employment Certification (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). Next, the employer must file a Form I-140, Immigrant Petition for Alien Worker, with U.S. Immigration and Citizenship Services (USCIS). *See* section 204 of the Act. Finally, if USCIS approves the petition, a 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] On the Form I-290B, Notice of Appeal or Motion, the Petitioner stated that it would submit a brief and/or additional evidence within 30 days of the appeal's filing. As of the date of this decision, more than 5 months after the appeal's filing, we have not received any further materials.

By approving the labor certification in this case, the DOL certified that U.S. workers are not able, willing, qualified, and available for the offered position of elementary Chinese immersion teacher. *See* section 212(a)(5)(A)(i)(I) of the Act. The DOL also certified that the Beneficiary's permanent employment in the position will not hurt the wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5)(A)(i)(II).

At issue is whether the Beneficiary meets the requirements of the offered position certified by the DOL. *See, e.g., Tongatapu Woodcraft Haw., Ltd. v Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984) (holding that the immigration service "makes its own determination of the alien's entitlement to [the requested] preference status").

B. The Beneficiary's Possession of the Requirements of the Offered Position

A petitioner must establish a beneficiary's possession of all the education, training, and experience specified on an accompanying labor certification by a petition's priority date. 8 C.F.R. §§ 103.2(b)(l), (12); *see also Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

In evaluating a beneficiary's qualifications, we must examine the job offer portion of a labor certification to determine the minimum requirements of an offered position. We may neither ignore a term of a labor certification, nor impose additional requirements. *See K.R.K. Irvine, Inc.* v. *Landon,* 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany* v. *Smith,* 696 F.2d 1008, 1012-13 (D.C. Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc.* v. *Coomey,* 661 F.2d 1, 3 (1st Cir. 1981).

In this case, the petition's priority date is June 12, 2015. This is the date the DOL received the labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

The labor certification states the minimum requirements of the offered position of elementary Chinese immersion teacher as a U.S. bachelor's degree or a foreign equivalent degree in education or a "[f]ield related to education." The labor certification states that no training or experience is required. The labor certification also states that the Petitioner will not accept an alternate combination of education and experience.

In addition, Part H.14 of the labor certification states that the offered position requires "[d]emonstrated native or near native fluency in Mandarin Chinese (Superior rating under the [redacted] and English Languages."[2]

On the labor certification, the Beneficiary attested to her receipt of a master's degree in "business administration/teaching English as a foreign language" from [redacted] in the United States

[2] [redacted] appears to stand for [redacted]

in 2010. The Petitioner submitted copies of the Beneficiary's August 31, 2010, master of business administration degree from the university.

The Petitioner also submitted copies of the Beneficiary's 2008 bachelor of management degree from [redacted] in China and an evaluation of the credential. The evaluation concludes that the Beneficiary's Chinese bachelor's degree equates to a U.S. bachelor of business administration degree, with a major in accounting.

As the Director found, the record does not establish the Beneficiary's possession of a bachelor's degree in education or a related field as specified on the labor certification. The record indicates the Beneficiary's possession of a U.S. master's degree in business administration. But the record does not establish business administration as a field of study related to education. The Petitioner submitted a copy of a 2009 certificate from [redacted] indicating the Beneficiary's completion of a course in "teaching English as a foreign language." But the record does not establish that the course reflects enough credits to constitute a field of study.

The record also indicates the Beneficiary's possession of the foreign equivalent of a U.S. bachelor's degree in business administration, with a major in accounting. Again, however, the record does not establish business administration or accounting as a field of study related to education.

The Petitioner submitted additional evidence from [redacted] including 2013 and 2015 transcripts and a 2016 letter from an enrollment and student services manager. These materials indicate that, upon completion of three additional courses in the spring of this year, the Beneficiary will receive a master of arts degree in teaching.

Because teaching is a field of study related to education, a master's degree in teaching would meet the educational requirements of the offered position. But the record indicates that the Beneficiary would not obtain the teaching degree until 2017, after the petition's 2015 priority date. *See Wing's Tea House*, 16 I&N Dec. at 160 (holding that a beneficiary may not receive a preferred priority date if she was not qualified for the offered position at that time). The uncompleted teaching degree therefore would not qualify the Beneficiary for the offered position. The record does not otherwise establish the Beneficiary's possession of a U.S. bachelor's degree or a foreign equivalent degree in education or a related field by the petition's June 12, 2015 priority date.

The record also does not demonstrate the Beneficiary's possession of the required capabilities in the Mandarin and English languages. The Petitioner submitted a copy of 2008 Test of English as a Foreign Language, indicating the Beneficiary's "high" and "intermediate" ability levels, respectively, in reading and listening to English. But the record does not establish her "near native fluency" or "superior rating under the [redacted] in the languages as specified on the labor certification in section H.14.

Thus, the record does not establish the Beneficiary's possession of the minimum education and the specified H.14. language requirements of the offered position by the petition's priority date. We will therefore affirm the Director's decision and dismiss the appeal.

II. CONCLUSION

In visa petition proceedings, a petitioner bears the burden of establishing eligibility for a requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Petitioner did not meet that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of M-P-S-*, ID# 290060 (AAO Mar. 1, 2017)