U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-B-C-

DATE: MAR. 22, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a health benefits company, seeks to employ the Beneficiary as a "Sr. Platform Developer I." It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. *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 2 years of training or experience.

The Director, Nebraska Service Center, denied the petition, concluding that the Beneficiary did not meet the education and experience requirements of the ETA Form 9089, Application for Permanent Employment Certification (labor certification).

The matter is now before us on appeal. The Petitioner states that the labor certification allows for the combination of education and experience and that the Beneficiary's education and experience meets the terms of the labor certification to qualify as a "skilled worker" under section 203(b)(3)(A)(i) of the Act.

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

I. LAW

A. Overview of the Employment-Based Immigrant Petition Process

A U.S. employer may sponsor a foreign national for lawful permanent residence, which is a three-part process. First, the employer must obtain a labor certification from the U.S. Department of Labor (DOL) for certification that "there are not sufficient [U.S.] workers who are able, willing, qualified, and available" to perform the position offered where the beneficiary will be employed, and that the employment of the beneficiary will not "adversely affect the wages and working conditions of workers in the United States similarly employed." Section 212(a)(5)(A)(i) of the Act. The date the labor certification is accepted for processing by the DOL establishes the priority date, which determines when a visa is available for the beneficiary to adjust to lawful permanent status. *See* 8 C.F.R. § 204.5(d).

Second, the U.S. employer files a Form I-140, Immigrant Petition for Alien Worker, with the approved labor certification, to U.S. Citizenship and Immigration Services (USCIS). To demonstrate eligibility for the petition, the petitioner must establish that it has the ability to pay the proffered wage to the beneficiary under 8 C.F.R. § 204.5(g)(2), that the position offered and the beneficiary meet the minimum requirements for the classification requested, and that the beneficiary meets the terms of the labor certification.

Third, if USCIS approves the Form I-140 and a visa is available based upon the priority date, the beneficiary may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States.

B. Skilled Worker Classification

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." A petition for skilled worker must be accompanied by a valid, individual labor certification, an application for Schedule A designation, or documentation of a beneficiary's qualifications for a shortage occupation. 8 C.F.R. § 204.5(l)(3)(i). For skilled worker classification, the labor certification must require at least 2 years of training or experience. *See* 8 C.F.R. § 204.5(l)(4).

A petition seeking classification of a beneficiary as a skilled worker must also be accompanied by evidence that the beneficiary possess at least 2 years of training or experience, *see* 8 C.F.R. § 204.5(l)(3)(ii)(B), and otherwise meets all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

II. ANALYSIS

At issue in this case is whether the Beneficiary meets the terms of the labor certification. Here, the labor certification states that the offered position has the following minimum requirements:

H.4.	Education: Bachelor's degree in computer science.
H.5.	Training: None required.
H.6.	Experience in the job offered: None required.
H.7.	Alternate field of study: Engineering or related IT field.
H.8.	Is there an alternate combination of education and experience that is acceptable? Yes.
H.8-A.	If Yes, specify the alternate level of education required: None.
H.8-B.	If Other is indicated in question 8-A, indicate the alternate level of education required: Left blank.

H.8-C. If applicable, indicate the number of years experience acceptable in question 8: 9.
H.9. Is a foreign educational equivalent acceptable? Yes.
H.10. Is experience in an alternate occupation acceptable? Yes.
H.10-A. If Yes, number of months experience in alternate occupation required: 60.
H.10-B. Identify the job title of the acceptable alternate occupation: "PeopleSoft, Siebel or related application development role."
H.14. Specific skills or other requirements:

Education requirement: Bachelor's degree, or foreign degree equivalent, in Computer Science, Engineering or related IT field.***

Experience requirements: Five (5) years of experience in a PeopleSoft, Siebel or related application development role which includes:***

- CRM with focused perspective on business functions.
- Demonstrated ability to analyze medium to large, moderately complex, business needs to determine appropriate solutions and design; construct/modify code to meet business needs based on program specifications; analyze and resolve medium to large size/risk production problems related to assigned applications.
- Working knowledge of Agile and SCRUM methodologies.

*** Employer will accept four additional years of experience as stated above in lieu of a bachelor's degree.

Experience may be gained concurrently. Any suitable, equivalent combination of education, experience or training is acceptable, as are foreign degree equivalents.

USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate about the beneficiary's qualifications. *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification]." *Id.* at 834 (emphasis added). USCIS will not look beyond the plain language of the labor certification to determine the employer's claimed intent.

Here, labor certification indicates that the job offered requires a bachelor's degree, or foreign degree equivalent, in computer science, engineering, or a related IT field, along with 5 years of experience

in a "PeopleSoft, Siebel or related application development role." Section H.14 states that the Petitioner "will accept four additional years of experience as stated above in lieu of a bachelor's degree." The plain meaning of these terms is that the position offered requires either: (1) a bachelor's degree in computer science, engineering or a related IT field and 5 years of the specific experience indicated above; or (2) 9 years of "experience in a PeopleSoft, Siebel or related application development role."

For the reasons discussed below, we do not find that the Beneficiary meets either the primary or the alternate requirements of the labor certification in order to qualify for the position offered.

A. Primary Requirements

Parts H.4 and H.7 of the labor certification state primary requirements of a bachelor's degree in computer science, engineering or a related IT field and, as stated in H.14, 5 years of experience in a PeopleSoft, Siebel or related application development role.

The record contains a copy of the Beneficiary's degree and accompanying transcripts which indicate that she completed a bachelor of science degree in accountancy from in Philippines in 2003. Part K of the labor certification states that the Beneficiary was employed as a "Functional Designer/Siebel" for from June 1, 2004, until January 7, 2012. The record contains a letter from the Manager for confirming this experience.

While the Beneficiary's bachelor's degree in accounting is the foreign degree equivalent of a U.S. bachelor's degree, it is not in one of the fields required on the labor certification. In attempting to demonstrate that the Beneficiary may qualify for the position, the Petitioner submitted two credential evaluations seeking to combine the Beneficiary's degree with professional experience. The first evaluation is from Visiting Assistant Professor in the Department of Design and Management at The evaluator references the Beneficiary's employment experience and states that her more than 7 years of experience for "reflect the time equivalent of not less than two additional years of Bachelor's-level academic training in Management Information Systems." He concludes that the Beneficiary's "experiential qualifications are comparable to university-level training in Management Information Systems" and that she "has attained the equivalent of at least a Bachelor of Science degree in Management Information Systems from an accredited institution of higher education in the United States."

Here, we find that the evaluator's conclusion does not match the requirements of the labor certification. The evaluator concludes that the Beneficiary's 7 years of experience for is equivalent to 2 additional years of bachelor's-level academic training. Accordingly, the evaluator concludes that the Beneficiary has attained the equivalent of at least a U.S. bachelor's degree in management information systems. However, the terms of the labor certification require a bachelor's degree and 5 years of specific experience. By viewing 7 years of the Beneficiary's experience

toward a bachelor's degree equivalency as the evaluator claims, the record would not establish that the Beneficiary possesses the additional 5 years of required experience.

The record also contains an evaluation from Associate Professor in the Department of for The evaluator states that the Beneficiary has, at the time of the evaluation in 2009, completed 5 years and 8 months of progressively responsible qualifying work experience in management information systems and related areas. The evaluator refers to a USCIS equivalency ratio of 3 years of experience for 1 year of college training and concludes that the Beneficiary's experience is equivalent to at least 1 year (closer to 2 years) of college-level study required for a U.S. bachelor's degree.[1] The evaluator concludes that the Beneficiary possesses the equivalent of a bachelor of science degree with a dual major in management information systems and accounting from an accredited institution of higher education in the United States.

Here again the evaluator's conclusion does not match the requirements of the labor certification. The evaluator concludes that the Beneficiary's 5 years and 8 months of experience for is equivalent to 1-2 additional years of bachelor's-level academic training. Accordingly, the evaluator concludes that the Beneficiary has attained the equivalent of at least a U.S. bachelor's degree with a dual major in management information systems and accounting. However, the terms of the labor certification require a bachelor's degree and 5 years of specific experience. By viewing 5 years and 8 months of the Beneficiary's experience toward a bachelor's degree equivalency as the evaluator claims, the record would not establish that the Beneficiary possesses the additional 5 years of required experience.

The evaluations in the record each state that when combined with professional experience, the Beneficiary's bachelor's degree in accounting can be deemed the equivalent of a bachelor's degree in management information systems, one of the fields allowed by the labor certification's acceptance of degrees in "IT related" fields. However, in counting the Beneficiary's years of experience toward her degree in a required field, the Beneficiary no longer has sufficient experience to meet the 5 years of additional experience requirement.[2] As such, the record does not demonstrate that the Beneficiary meets the primary requirements of the labor certification.

[1] We note the rule to equate 3 years of experience for 1 year of education applies to non-immigrant H-1B petitions, not to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(*5*).

[2] While the Petitioner noted on the labor certification that experience could be gained concurrently, we read that to mean that a beneficiary could simultaneously earn experience in the specific skills ("CRM with focused perspective on business functions," "[d]emonstrated ability to analyze medium to large, moderately complex, business needs to determine appropriate solutions and design; construct/modify code to meet business needs based on program specifications; analyze and resolve medium to large size/risk production problems related to assigned applications," and "[w]orking knowledge of Agile and SCRUM methodologies") required by the labor certification.

B. Alternate Requirements

Part H.14 of the labor certification states that the Beneficiary could alternatively qualify for the proffered position with 9 years of "experience in a PeopleSoft, Siebel or related application development role" in lieu of possessing a bachelor's degree and 5 years of experience in those roles. The record indicates that the Beneficiary possesses 7 years and 7 months of experience as a "Functional Designer/Siebel Developer/Application Team Lead" for [redacted] from June 2004 until January 7, 2012. This experience does not meet the 9 years of experience as required by the terms of the labor certification.

In addition, the record does not establish that the Beneficiary could rely upon experience gained while employed by the Petitioner. The labor certification states that the Beneficiary began working for the Petitioner in the proffered position of "Sr. Platform Dev. I" on February 27, 2012. Under 20 C.F.R. § 656.17(i)(3)(i), a petitioner may not rely on a beneficiary's experience gained while working for the employer in a position that is "substantially comparable" to the position offered. Here, the Petitioner has not established that the Beneficiary's employment with the Petitioner is in a position that is not substantially comparable to the position offered. Therefore, the Petitioner has not established that the Beneficiary meets the alternate requirements of the labor certification.

III. CONCLUSION

In summary, we conclude that the Petitioner has not established that the Beneficiary meets the requirements of the labor certification.

ORDER: The appeal is dismissed.

Cite as *Matter of P-B-C-*, ID# 263781 (AAO Mar. 22, 2017)