U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V- CORP.

DATE: MAR. 24, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a provider of software design, development, and consulting services, seeks to employ the Beneficiary as a senior consultant - release manager. It requests his classification as a member of the professions holding an advanced degree under the second preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This category allows a U.S. employer to sponsor a professional with an advanced degree or its equivalent for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition. The Director concluded that the record did not establish the Beneficiary's possession of at least 5 years of post-baccalaureate experience as required for the requested classification.

On appeal, the Petitioner asserts that the Director erred in measuring the Beneficiary's post-baccalaureate experience from the date he received a diploma, rather than from the earlier date on which he completed the degree's requirements.

Upon *de novo* review, we will remand this matter to the Director for further proceedings consistent with the following opinion and for the entry of a new decision.

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 U.S. workers are not able, willing, qualified, and available for the offered position and that a foreign national's employment in the position will not hurt the wages and working conditions of U.S. workers in similar jobs. 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

[1] In cases like this one, the date of a labor certification's filing become a petition's "priority date." 8 C.F.R. § 204.5(d). By that date, a beneficiary must meet all the requirements stated on a labor certification. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). Therefore, the Beneficiary in this case must have had the 5 years' requisite experience by the date of the labor certification's filing.

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

A. The Beneficiary's Qualifications for the Requested Classification

The Petitioner asserts the Beneficiary's qualifications as an advanced degree professional based on his possession of a bachelor's degree followed by 5 years of experience. The record establishes that the Beneficiary's postgraduate diploma from the equates to a U.S. bachelor of science degree. The record also documents the Beneficiary's possession of more than 7 years of employment experience, from February 6, 2007, until the labor certification's filing on September 23, 2014.

The Director found that because the Beneficiary did not receive his postgraduate diploma, the foreign equivalent to a U.S. bachelor's degree, until February 18, 2010, he lacked 5 years of post-baccalaureate experience by the petition's priority date of September 23, 2014. The Director therefore concluded that the Beneficiary did not qualify for the requested classification of advanced degree professional.

The Act and Department of Homeland Security regulations, however, indicate that post-baccalaureate experience begins after the date of a degree's completion, rather than after the date of a diploma's issuance. The Act and the regulations state the requirements for advanced degree classification in terms of "degrees," not diplomas. The regulations also indicate that the terms "degree" and "diploma" are not synonymous. For example, evidence in support of a petition for a foreign national of exceptional ability may include "a degree, diploma, certificate, or similar award from a college [or] university." 8 C.F.R. § 204.5(k)(3)(ii)(A).

Regulations require that a petitioner must submit "[a]n official academic record" to demonstrate a beneficiary's attainment of a degree. 8 C.F.R. § 204.5(k)(3)(i). In this case, the Petitioner submitted a certificate showing that the Beneficiary was awarded the postgraduate diploma at a convocation held February 18, 2010. However, the Petitioner also submitted an official academic record in the form of a "result sheet" from the indicating the Beneficiary's attainment of the postgraduate diploma in July 2009. The academic record documents the Beneficiary's first two postgraduate semesters from July 2008 to June 2009 and states: "Status: Passed the postgraduate diploma in information technology and was admitted to the diploma on first of July 2009."

Here, the result sheet constitutes an official academic record indicating the Beneficiary's completion of the substantive requirements of the postgraduate program on July 1, 2009, and the institute's recognition of that achievement. As such, we find that the Beneficiary was awarded the equivalent of a U.S bachelor's degree on July 1, 2009, and may begin to accrue qualifying post-baccalaureate experience from that date onward. Considering the date the Beneficiary was admitted to the

postgraduate diploma, the record establishes the Beneficiary's possession of the post-baccalaureate experience required for the requested classification. We will therefore withdraw the Director's decision.

B. The Validity of the Labor Certification

Although the Beneficiary qualifies for the requested classification, the record does not establish the labor certification's support for that classification.

If accompanying a petition for an advanced degree professional, a job offer portion of a labor certification "must demonstrate that the job requires a professional holding an advanced degree or the equivalent." 8 C.F.R. § 204.5(k)(4)(i). When interpreting the job requirements on a labor certification, we may neither ignore a term, nor impose additional requirements. *See, e.g., Madany* v. *Smith,* 696 F.2d 1008, 1012-13 (D.C. Cir. 1983).

Here, the labor certification states the primary requirements of the offered position of senior consultant - release manager as a U.S. master's degree or a foreign equivalent degree, plus 24 months of experience in the job offered or a related occupation. Alternately, the labor certification states in part H.8-B that the Petitioner will accept a combination of education and experience in the form of a "BS in Comp Sci or related [field] w/5yr prog exp in job offered or." It is not clear from the labor certification what text was intended to follow "or" in Part H.8-B. One possibility is that the text continues into part H.14, which states "2 years of progressive experience in job offered or related position (must include experience working with PRPC [Pega Rules Process Commander] in a distributed environment)." H.14 further reads that the Petitioner "[w]ill accept [a] Bachelor's Degree in Computer Science or related [field] with 5 years progressive experience in job offered or related (2 years must include experience working with PRPC in a distributed environment)."

As such, the alternate combination of education and experience stated on the labor certification is ambiguous. Part H.8-B of the labor certification, in conjunction with part H.14, appears to list two acceptable alternate combinations: a bachelor's degree plus 5 years of experience, or a bachelor's degree plus 2 years of experience working with PRPC in a distributed environment, which would not require an advanced degree professional. Part H.14, however, states yet another alternate combination: a bachelor's degree plus 5 years of experience, 2 years of which must include working with PRPC in a distributed environment.

Also in this case, the Petitioner stated that its alternate combination does not require 5 years of experience to follow a bachelor's degree. In response to the Director's request for additional evidence, the Petitioner stated: "The [labor certification] requires five years of progressive experience in the job offered or a related occupation. The [labor certification] does not specify that the experience must be post-graduate experience." If the 5 years of experience is not required to be post-baccalaureate experience, the labor certification would not support the requested classification.

Because of the inconsistencies in the alternate job requirements for the offered position, we will remand this matter to the Director for further fact-finding. On remand, the Director should give the Petitioner an opportunity to submit additional evidence of the job's alternate requirements in order to determine whether the labor certification supports the requested classification. Evidence should include copies of the Petitioner's labor certification documentation, including copies of: the notice of filing (posting notice); the prevailing wage determination; the job order; newspaper advertisements; online ads; the Petitioner's employee referral program materials; its recruitment report; and applications/resumes received from U.S. workers. Upon receipt of the Petitioner's response, the Director should review the entire record and enter a new decision.

III. CONCLUSION

The record establishes the Beneficiary's qualifications for the requested classification of advanced degree professional. We will therefore withdraw the Director's decision. But the record does not establish the labor certification's support for the requested classification.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of V- Corp.*, ID# 41166 (AAO Mar. 24, 2017)