U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7965666

Date: MAR. 24, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner seeks to employ the Beneficiary as a grain and livestock farmworker under the third-preference immigrant classification for skilled workers. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i).

The Director of the Nebraska Service Center denied the petition and dismissed the Petitioner's following motion to reopen. We dismissed the Petitioner's appeal and the company's two subsequent motions to reopen. We concluded that the job requirements of the offered position do not support the requested visa classification. We also found that the Petitioner did not demonstrate the Beneficiary's possession of the minimum educational, experience, or licensing requirements of the position.

The matter is before us again on the Petitioner's motion to reopen. We will grant the motion in part and dismiss it in part. The petition will remain denied.

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 a petition's approvability.

II. THE BENEFICIARY'S EXPERIENCE AND LICENSING

The Petitioner submits a letter from the Beneficiary's former employer and a copy of the Beneficiary's commercial driver's license (CDL). These materials demonstrate that the Beneficiary meets the minimum experience and licensing requirements of the offered position of grain and livestock farmworker. We will therefore grant this portion of the motion.

III. THE BENEFICIARY'S EDUCATION

The Petitioner contends that the Beneficiary's employment experience "surpass[es]" the offered position's minimum educational requirement of a U.S. high school diploma or a "foreign educational

equivalent." The Petitioner, however, misunderstands the nature of the educational requirements listed on the certification from the U.S. Department of Labor (DOL) that accompanies the petition.

On the labor certification application, the Petitioner had to list the minimum job requirements of the offered position of grain and livestock farmworker. *See* 20 C.F.R. § 656.17)(i)(1) (stating that "[t]he job requirements, as described, must represent the employer's actual minimum requirements for the job opportunity"). To evaluate the Beneficiary's eligibility for the offered position, USCIS must determine whether he meets the minimum job requirements listed on the application that DOL certified. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977).

If the Beneficiary's experience equates to at least a U.S. high school diploma as the Petitioner contends, then the company did not list the position's actual minimum educational requirements on the labor certification application. Rather, the Petitioner should have indicated that the position does not require education, or the company's acceptance of an alternate combination of education and experience. Asked in part H.4 of the application for the minimum level of education required, the Petitioner could have checked "None" or "Other." Instead, the company marked "High School," indicating that the position requires at least a high school diploma. Also, asked in part H.8 whether the company would accept an alternate combination of education and experience, the Petitioner checked "No." Thus, the labor certification unambiguously indicates that the offered position requires a U.S. high school diploma or a "foreign *educational* equivalent." (emphasis added). The Beneficiary must meet those requirements to obtain the requested benefit, and we lack authority to change them. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

Thus, the record does not demonstrate the Beneficiary's possession of the minimum educational requirements of the offered position as listed on the accompanying labor certification. We will therefore dismiss this portion of the motion.

IV. THE REQUESTED VISA CLASSIFICATION

The Petitioner seeks to change the requested visa classification from skilled worker, under section 203(b)(3)(A)(i) of the Act, to "other worker," under section 203(b)(3)(A)(iii) of the Act. The record indicates that the Petitioner initially did not realize that a skilled worker position must require at least two years of training or experience. *See* 203(b)(3)(A)(i) of the Act (stating that skilled workers must be "capable . . . of performing skilled labor (requiring at least 2 years training or experience)").

U.S. Citizenship and Immigration Services (USCIS) policy, however, bars a change of visa classification after the Agency decides a Form I-140 petition. *See* USCIS, *Petition Filing and Processing Procedures for Form I-140, Immigrant Petition for Alien Worker*, "Requesting or Changing Visa Categories," https://www.uscis.gov/forms/petition-filing-and-processing-procedures-form-i-140-immigrant-petition-alien-worker (last visited Mar. 4, 2020) (stating that "[w]e cannot change the visa category if we have already made a decision on your Form I-140"). Also, USCIS changes a visa category only "to correct a clerical error" on a Form I-140. *Id.* Here, the record indicates that the Petitioner misunderstood the requirements of its selected visa classification, not that it inadvertently chose an unintended category on the form.

For the foregoing reasons, we deny the Petitioner's request to change the petition's visa classification. Because the job requirements of the offered position do not support the requested classification, we will also dismiss this portion of the motion.

V. CONCLUSION

The motion's new evidence demonstrates the Beneficiary's experience and licensing qualifications for the offered position. The petition, however, will remain denied. The record does not establish the Beneficiary's possession of the minimum education required for the job, and the position's job requirements do not support the requested visa classification.

ORDER: The motion to reopen is granted in part and dismissed in part.