U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-E- LLC

DATE: MAR. 25, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a "freight transportation arrangement" business, seeks to employ the Beneficiary as a customer service manager. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. 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 Texas Service Center denied the petition on the ground that the Petitioner did not establish that the Beneficiary had two years of qualifying experience as a customer service manager, as required by the terms of the labor certification.

On appeal the Petitioner submits additional evidence and asserts that the documentation of record establishes that the Beneficiary had the requisite experience as a customer service manager to meet the terms of the labor certification.

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

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved 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). By approving the labor certification, the 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. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files 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.

To qualify for classification as a skilled worker a beneficiary must have at least two years of training or experience. 8 C.F.R. § 204.5(l)(3)(ii)(B). A beneficiary must also meet the specific educational, training, experience, or other requirements of the labor certification. *Id.* All requirements must be met by the petition's priority date.[1] *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

II. ANALYSIS

At issue in this case is whether the Beneficiary has two years of qualifying experience to meet the requirement of the labor certification.

A. Requirements of the Labor Certification

The labor certification that accompanied the Petitioner's Form I-140, Immigrant Petition for Alien Worker, states that the minimum experience required for the proffered position of customer service manager is 24 months in the job offered, and that experience in an alternate occupation is not acceptable. According to the labor certification the Beneficiary exceeded the 24-month experience requirement by working as a customer service manager for a cargo/shipping company in Venezuela, from June 2005 through May 2012. This is the only employment experience listed for the Beneficiary on the labor certification.

With its initial evidence the Petitioner submitted a letter dated August 22, 2017, from human resources manager, stating that the Beneficiary was employed as a customer service manager from June 2005 through May 2012, and listing her job duties. The Petitioner also submitted documentary evidence of the Beneficiary's educational credentials from in Venezuela, which include a baccalaureate course of study resulting in the title of architect in 2003 and a post-graduate course of study resulting in the title of construction specialist in civil engineering in 2008.

In a request for evidence (RFE) the Director noted that the above letter from conflicts with information provided in two nonimmigrant visa (NIV) applications by the Beneficiary which describe a different job with In the first NIV application, submitted in June 2011, the Beneficiary identified her primary occupation as engineering, stated that she was currently employed by and described her job duties as "an architect in the engineering department." In the second NIV application, submitted in June 2016, the Beneficiary indicated that was her previous employer, stated that her job title was "assistant project manager," and described her job duties as "assist[ing] the project manager." In response to the RFE the Petitioner submitted another letter from HR director who stated that the company is a family-run business in which the Beneficiary has a 10% ownership interest, that the company used her skills as an architect and construction manager on an intermittent basis, but that her principal duties were those of a customer service manager. The Petitioner also submitted a letter from the Beneficiary which aligned with the substance of the HR

[1] The priority date of a petition is the date the underlying labor certification is filed with the DOL. *See* 8 C.F.R. § 204.5(d). In this case the priority date is May 16, 2017.

manager's letter. The Beneficiary stated that while she is an architect by profession, she had only sporadic architectural duties at [redacted] and her recurrent duties were those of a customer service manager, which included management assistance in construction and equipment marketing projects. The Director found that the Petitioner had not resolved the evidentiary discrepancies discussed in the RFE, and denied the petition.

On appeal the Petitioner submits six letters from companies stating that they are former customers of [redacted] at various times between 2005 and 2012, and claiming that the Beneficiary was [redacted] customer service manager. In addition, the Petitioner submits copies of the Beneficiary's monthly bank account statements from 2011 and 2012 showing that her salary was regularly deposited, and the Beneficiary's Venezuelan tax returns for the years 2011 and 2012. The Petitioner acknowledges that neither the bank account statements nor the tax returns identify the Petitioner's employer or job title in 2011 and 2012, much less describe her job duties. As for the letters from former customers of [redacted] each was authored by an engineer or a company official who claimed that the Beneficiary served as [redacted] customer service manager for their respective equipment purchase and servicing contracts with [redacted] and described the customer service functions she allegedly performed.

The Petitioner complains that the Director failed to mention the corporate records previously submitted in response to the RFE which show that the Beneficiary's ownership interest in [redacted] goes back to 2003. The Beneficiary's long-time ownership interest in [redacted] however, is not an issue in this proceeding. Nor is the fact of the Beneficiary's prior employment with [redacted] The issue on appeal is the nature of the Beneficiary's job with [redacted] and the duties she performed, and whether they met the requirements of the labor certification.

The Petitioner could have provided persuasive evidence of the beneficiary's employment in a customer service role, such as human resources or personnel records issued contemporaneously with her employment. Rather than submitting contemporaneous documentary evidence or detailed information regarding the beneficiary's experience at [redacted] the Petitioner submitted letters dated six years after the alleged employment occurred from [redacted] former customers claiming that the Beneficiary served in a customer service capacity in connection with their contracts with [redacted] However, we find that this evidence is outweighed by the information the Beneficiary provided on two separate NIV applications, neither of which identified any duties as a customer service manager in her employment with [redacted] In the first NIV application, completed when the Beneficiary was still working at [redacted] in 2012, the Beneficiary identified "engineering" as her *primary occupation* and summarized her job duties as "an architect in the engineering department." Thus, the Beneficiary did not identify customer service management as her primary occupation and did not identify any customer service management component in the brief description of her job duties. In her second NIV application, completed in 2016, the Beneficiary named [redacted] as her previous employer, identified her job title as "assistant project manager," and summarized her job duties as "assist the project manager." Both the job title and the job duties were considerably different on the second NIV application, and the Beneficiary once again did not identify any customer service management component in the brief description of her job duties. As far as the evidence shows, the Beneficiary did not claim to have worked for [redacted] in the capacity of a customer service manager at any time before the instant petition and the associated labor certification were filed in 2017.

USCIS may assign less weight to testimonial evidence, particularly when it is contradicted by other evidence in the record of proceeding. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190, 194 (Reg'l Comm'r 1972)). Therefore, while we have weighed the submitted evidence, it is not sufficient in this case to establish whether the beneficiary was actually employed in a customer service role.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). To meet this burden, the petitioner must prove by a preponderance of evidence that it and the beneficiary are qualified for that benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The "preponderance of the evidence" standard requires that the evidence demonstrate that the petitioner's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Id.* (quoting *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, USCIS must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

For the reasons discussed above, we conclude that the Petitioner has not established that the Beneficiary gained any experience as a customer service manager with [redacted] Therefore, the Beneficiary does not have two years of qualifying experience as required by the labor certification.

III. CONCLUSION

The appeal will be dismissed for the above stated reason. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of C-E-, Inc.*, ID# 2841559 (AAO Mar. 25, 2019)