U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22662415

Date: MAR. 29, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Professional)

The Petitioner, a coffee manufacturer, seeks to employ the Beneficiary as an accounting manager. The company requests her classification under the employment-based, third-preference (EB-3) immigrant visa category as a "professional." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). In this category, U.S. businesses may sponsor noncitizens to obtain permanent residence to work in jobs requiring at least bachelor's degrees. *Id.*

The Acting Director of the Texas Service Center denied the petition. The Director concluded that, contrary to the offered job's requirements, the Petitioner did not demonstrate the Beneficiary's experience performing the job's duties. On appeal, the Petitioner contests the finding and contends that the Director immaterially focused on a 2009 date when the Beneficiary's job duties purportedly changed.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that, despite the Director's mistaken reference to the 2009 date, the company did not establish the Beneficiary's qualifying experience for the offered job. We will therefore dismiss the appeal.

I. LAW

Immigration as a professional generally follows a three-step process. First, a prospective employer must apply to the U.S. Department of Labor (DOL) for certification that: there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and a noncitizen's employment in the position would not harm wages and working conditions of U.S. workers with similar jobs. Section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

Second, an employer must submit an approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F); 8 C.F.R. § 204.5(l)(3)(i). Among other things, USCIS determines whether a

noncitizen beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l)(3)(ii)(C).

Finally, if USCIS approves a petition, a beneficiary 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 Offered Job's Required Experience

A petitioner must demonstrate that a beneficiary met all DOL-certified requirements of an offered job by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). This petition's priority date is December 16, 2019, the date DOL accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

When assessing a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine the job's minimum requirements. The Agency may neither ignore certification terms nor impose unstated requirements. *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); *see also Balul v. Mayorkas*, No. 21-cv-62255-JEM/Becerra, 2023 WL 2838074, *5 (S.D. Fla. Feb. 15, 2023) (quoting *Madany*).

The Petitioner's labor certification states the minimum requirements of the offered job of accounting manager as a U.S. bachelor's degree or a foreign equivalent degree in accounting, plus two years of experience "in the job offered."[1] The company indicated on the labor certification that it will not accept experience in an alternate occupation. For labor certification purposes, experience "in the job offered" means "experience performing the key duties of the job opportunity, specifically those listed in Question H.11 [of the labor certification]." *Matter of Symbioun Techs., Inc.*, 2010-PER-01422 (BALCA Oct. 24, 2011) (citations omitted).

On the labor certification, the Beneficiary attested that, by the petition's December 2019 priority date and before she began working for the Petitioner in April 2011, she gained more than seven years of full-time, qualifying experience in the United States.[2] She stated that an accounting firm employed her as an accounting manager from February 2004 to April 2011.

To prove qualifying experience, a petitioner must submit a letter from a beneficiary's former employer. 8 C.F.R. § 204.5(l)(3)(ii)(A). The letter must include the employer's name, title, and address, and describe the beneficiary's experience. *Id.*

---

[1] In Question H.14, "Specific skills and other requirements," the labor certification also states that the offered job requires experience with "Microsoft Word, QuickBooks and Excel." The Petitioner's experience with these applications, however, is not at issue.

[2] A labor certification employer cannot rely on experience that a noncitizen gained with it, unless the noncitizen gained the experience in a substantially different job or it demonstrates the impracticality of training a U.S. worker for the job. 20 C.F.R. § 656.17(i)(3). The Petitioner has not claimed reliance on the Beneficiary's experience with it.

The Petitioner submitted a 2020 letter from the Beneficiary's former employer. The letter confirms her employment dates and job title consistent with the information on the labor certification and describes her experience. But, in a request for additional evidence (RFE), the Director found that the letter does not demonstrate the Beneficiary's performance of the duties "in the job offered" as listed in Question H.11 of the labor certification. *See Matter of Symbioun Techs.*, 2010-PER-01422 at *4.

Question H.11 of the labor certification states the offered job's following duties:

> Supervise [a]ccounting assistant. Record and analyze the financial information of the client. Ensure that statements and records comply with laws and regulations. Keep up to date account books. Organize and maintain financial records. Suggest ways to reduce costs, enhance revenues and improve profits. Prepares payments by verifying documentation. Prepare balance sheet, profit and loss statement. Reporting skills, time management, attention to details.

The Director found that, contrary to the offered job's duties in Question H.11, the former employer's letter did not demonstrate the Beneficiary's experience: supervising an accounting assistant; suggesting ways to reduce costs, enhance revenues, or improve profits; or recording and analyzing clients' financial information.

The RFE also alleged inconsistencies in the Beneficiary's employment history. On a prior labor certification that her former employer filed for her, she attested to her self-employment from February 2004 until the labor certification application's filing in December 2004. That attestation conflicts with her statement on the Petitioner's labor certification that she began working for her former employer in February 2004. The Director also found that, although the Beneficiary purportedly worked for her former employer from 2004 to 2011, the former employer submitted a February 2007 employee list that excludes her. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies); *see also Marllantas, Inc. v. Rodriguez*, 806 F. App'x 864, 869 (11th Cir. 2020).

In its RFE response, the Petitioner asserted that the Beneficiary performed the offered job's duties that the Director found missing from her former employer's letter. The response included a new August 2021 letter from the former employer stating that her former job duties included: "supervision of accounting assistants;" "[p]rovid[ing] recommendations such as ways to reduce costs, enhance revenues, and improve profits;" and "verif[ying] financial data from individual customers."

In a notice of intent to deny (NOID) the petition, the Director noted that the former employer's 2020 letter and the Beneficiary's description of her former job duties on the Petitioner's labor certification omit the additional duties stated in the former employer's 2021 letter. The Director also stated that the Beneficiary's Form G-325A, Biographic Information, dated in July 2007 and submitted with her application for adjustment of status, indicates her unemployment after January 2004.

The Petitioner's NOID response sought to explain the discrepancies in the Beneficiary's job duties. A December 2021 letter from her former employer contends that its prior letter demonstrates that her former job duties are "equivalent" to the offered job's duties. The former employer contended that its prior statement that she "managed and oversaw the daily operations of the accounting department"

equates to the offered job's duty of supervising an accounting assistant. Also, by stating her "preparation of financial analysis and reports," the former employer stated that its prior letter indicated her analysis of financial information, preparation of statements, and management of financial records as the offered job requires.

The Beneficiary's former employer also contended that descriptions of her former job duties vary because they changed during her tenure. The former employer stated that she:

> started her professional services as an accounting manager and with time, her job description changed and expanded as more responsibilities were added in the accounting department. Therefore her job duties as an accounting manager grew from the time she began in 2004 until she left the company in 2011.

The Beneficiary similarly stated that her "job description changed throughout my tenure. My responsibilities grew and changed from the time I started in 2004 until I left in 2011, hence the different duties listed."

The Petitioner also submitted copies of IRS Forms 1099, Miscellaneous Income; IRS Forms W-2, Wage and Tax Statements; and payroll records. The materials show that the Beneficiary worked for her former employer from February 2004 to April 2011. The company initially treated her as an independent contractor by issuing her Forms 1099, before placing her on its payroll in 2009 and issuing her Forms W-2. The Petitioner stated that, because her former employer initially treated her as a contractor and did not add her to its payroll until 2009, its February 2007 employee list properly excludes her.

The Director's decision faults the Petitioner for not providing a specific date when the Beneficiary's job duties with her former employer purportedly changed in 2009. But, as the Petitioner argues on appeal, the record does not indicate that her job duties changed in 2009. Rather, the record shows only that, in 2009, her employment status changed from a contractor to an employee.

The tax and payroll records submitted by the Petitioner constitute independent, objective evidence demonstrating that the Beneficiary worked for her former employer from February 2004 to April 2011 as indicated on the Petitioner's labor certification. But the Petitioner has not explained why, on Form G-325A, the Beneficiary indicated her unemployment after January 2004. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies with independent, objective evidence).

Also, we agree with the Director that the Petitioner has not demonstrated the Beneficiary's qualifying experience "in the job offered." *See SEC v. Chenery*, 318 U.S. 80, 88 (1943) (citation omitted) (affirming a decision that reached the correct result but relied on a "wrong reason"); *see also Chappell v. Chao*, 388 F.3d 1373, 1376-77 (11th Cir. 2004). To explain the discrepancies in her former job duties, the Petitioner and her former employer state that her duties changed over time. But, to determine whether she has the required two years of experience in the job offered, the Petitioner has not established when her former job duties changed to encompass the offered job's tasks. Thus, contrary to the offered job's experience requirements, the Petitioner has not established that the Beneficiary gained at least two years of experience performing the offered job's duties. We will therefore affirm the petition's denial.

B. The Offered Job's Required Education

Although unaddressed by the Director, the record also does not demonstrate the Beneficiary's qualifying education for the requested immigrant visa category or the offered job. The term "professional" means a noncitizen holding at least a U.S. bachelor's degree or a foreign equivalent degree. 8 C.F.R. § 204.5(l)(2). Also, as previously indicated, the labor certification states the job's requirement of a U.S. bachelor's degree, or a foreign equivalent degree, in accounting.

On the labor certification, the Beneficiary attested that, by the petition's December 2019 priority date, a university in the Dominican Republic issued her a bachelor's degree in accounting. The Petitioner submitted a copy of her 1999 *licenciado* in accounting and a record of her university grades.

The Petitioner also submitted an independent, professional evaluation of the Beneficiary's qualifications. The evaluation states that – based on a combination of education and employment experience – she has the equivalent of a U.S. bachelor of science degree in accounting. But the evaluation specifies that her foreign educational credential in accounting – which the evaluation describes as a "bachelor of business in accounting" – equates to "two . . . years of college preparation in the United States." A U.S. bachelor's degree typically requires at least four years of college or university studies. *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). With its prior Form I-140, Petition for Alien Workers, for the Beneficiary, her former employer submitted an educational evaluation stating the equivalency of her foreign university credential to a U.S. bachelor of science degree. But the Petitioner has not resolved the discrepancy between the conflicting educational evaluations. *See Matter of Ho*, 19 I&N Dec. at 591. Thus, contrary to the requirements of the requested immigrant visa category and the offered job's requirements on the labor certification, the Petitioner has not demonstrated the Beneficiary's receipt of a foreign degree equating to a U.S. bachelor's degree.

In any future filings in this matter, the Petitioner must explain the conflicting educational evaluations and submit additional evidence that the Beneficiary has a U.S. bachelor's degree in accounting or a foreign equivalent degree.

III. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's qualifying experience for the offered job or the requested immigrant visa category. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.