U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8409090

Date: MAY. 1, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Professional Worker

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

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the Beneficiary's expertise with specified software applications as the offered position requires.

The Petitioner bears the burden of establishing eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as a professional generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain 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). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for an offered position. *Id.* Labor certification also indicates that employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS determines whether a beneficiary meets the requirements of a DOL-certified position and a requested visa classification. If USCIS grants a petition, a foreign national may finally 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. THE SPECIFIC SKILLS

A petitioner must establish a beneficiary's possession of all DOL-certified job requirements of an offered position by a petition's priority date. *Matter of Wing's Tea House,* 16 I&N Dec. 158, 160

(Acting Reg'l Comm'r 1977).[1] In evaluating a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine a position's minimum requirements. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Madany* v. *Smith,* 696 F.2d 1008, 1015 (D.C. Cir. 1983).

Here, the accompanying labor certification states the minimum requirements of the offered position of staff accountant as a U.S. bachelor's degree, or a foreign equivalent degree, in accounting, finance, or business. Part H.14 of the certification, "Specific skills or other requirements," also states that the job requires "[e]xpertise" with certain software applications involving spreadsheets and word processing. Beyond the required degree and skills specified in part H.14, the certification indicates that the position requires neither training nor experience.

The Petitioner's initial filing lacked evidence that the Beneficiary gained the requisite expertise with the specified software applications. In response to the Director's written request for additional evidence, the Petitioner submitted copies of pages of a syllabus from the Beneficiary's university summarizing courses she completed in college. The courses on the syllabus pages match classes stated in the Beneficiary's university transcript. The summaries list topics taught in the classes, including: management information systems; software tools; and micro-computer-based software. But the summaries do not specify that the Beneficiary's coursework included the applications detailed on the labor certification. The course summaries therefore do not establish the Beneficiary's possession of the specific skills required for the offered position.

The Petitioner also provided an online link to an article published by the Beneficiary's university. The article states that the maker of the software applications specified on the labor certification provides free access to the applications and training to the school's students, faculty, and staff. The article, however, does not indicate that the Beneficiary accessed the specified applications or received training on them. Also, the article is dated only about a month before the Beneficiary graduated from the university and does not indicate when the free, software services began. The article therefore does not demonstrate the Beneficiary's possession of the required expertise in the specified software applications.

On appeal, the Petitioner asserts that it cannot provide copies of certificates demonstrating the Beneficiary's requisite expertise because courses no longer teach the designated applications. The Petitioner, however, provided another online link casting doubt on that assertion. The link is to a website of the information technology department of the Beneficiary's university publicizing "convenient classes" on the applications. The website states that students may "[a]ttend any workshop, or attend the whole series to earn a certificate." Thus, contrary to the Petitioner's assertion, the record indicates the existence of courses and certificates on the specified software applications. The Petitioner therefore has not demonstrated the unavailability of evidence of the Beneficiary's purported qualifications for the offered position.

[1] This petition's priority date is September 8, 2017, 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).

The Petitioner also argues that the specified software applications "have become basic tools for college students majoring in Business Administration or Financing or Accounting or Mathematics." The purported ubiquity of the applications in the accounting field, however, does not excuse the Petitioner from demonstrating the Beneficiary's required expertise with them. The Petitioner had to list the "actual minimum requirements for the job opportunity" on the labor certification application. *See* 20 C.F.R. § 656.17(i)(1). USCIS "must examine the certified job offer exactly as it is completed by the prospective employer." *Rosedale & Linden Park Co. v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). Thus, USCIS cannot merely assume that the Beneficiary's college education provided her with the requisite expertise in the specified applications.

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary's possession of the specific skills required by the proffered position. We will therefore affirm the petition's denial.

III. THE REQUIRED FIELD OF STUDY

Although unaddressed by the Director, the record also does not establish the Beneficiary's possession of a bachelor's degree in an acceptable field of study. As previously indicated, the labor certification states that the offered position of staff accountant requires a U.S. bachelor's degree, or a foreign equivalent degree, in "[a]ccounting," "[f]inance," or "[b]usiness."

On the labor certification, the Beneficiary attested that, by the petition's priority date, she obtained a U.S. bachelor's degree in "[f]inance." The Petitioner, however, submitted a copy of the Beneficiary's university transcript indicating her receipt of a U.S. bachelor of science degree in "[m]anagement." Management is not among the acceptable major fields of study listed on the labor certification. The Beneficiary's transcript states that she has a "[c]oncentration" in finance, which typically would require less courses than a major field of study. But the document describes her "[m]ajor" field of study as management. The record therefore does not establish the Beneficiary's educational qualifications for the offered position. In any future filings in this matter, the Petitioner must demonstrate that, by the petition's priority date, the Beneficiary obtained at least a bachelor's degree in a major field of study listed on the labor certification.

IV. CONCLUSION

The record on appeal does not demonstrate the Beneficiary's requisite expertise with the skills specified for the offered position. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.