U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 08397878

DATE: MAY. 1, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for a Skilled Worker

The Petitioner, an engineering and capital equipment company, seeks to employ the Beneficiary as an accountant. It requests skilled worker classification for the Beneficiary 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 "EB-3" 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 multiple grounds. The Director determined that the Petitioner did not establish that the Beneficiary had the requisite experience to meet the terms of the labor certification and to qualify for skilled worker classification. The Director also determined that the Petitioner did not establish that the job offered is a *bona fide* accountant position or that it was open to U.S. workers. The Petitioner filed a combined motion to reopen and reconsider, which the Director dismissed.

On appeal the Petitioner asserts that the Director did not properly consider the evidence it submitted. The Petitioner claims that its documentation establishes that the Beneficiary has the requisite experience to meet the terms of the labor certification and qualify for skilled worker classification, and that the record establishes the *bona fides* of the job offer for an accountant position within the Petitioner's organization.

In visa petition proceedings it is the Petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's determination that the Petitioner has not established the *bona fides* of the accountant position, but dismiss the appeal on the ground that the Petitioner has not established that the Beneficiary has the requisite experience to meet the terms of the labor certification and to qualify for skilled worker classification.

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.

II. ANALYSIS

The record indicates that the Petitioner was established in 2012 as a subsidiary of the German company [redacted]. The record also indicates that the Beneficiary began working for [redacted] in a position called "marketing account manager" in 2007, and was transferred to the Petitioner to work in the position of "office manager" following the approval of her nonimmigrant visa in 2013. The instant petition for an immigrant visa was filed in February 2019.

A. *Bona Fides* of the Proffered Position

A petitioner must establish its intent to employ the beneficiary in accordance with the terms and conditions of the labor certification. *See Matter of Izdebska*, 12 I&N Dec. 54 (Reg'l Comm'r 1966). The terms and conditions of the job opportunity are set forth in section H of the labor certification.

In this case the labor certification states at section H.3 that the job title of the proffered position is accountant, and describes the duties of the position as follows in section H.11:

> Assist in analyzing financial information for the company, including preparing financial forecasts and budgets, weekly liquidity planning and coordination with headquarters, releasing invoices and monitoring A/P and A/E reports, reconciliation of supplier and customer accounts (national and international);
> Assist in preparing and analyzing book-keeping processes, including HBI, HBII, US-Gap, Transfer Pricing and Percentage of Completion (POC);
> Setting up accounting programs using accounting software (eEvolution with modules order, purchase, KuLiMi, Article and Easy Document Management Software);
> Creating new internal accounting corporate policy and maintaining existing policies with closeouts and reports, reconciliation of bank accounts, depreciation and prepaid expenses calculations, bank account reconciliations, third party audits, sales tax filings; and managing and processing all day to day accounting processes.

The labor certification indicates in section H.4 that there is no educational requirement for the position, and in section H.10 that 24 months of experience is required in the job offered or "any related occupation." Section H.14 of the labor certification states that there are specific experience and skills requirements consisting of:

> 2 years of accounting experience dealing with international customers and suppliers, including using accounting software eEvolution with modules order, purchase,

KuLiMi, Article and Easy Document Management Software. Stated experience to include HBI, HBII, US-Gap, Transfer Pricing and Percentage of Completion (POC).

In his denial decision the Director identified three factors that raised questions about whether the proffered position was a *bona fide* offer of employment as an accountant. As explained by the Director, the Beneficiary's prior nonimmigrant proceedings did not reveal that she had experience as an accountant; the Beneficiary already worked for the Petitioner as an office manager and it did not appear that her new position would involve full-time accountant duties; and the duties of the proffered position as described on the labor certification fell outside the normal standards for an accountant according to the *Occupational Outlook Handbook* (*OOH*) published by the DOL's Bureau of Labor Statistics. The Director noted that the user interface of the eEvolution software was in German and implied that the indication in section H.13 of the labor certification that no foreign language was required for the proffered position was inconsistent with actual job requirements. As for the specific software requirements identified in section H.14 of the labor certification, the Director stated that the Petitioner did not establish that ordering and purchasing were normal functions of accounting, and neither the *OOH* nor any other publicly available resource suggested that invoicing, purchasing, or ordering are standard functions of an accountant. The Director cited a letter from the Petitioner's president stating that knowledge of the particular software identified in the labor certification was necessary because no in-house expertise was available for on-the-job training. The Director concluded that the labor certification requirements created a narrow field of eligible candidates with experience in accounting, but also in specific German software that was generally not used by accountants, that a reasonable explanation for these requirements was not provided, and that the Petitioner therefore did not establish that the proffered position is a *bona fide* job opportunity for U.S. workers. As additional grounds for doubting the *bona fides* of the proffered position, the Director noted that the Petitioner is a small business with only five employees at the time the instant petition was filed and had not demonstrated its need for a full-time accountant or explained who would handle office manager responsibilities if the Beneficiary were shifted out of that position.

On appeal the Petitioner asserts that previously submitted documentation confirms that the proffered position is a *bona fide* job offer for an accountant, consistent with the duties described in the labor certification. One of those documents was a letter from the Petitioner's president asserting that a full-time accountant is needed because of the growing volume and complexity of the Petitioner's business, and reiterating that the Beneficiary would perform the job duties described in the labor certification.

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification, must involve reading and applying *the plain language* of the alien employment certification application form. *See id.* at 834. USCIS may not ignore a term of the labor

certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm'r 1986).

In this case, the Petitioner submitted documentation showing that DOL audited the labor certification application prior to certifying that there were no qualified U.S. workers for the position. While the position title of accountant appears more advanced than the job duties, DOL reviewed the recruitment materials and determined that there were not any qualified workers for the accountant position as advertised, and certified the position. Accordingly, we withdraw the Director's determination that the position is not *bona fide*.

B. Beneficiary's Qualifications

The remaining question on appeal is whether the Beneficiary has the requisite qualifications for the proffered position and the requested visa classification. The Petitioner requests classification of the Beneficiary as a skilled worker. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) states that to qualify for skilled worker classification:

> . . . the petition must be accompanied by evidence that the [beneficiary] meets the educational, training or experience, and any other requirements of the individual labor certification . . . . The minimum requirements for this classification are at least two years of training or experience.

To be eligible for skilled worker classification, therefore, the Beneficiary must meet all specific requirements of the labor certification and have at least two years of relevant experience (or training). All requirements must be met by the petition's priority date,[1] which in this case is June 1, 2018. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

In this case section H of the labor certification (Job Opportunity Information) specifies the following with respect to the requirements for the job of accountant:

4.	Education: Minimum level required:	None
5.	Is training required for the job?	No
6.	Is experience in the job offered required?	Yes
6-A.	How long?	24 months
8.	Is an alternate combination of education and experience acceptable?	No
10.	Is experience in an alternate occupation acceptable?	Yes
10-A.	How long?	24 months
10-B.	Acceptable alternative occupation:	Any related occupation
13.	Is knowledge of a foreign language required?	No

14. Specific skills or other requirements:

[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).

> 2 years of accounting experience dealing with international customers and suppliers, including using accounting software eEvolution with modules order, purchase, KuLiMi, Article and Easy Document Management Software. Stated experience to include HBI, HBII, US-Gap, Transfer Pricing and Percentage of Completion (POC)

In a letter accompanying the petition the Petitioner's president asserted that the Beneficiary gained more than two years of qualifying experience in her work as a marketing account manager for [redacted] in Germany from September 2007 to November 2013. The labor certification describes the Beneficiary's job duties with [redacted] as follows:

> Responsible for intercompany operations for international suppliers and customers, including bookkeeping, accounting, and purchasing. Manage client billing and prepare invoices to clients in multiple formats across different platforms (HBI, HBII, US-Gap, Transfer Pricing and Percentage of Completion (POC)). Manage accounts payable: receive and verify vendor invoices, pay invoices timely and accurately, and maintain all accounts payable records. Use accounting software (eEvolution with modules order, purchase, KuLiMi, Article and Easy Document Management Software) to prepare and analyze bookkeeping processes. Review contracts, maintain all company accounts (business licenses, insurance, software, utilities, etc.) and manage company bookkeeping and financial records. Coordinate and manage the maintenance, inventory, purchasing, and distribution of all company equipment and supplies.

As evidence of this experience a letter from [redacted]'s head of human resources was also submitted with the petition. This letter described the Beneficiary's job duties in the years 2007-2013 in wording taken almost verbatim from the job description in the labor certification.

In a request for evidence (RFE), however, the Director advised the Petitioner that in the Beneficiary's prior nonimmigrant visa proceeding no accounting experience was claimed in her marketing specialist job with the Petitioner's German parent. The Director requested additional evidence to resolve this discrepancy. In its response to the RFE the Petitioner submitted another letter from its president asserting that the Beneficiary's current office manager position with the Petitioner and her prior marketing position with the parent company, while dissimilar to the proffered position, contained certain accounting duties. The Petitioner also submitted copies of old letters from the *Akademie Handel* (Academy of Trade) in Germany asserting that the Beneficiary was a lecturer and author of business-related subjects, including accounting, during the years 1991-2008. However, no evidence was submitted to resolve the discrepancy discussed in the RFE between the Petitioner's claim in the current proceeding that the Beneficiary gained accounting experience in her position with [redacted] in the years 2007-2013 and the absence of any such claim of accounting experience with [redacted] in the Beneficiary's prior proceeding to obtain a nonimmigrant visa. The failure to resolve this discrepancy was a primary reason for the Director's conclusion that the record did not establish that the Beneficiary had at least two years of experience in accounting or a related job.

On appeal the Petitioner claims that the Beneficiary's job duties with [redacted] were described on her nonimmigrant visa application in basic terms since the State Department's Form DS-160, unlike the labor certification application and employment-based immigrant petition of the current proceeding, did not require details about specific skills. This explanation is unpersuasive, however, because it does not account for the fact that the job duties described on the nonimmigrant visa application in 2013 focused exclusively on marketing-related activities, consistent with the Beneficiary's job title of marketing account manager, and did not mention any accounting-related activities. The Petitioner submits another letter from [redacted] which reiterates the substance of its initial letter that accompanied the petition, but likewise fails to explain why the Beneficiary's job duties from 2007 to 2013 were explained so differently in the Beneficiary's nonimmigrant visa application in 2013 than they are in the current immigrant visa proceeding. Thus, on appeal the Petitioner has still failed to provide a convincing explanation for the fundamentally different way the Beneficiary's duties at [redacted] were described in the nonimmigrant visa application compared to the current immigrant visa petition.

It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's evidence also reflects on the reliability of the petitioner's remaining evidence. *See id.*

In this case the Petitioner has not resolved the inconsistent descriptions of the Beneficiary's job duties with [redacted] between the Beneficiary's nonimmigrant visa application with the Department of State, which claims they were all marketing related, consistent with her job title of marketing accounts manager, and the current employment-based immigrant petition in which the Petitioner claims the Beneficiary had primarily accounting-related duties, notwithstanding her job title of marketing accounts manager. Accordingly, the Petitioner has not established that the Beneficiary gained any qualifying experience as an accountant or in an accountant-related job with [redacted] during the years 2007-2013.

The Petitioner resubmits copies of the letters from the *Akademie Handel* (Academy of Trade) in Germany asserting that the Beneficiary was a lecturer and author of business-related subjects, including accounting, during the years 1991-2008, but does not explain how these activities translate into qualifying experience for the proffered position.

Finally, while the Petitioner asserts that the Beneficiary performs some accounting duties in her current position of office manager, the Petitioner acknowledges that the office manager position, consistent with its indication at section J.21 on the labor certification, is not substantially comparable to the proffered position of accountant. According to the Petitioner about 25% of the Beneficiary's current duties as office manager are accounting duties that overlap with the duties of the proffered position. Thus, the Petitioner does not claim that the Beneficiary meets the experience requirement of the proffered position based on her current job alone.

In accord with the foregoing analysis we conclude that the Petitioner has not established that the Beneficiary gained at least two years of qualifying experience by the priority date of June 1, 2018. Therefore, the Beneficiary does not have the requisite experience to meet the terms of the labor certification.

III. CONCLUSION

We withdraw the Director's determination that the proffered position is not a *bona fide* job offer for an accountant. However, the Petitioner has not established that the Beneficiary had at least two years of qualifying experience for the position by the priority date, as required by the labor certification. Therefore, the Beneficiary does not meet the experience requirement of the labor certification and does not qualify for classification as a skilled worker. The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision.

ORDER: The appeal is dismissed.