U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E- LLC

DATE: MAY 2, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a provider of information technology services to healthcare organizations, seeks to employ the Beneficiary as a clinical business analyst. It requests her classification as a skilled worker under the third-preference immigrant category. *See* 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" category allows a U.S. business to sponsor a foreign national with at least two years of training or experience for lawful permanent resident status.

The Director of the Texas Service Center denied the petition. The Director concluded that the record did not establish the Beneficiary's possession of the minimum educational requirements of the offered position.

On appeal, the Petitioner submits additional evidence of the Beneficiary's educational qualifications and asserts that the Director misunderstood the position's requirements.

Upon *de novo* review, we will withdraw the Director's decision and remand this matter for further proceedings consistent with the following opinion and for the entry of a new decision.

I. LAW

Skilled-worker immigration generally follows a three-step process. First, a U.S. employer files an application for labor certification with the U.S. Department of Labor (DOL). The DOL must certify that the United States lacks able, willing, qualified, and available workers for the offered position and that employment of a foreign national will not hurt the wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). If the DOL approves the labor certification application, the employer next files a petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, 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.

A petitioner must establish a beneficiary's possession of all the education, training, and experience specified on an accompanying labor certification by a petition's priority date. *See, e.g., Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).[1] In evaluating a beneficiary's qualifications, we must examine the job offer portion of a labor certification to determine the minimum requirements of an offered position. We may neither ignore a term of a labor certification, nor impose additional requirements. *See, e.g., Madany* v. *Smith,* 696 F.2d 1008, 1012-13 (D.C. Cir. 1983).

II. ANALYSIS

In this case, the labor certification states the primary requirements of the offered position of clinical business analyst as a U.S. bachelor's degree, or an equivalent foreign degree, in business, information systems, marketing, or a related field of study. Alternatively, the labor certification states the Petitioner's acceptance of a "combination of four (4) years [of] education which has been formally equated to a U.S. Bachelor's Degree in Business, Information Systems, Marketing or [a] related field." The offered position does not require any training or experience.[2]

The record documents the Beneficiary's Indian educational credentials. Before the petition's priority date, she obtained a three-year, bachelor of commerce degree and completed the first year of a two-year, master of commerce program.

The Petitioner does not claim that the Beneficiary meets the position's primary requirements. Rather, at issue is whether she has a "combination of four (4) years [of] education which has been formally equated to a U.S. Bachelor's Degree in Business, Information Systems, Marketing or [a] related field."

The Petitioner submitted a written, professional evaluation of the Beneficiary's educational credentials, which the Petitioner claims establishes her possession of the position's alternative requirements. The evaluation states that her four-year combination of Indian undergraduate and graduate studies equates to a U.S. bachelor's degree in business administration.

The Director found that the evaluation did not sufficiently explain how the Beneficiary's studies equate to a U.S. bachelor's degree. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (allowing USCIS to reject or discount expert testimony that conflicts with other evidence or "is in any way questionable"). On appeal, however, the Petitioner submits an expanded evaluation, identifying the bases of the U.S. baccalaureate equivalency as the number of years, progressive nature, and credit hours of the Beneficiary's foreign studies. Because the appellate record explains

[1] In this case, the petition's priority date is the date the DOL received the labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

[2] Although a skilled worker position must require at least two years of training or experience, "[r]elevant post-secondary education may be considered as training." 8 C.F.R. § 204.5(l)(2). Because the offered position in this case requires at least two years of post-secondary education, the position may be classified as a skilled worker.

the evaluator's reasoning and lacks evidence undermining his conclusion, we will withdraw the Director's finding.

However, the petition may not be approved because the record does not establish the Beneficiary's possession of the stated alternative requirements of the offered position. Specifically, the record does not establish what the Petitioner intended when requiring years of education to be "formally equated" to a bachelor's degree. Absent evidence of the Petitioner's intended meaning, we cannot conclude that the evaluations presented "formally" equate the Beneficiary's education to a U.S. bachelor's degree, as specified on the labor certification.

On appeal, the Petitioner states that it intended such an evaluation to meet the labor certification's alternative requirements. But the record lacks sufficient evidence of its claimed intention, such as evidence contemporaneous with the drafting and filing of the labor certification. *See SnapNames.com v. Chertoff*, No. CV 06-65-MO, 2006 WL 3491005, *8 (D. Or. Nov. 30, 2006) (holding that, in adjudicating a skilled worker petition, a labor certification employer's intention should inform USCIS' interpretation of an educational requirement). Because the record does not establish the evaluation's satisfaction of the alternative requirements, we will remand this matter to the Director for further fact-finding.

On remand, the Director should request additional evidence of the Petitioner's intended meaning of the alternative requirements, including copies of the Petitioner's labor certification documentation, which may provide evidence that the DOL and U.S. workers were given notice of how the alternative requirement could be met. The Director should request: the posted notice of filing; the prevailing wage determination; the job order; advertisements of the offered position on the Internet and in newspapers and employee referral materials; the recruitment report; any resumes or applications received from U.S. workers; and any correspondence between the Petitioner and the DOL. The Director may also request additional evidence needed to address other issues he may find regarding the petition. After affording the Petitioner a reasonable opportunity to respond, the Director should review the entire record and enter a new decision.

III. CONCLUSION

Contrary to the Director's finding, the appellate record sufficiently explains the evaluator's bases for equating the Beneficiary's foreign studies to a U.S. bachelor's degree. The record, however, does not establish the evaluation's satisfaction of the alternative requirements of the offered position as stated on the labor certification.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of E- LLC*, ID# 26674 (AAO May 2, 2017)