U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-D- CORP.

DATE: MAY 3, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a provider of prepaid debit cards and cash reload services, seeks to employ the Beneficiary as a financial analyst. It requests her classification as a professional under the third-preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based, "EB-3" category allows a U.S. business to sponsor a foreign national for lawful permanent resident status in a position requiring at least a bachelor's degree.

The Acting Director of the Nebraska Service Center denied the petition. The Director found the accompanying labor certification invalid because it contains a job offer from a different company than the Petitioner.

On appeal, the Petitioner submits additional evidence and asserts itself as a successor in interest of the labor certification employer.

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

I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS

Employment-based immigration generally follows a three-step process. First, an employer seeking to permanently employ a foreign national in the United States must obtain U.S. Department of Labor (DOL) certification of its job offer. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). The DOL must determine whether the country lacks able, willing, qualified, and available workers for an offered position, and whether employment of a foreign national would hurt the wages and working conditions of U.S. workers with similar jobs. *Id.*

If the DOL certifies a position, an employer must submit the certification with an immigrant visa petition to USCIS. *See* section 204 of the Act, 8 U.S.C. § 1154. If USCIS approves 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. SUCCESSORSHIP IN INTEREST

Unless accompanied by an application for Schedule A designation or documentation of a beneficiary's qualifications for a shortage occupation, a petition for a professional must include a valid, individual labor certification. 8 C.F.R. § 204.5(l)(3)(i). A labor certification remains valid only for the particular job opportunity stated on it. 20 C.F.R § 656.30(c)(2).

A business may use a labor certification filed by another employer only if it establishes itself as a successor in interest of the employer. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481, 482-83 (Comm'r 1986). A successor must demonstrate its acquisition of rights and obligations needed to operate a predecessor's business. A successor must: 1) document the transfer of all or a relevant part of the predecessor to it; 2) demonstrate that, but for the change in employer, the job opportunity remains the same as certified; and 3) establish eligibility for a petition's approval, including the abilities of itself and the predecessor to pay a proffered wage. *Id.*

Here, the labor certification identifies the employer as a different company than the Petitioner. The Petitioner asserts that, after the certification's issuance and before the petition's filing, it acquired the employer and operates its former prepaid card management services. Specifically, the Petitioner claims that it acquired the labor certification employer's parent company and that both the labor certification employer and its parent company are now non-functioning entities. As such, the Petitioner argues that a successor relationship exists between it and the labor certification employer.

In support of its claims, the Petitioner submitted a letter and a copy of its 2015 annual report indicating its acquisition that year of the labor certification employer's parent company. In response to a request for evidence (RFE), the Petitioner also provided copies of parts of its acquisition "agreement and plan." The agreement indicates a merger between a wholly owned subsidiary of the Petitioner and the labor certification employer's parent company. According to the agreement, upon merging, the Petitioner's subsidiary would terminate, and the labor certification employer's parent company would survive as a wholly owned subsidiary of the Petitioner. The Petitioner also submitted copies of a signed certificate, indicating the merger's occurrence.

However, the evidence submitted is insufficient to establish the Petitioner as the successor-in-interest to the labor certification employer. The agreement and the certificate demonstrate the Petitioner's acquisition of the labor certification employer's parent company. But the agreement is missing pages and does not indicate what provisions were made concerning the subsidiaries of the merged companies, including the labor certification employer. Absent this information, the record does not document the transfer of all or part of the labor certification employer to the Petitioner, as required, nor does the record establish whether the Petitioner assumed rights and obligations needed to operate the labor certification employer's business. *See Matter of Dial Auto Repair*, 19 I&N Dec. at 482 (requiring a claimed successor "to fully explain the manner by which the petitioner took over the business" and to provide a copy of a contract or agreement between the entities).

Moreover, both the labor certification employer and its parent company appear to continue to exist. Although the Petitioner claims that these two entities became "non-functioning" after transferring their prepaid card management programs to the Petitioner in August 2015, the Petitioner has not submitted a copy of the agreement transferring these programs or otherwise provided evidence to corroborate the claims. If the labor certification employer continues to operate as a separate entity, although now a subsidiary of the Petitioner, the offered job opportunity would appear to remain with the labor certification employer. If the offered job remains with the labor certification employer, the Petitioner may not be considered a successor in interest in this petition.

Based on the foregoing discussion, we find that the record does not document the Petitioner's claimed successorship of the labor certification employer.

III. THE BENEFICIARY'S QUALIFYING EXPERIENCE

Although not mentioned by the Director, the record also does not demonstrate the Beneficiary's possession of the experience required by the terms of the labor certification. A petitioner must establish a beneficiary's possession of all DOL-certified job requirements by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). In evaluating a beneficiary's qualifications, USCIS must examine the job offer portion of a labor certification to determine the minimum requirements of an offered position. USCIS may neither ignore a certification term, nor impose additional requirements. *See Tongatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984) (holding that immigration authorities are "bound by the DOL's certification").

Here, the labor certification states the minimum requirements of the offered position of financial analyst as a master's degree and three years of experience in the job offered or in "[a]ny related occupation." On the certification, the Beneficiary attested to her possession, by the petition's priority date, of about three years and eight months of full-time qualifying experience, including about two years with the labor certification employer, and about two years and three months of part-time qualifying experience.

A labor certification employer may not rely on experience that a foreign national gained with it, unless the experience was in a substantially different position or the employer can demonstrate the impracticality of training a U.S. worker for the offered position. 20 C.F.R. § 656.17(i)(3). Here, the experience gained with the labor certification employer was in the offered position and may therefore not be considered qualifying experience. *See* 20 C.F.R. § 656.17(i)(5)(ii) (defining a "substantially comparable" position as one requiring performance of the same job duties more than 50 percent of the time.)

The Petitioner submitted letters documenting the Beneficiary's remaining experience, including: one year and eight months of full-time experience; and two years and three months of part-time experience. *See* 8 C.F.R. § 204.5(g)(1) (requiring a petitioner to support a beneficiary's claimed, qualifying experience with letters from employers). For labor certification purposes, however, part-time experience equals half the amount of full-time experience. *See Matter of Cable Television Labs, Inc.*, 2012-PER-00449, 2014 WL 5478115, *1 (BALCA Oct. 23, 2014) (finding 16 months of part-time

experience equivalent to eight months of full-time experience). Thus, the Beneficiary's two years and three months of part-time experience equates to only about 14 months of full-time experience. Combined with her other one year and eight months of full-time experience, the record does not establish the Beneficiary's possession of the requisite three years of full-time employment experience.

IV. CONCLUSION

The Petitioner has not established itself as a successor in interest of the labor certification employer. The record therefore does not establish the validity of the accompanying certification. The record also does not demonstrate the Beneficiary's possession of the experience required by the terms of the labor certification.

ORDER: The appeal is dismissed.

Cite as *Matter of G-D- Corp.*, ID# 835847 (AAO May 3, 2018)