U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 00561959

DATE: MAY 4, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for an Alien Worker

The Petitioner, a limited service restaurant, seeks to employ the Beneficiary as a pizza cook. It requests classification for the Beneficiary as an "other worker" under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). This employment-based "EB-3" immigrant classification allows a U.S. employer to sponsor for lawful permanent resident status a foreign national who is capable of performing unskilled labor that requires less than two years of training or experience and is not of a temporary or seasonal nature.

The Director of the Texas Service Center denied the petition on the ground that the record did not establish that the Beneficiary met the educational requirement of the labor certification because the Petitioner did not submit properly certified English translations of the foreign educational documents.

On appeal the Petitioner submits additional documentation which overcomes the Director's finding on the translation issue. Accordingly, we will withdraw the Director's decision. However, the Director did not address all possible issues in the initial adjudication of this petition. Therefore, we will remand the case for further consideration of the petition and the issuance of a new decision.

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) of the Act, 8 U.S.C. § 1182(a)(5). 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.

The regulation at 8 C.F.R. § 103.2(b)(3) provides that:

> Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

II. ANALYSIS

As previously indicated, the Petitioner requests classification of the Beneficiary as an "other worker." The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(D) states that:

> If the petition is for an unskilled (other) worker, it must be accompanied by evidence that the alien meets any educational, training and experience, and other requirements of the labor certification.

All requirements must be met by the petition's priority date,[1] which in this case is April 2, 2015. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

The labor certification in this case indicates (in section H) that the only qualification for the job of pizza cook is a high school level education or a foreign educational equivalent. The labor certification also asserts (in section J) that the Beneficiary met this requirement by graduating in 1997 from [redacted] High School in [redacted] Iran.

With its initial evidence the Petitioner submitted copies of Farsi and English language documents relating to the Beneficiary's alleged high school education in [redacted] Iran, which appeared to indicate that he completed his education at [redacted] High School in the 1996 school year, took his final examinations in January, and received a completion certificate in the field of experimental sciences.

The Director issued a request for evidence (RFE) indicating, among other things, that the translations of the foreign language documentation submitted with the petition did not comply with applicable requirements including certification by the translator that:

- the translation is accurate and complete, and
- he/she is competent to translate from the foreign language into English.

The Director noted that the translator must personally certify the English translation, that another individual could not certify on behalf of the translator. As the English versions of the foreign language documents did not comply with these translation requirements, the Director advised the Petitioner to resubmit the foreign language documents with properly certified English translations attached. The Director also requested that an evaluation of the Beneficiary's education be submitted to establish its U.S. equivalency.

[1] The priority date of an employment-based immigrant petition is the date the underlying labor certification is filed with the DOL. *See* 8 C.F.R. § 204.5(d).

In response to the RFE the Petitioner submitted additional Farsi and English language documentation as evidence of the Beneficiary's education in Iran. The documents included Farsi and English language versions of the Beneficiary's high school transcripts and graduation certificate. All of the transcripts, both Farsi and English, bear an official stamp of [redacted] Certified English Translator to the IRI [Islamic Republic of Iran] Judiciary." The Farsi language transcripts each contain an additional stamp from [redacted] stating that it is a "True Certified Copy" of the original. The Petitioner also submitted an evaluation of the Beneficiary's education by Silvergate Evaluations Inc. which stated that [redacted] High School is a government-recognized institution of secondary education in Iran, and that the Beneficiary's graduation certificate from that school after four years of course work is equivalent to a high school diploma in the United States.

In his decision the Director pointed to the English translations of the Beneficiary's high school graduation certificate submitted with the petition and in response to the RFE, both of which in addition to the translator's stamp previously discussed has a stamp which states: "This Certificate does not include confirmation of the accuracy of the translation . . ." According to the Director this latter stamp demonstrates that the English translations are not properly certified because the translator did not certify the accuracy and completeness of the translated document or his competency to translate from the foreign language into English. The Director concluded that the English translations of the Beneficiary's high school graduation certificate from Iran did not comply with the substantive requirements of 8 C.F.R. § 103.2(b)(3) and therefore did not establish that the Beneficiary meets the educational requirement of the labor certification.

On appeal the Petitioner asserts that the Director misinterpreted the seal (stamp) quoted in the decision, whose sole purpose was to certify the authenticity of the translator's seal. We agree with the Petitioner insofar as the Director did not identify the owner of the authentication seal, and quoted just a portion of its language in the decision. In fact, the seal's owner is identified as the [redacted] Justice Administration, and its language reads in full as follows:

> Only the authenticity of the seal and signature of the Official Translator is certified. This certification does not include confirmation of the accuracy of the translation and the authenticity of the translated document. Department of Official Translators' Affairs of the Judiciary of the Islamic Republic of Iran.

The Director overlooked the other seal that was stamped on both English language translations of the Beneficiary's diploma (as well as all of the other English and Farsi language education documents) which belongs to the translator himself and identifies him (in the case of [redacted]) in printed language on the seal as a "Certified English Translator to the IRI Judiciary" [2] This statement on his official seal satisfies the second regulatory requirement of 8 C.F.R. § 103.2(b)(3) because it confirms that the translator "is competent to translate from the foreign language into English." In support of the appeal the Petitioner submits a statement from the translator of the documents produced in response to the RFE, [redacted] confirming that he is an official translator approved by the Iranian Department of Justice, that the documents he translated in this proceeding are "a true

[2] The English translation of the high school graduation certificate submitted with the petition had a different translator, [redacted] and his seal identified him in slightly different language as an "Official Translator to The Judiciary."

translation from Farsi into English," and that it is standard procedure in Iran for a certified translator to affix his/her seal to a translated document and then take it to the Department of Justice for another stamp certifying the *bona fides* of the official translator. The quoted language addresses the first regulatory requirement of 8 C.F.R. § 103.2(b)(3). Also submitted in support of the appeal is a copy of the official translation license granted to [redacted] by The Judiciary of the Islamic Republic of Iran in October 2014.

Based on the entire record, we conclude that the translations of the Beneficiary's educational documents submitted in this proceeding meet the substantive requirements of 8 C.F.R. § 103.2(b)(3). Therefore, we will withdraw the Director's contrary finding. We cannot approve the petition, however, because the Director did not adjudicate all potential issues in his decision.

In the RFE the Director requested documentary evidence of the Petitioner's ability to pay the proffered wage, and the Petitioner responded with various documents. While these materials would appear to establish the Petitioner's ability to pay the proffered wage of the instant Beneficiary, USCIS records show that the Petitioner has submitted many additional I-140 petitions for other beneficiaries. When a petitioner has filed multiple I-140 petitions it must establish that its job offer is realistic not only for the instant beneficiary, but also for the beneficiaries of its other I-140 petitions. A petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977). Accordingly, a petitioner must demonstrate its ability to pay the combined proffered wages of the instant beneficiary and every other I-140 beneficiary from the priority date of the instant petition until the other I-140 beneficiaries obtain lawful permanent resident status. *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (upholding our denial of a petition where a petitioner did not demonstrate its ability to pay multiple beneficiaries).[3] The Director did not address this issue in his decision.

In addition, the Director may wish to examine whether the pizza cook position in this petition is a *bona fide* job offer. 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).

III. CONCLUSION

For the reasons discussed above, we will remand this case to the Director for further consideration.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[3] The Petitioner's ability to pay the proffered wage of one of the other I-140 beneficiaries is not considered:

- After the other beneficiary obtains lawful permanent residence;
- If an I-140 petition filed on behalf of the other beneficiary has been withdrawn, revoked, or denied without a pending appeal or motion; or
- Before the priority date of the I-140 petition filed on behalf of the other beneficiary.