U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 00597047

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 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 March 11, 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 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 2001 from [redacted] High School in Iran (exact location unstated).

With its initial evidence the Petitioner did not submit any documentation of the Beneficiary's alleged education. In a request for evidence (RFE) the Director requested the submission of such evidence and advised that translations of foreign language documentation must 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. The Director also requested that an evaluation of the Beneficiary's education be submitted to establish its U.S. equivalency.

In response to the RFE the Petitioner submitted copies of Farsi and English language versions of high school transcripts and a graduation certificate indicating that that the Beneficiary attended [redacted] High School in [redacted] from 1997 to 2001, passed her final examinations in June 2001, and received her graduation certificate in the field of mathematics and physics on November 30, 2001. Every document, both English and Farsi, bears an official stamp of [redacted] Official English Translator of the Islamic Republic of Iran, [redacted] License No. 984." The Petitioner also submitted a copy of a document in Farsi and English identifying [redacted] as a "Certified English Translator to the Judiciary of I.R. [Islamic Republic of] Iran." Finally, the Petitioner submitted an evaluation of the Beneficiary's education by Silvergate Evaluations Inc. which stated that [redacted] High School is a

[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).

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 acknowledged the Petitioner's submission of Farsi and English language documents, but focused on the particular document in Farsi and English which identified [redacted] as a "Certified English Translator to the Judiciary of I.R. [Islamic Republic of] Iran" and stated that the validity of a sealed (stamped) document shall be subject to (1) certification of attached copies by the seal and signature of the translator, (2) non-alteration and/or obliteration of the translated text, and (3) intactness of the seal. The Director noted that this document was not signed by [redacted] did not state that the translations of the Beneficiary's educational documents were accurate and complete, and did not state that the translator was competent to translate from the foreign language into English. The Director concluded that the English translations of the Beneficiary's educational documents 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 the labor certification.

On appeal the Petitioner asserts that the Director misinterpreted the signature requirement as applying to the Beneficiary's license rather than the documents she translates. The Petitioner points out that every English translation submitted in this proceeding contains the translator's signature, next to a seal with printed language identifying [redacted] as an Official English Translator to The Judiciary of the Islamic Republic of Iran. In support of the appeal the Petitioner submits a copy of the official translation license granted to [redacted] by The Judiciary of the Islamic Republic of Iran in April 2014. In addition the Petitioner submits a statement from the translator, [redacted] confirming that she is an official translator approved by the Iranian Department of Justice, that her license allows her to use the seal to certify her document translations as accurate, and that the documents she translated in this proceeding are "a true, accurate and complete translation of the Farsi text and figures into English." These two documents, together with the translator's seal and signature on each translation, satisfy the specific requirements of 8 C.F.R. § 103.2(b)(3) because they certify that [redacted]'s English translations are complete and accurate, and that she is competent to translate from Farsi into English.

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).[2] The Director did not address this issue in his decision.

In addition, the Director may wish to examine whether the 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.

[2] 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.