U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30993333

Date: MAY. 14, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Skilled Worker)

The Petitioner, a commercial real estate business, seeks to employ the Beneficiary as a financial analyst. It requests classification of the Beneficiary as a skilled worker under the third preference employment-based immigrant visa category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This immigrant visa category 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 education, training, or experience.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary possessed the required experience for the offered position. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Immigration as a skilled worker usually follows a three-step process. First, the prospective employer must obtain a labor certification approval from the U.S. Department of Labor (DOL) to demonstrate that there are not sufficient U.S. workers who are able, willing, qualified, and available for the offered position. Section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5).

Second, the employer must submit the approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204 of the Act, 8 U.S.C. § 1154. The immigrant visa petition must establish that the foreign worker qualifies for the offered position, that the foreign worker and the offered position are eligible for the requested immigrant visa category, and that the employer has the ability to pay the proffered wage. *See* 8 C.F.R. § 204.5. These requirements must be satisfied by the priority date of the immigrant visa petition. *See* 8 C.F.R. § 204.5(g)(2); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg'l Comm'r 1977). For petitions that require a

labor certification, the priority date is the date on which the DOL accepted the labor certification application for processing. 8 C.F.R. § 204.5(d). In this case, the priority date is July 21, 2022.

Finally, if USCIS approves the immigrant visa petition, the foreign worker may apply for an immigrant visa abroad or, if eligible, for adjustment of status in the United States. Section 245 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

A. Qualification for the Offered Position

A skilled worker must be capable of "performing skilled labor (requiring at least 2 years training or experience)." Section 203(b)(3)(A)(i) of the Act. The requirements for the offered position are set forth at Section H of ETA Form 9089. USCIS must examine the job offer portion of the labor certification to determine the minimum requirements of the offered position. In evaluating a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine a position's minimum requirements. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Madany* v. *Smith,* 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that the "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original). USCIS' interpretation of the job requirements must involve reading and applying the plain language of the labor certification application form even if the employer may have intended different requirements than those stated on the form. *See Rosedale Linden Park Co. v. Smith*, 595 F.Supp. 829, 834 (D.D.C. 1984).

Here, Section H of the labor certification states that the offered position of financial analyst does not require education or training, but does require 36 months of experience in the job offered. Experience in an alternate occupation is not acceptable. In the addendum attached to the labor certification, the Petitioner described the duties as follows:

- Analyze financial info to produce forecasts of real estate development opportunities and economic conditions for use in making real estate investment decisions; analysis of variances to budget/forecast for revenue/margin as well as operating expenses.
- Interpret data affecting the sale of various types of residential developments, such as price, yield, stability, future trends and economic influences.
- Monitor financial developments.
- Determine costs of operations by establishing standard costs.
- Prepare monthly analysis, reports and cash flow projections.
- Production of investment memorandums for potential investors.

In Section K of the labor certification, the Beneficiary listed only one previous employer, stating that she was employed by H- I- S.A., a construction tools wholesaler, as a general manager/financial analyst from May 1, 1998 to November 30, 2001. In support of her qualifications for the position, the Petitioner submitted a letter from H- I- S.A. confirming the Beneficiary's job title and employment dates. The letter also stated that she had "finance responsibilities, administration, and business analyst functions," and listed her duties:

- Responsible for the Administrative and Financial Management.
- Determine costs of operations by establishing standard costs.
- Analyze financial info to produce forecast, and analysis of variances to budget/forecast for revenue/margin as well as operating expenses.
- Monitor financial developments. Prepare financial analyses and projections.
- Prepare monthly analysis, reports, and cash flow projections.
- Interpret data affecting sales including economic influences. Perform financial analyses of performance against budgets and benchmarks for existing assets.
- Establish and maintain portfolio management and acquisition databases.

In her decision, the Director concluded that the duties described above were not commensurate with those of the job offered, and that the Beneficiary's previous employment appeared to be in an "alternate occupation" which was not qualifying per the terms of the labor certification. The Director also noted that the Beneficiary had not indicated that she was previously employed in three nonimmigrant visa applications submitted to the U.S. Department of State in 2018, 2013, and 2009, and did not sufficiently resolve this discrepancy after being notified of it in the Director's request for evidence.

On appeal, the Petitioner asserts that the Beneficiary's experience "is consistent with the need" of its business, and that the "offered position is in no way subjective to being considered an alternate position." It notes that the letter it submitted from H- I- S.A. complies with the regulatory requirement at 8 C.F.R. § 204.5(g)(1) pertaining to evidence of work experience.

As noted above, the labor certification specifies that the Petitioner will not accept experience in a related occupation. Experience "in the job offered" means experience "performing the key duties of the job opportunity." *Matter of Symbioun Techs., Inc.*, 2010-PER-01422, slip op. at 4 (BALCA Oct. 24, 2011) (citations omitted). Three key job duties, as stated on the labor certification, are to "produce forecasts of real estate development opportunities for use in making real estate investment decisions," "interpret data affecting the sale of various types of residential developments, such as price, yield, stability, future trends and economic influences," and "production of investment memorandums for potential investors." The Petitioner's detailed description of these duties pertaining to its business in the real estate market demonstrates that specific experience in that market and in preparing reports and investment memoranda tailored to it is required for the offered position. Therefore, experience in the offered position of financial analyst must include the key job duties of forecasting real estate development opportunities, interpreting data specific to the real estate market, and preparing reports for potential real estate investors.

The letter from H- I- S.A. indicates that the Beneficiary "monitor[ed] financial developments," "prepare[d] monthly analysis, reports and cash flow projections," and "determine[d] costs of operations by establishing standard costs," which is consistent with the duties of the offered position as stated on the labor certification. But the letter does not indicate that she has experience with producing forecasts of real estate development opportunities, interpreting residential real estate sales data, and preparing investment reports. We further note that the Beneficiary indicated in Section K of the labor certification that H- I- S.A. was not involved in the commercial or residential real estate market but is a wholesaler of construction tools. The record, therefore, does not establish the Beneficiary's experience "in the job offered."

B. Evidence of the Beneficiary's Qualifying Experience

As mentioned above, in addition to concluding that the Beneficiary is not qualified for the offered position, the Director noted that her responses on nonimmigrant visa application forms submitted to the U.S. Department of State on three occasions, in which she indicated that she was not previously employed, were not consistent with the evidence of her experience with H- I- S.A. The Petitioner responded to the Director's RFE with an explanation from the Beneficiary in which she stated that this was an honest mistake, and with additional letters from individuals stating that they were former co-workers of the Beneficiary during her employment with H- I- S.A. However, the Beneficiary's signature on the nonimmigrant visa forms "establishes a strong presumption" that she knew and assented to the contents, including her response to the question of whether she was previously employed. *See Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018).

The Petitioner must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, we note that all three of the letters include the exact description of the Beneficiary's duties with H- I- S.A. as the letter from the company's general manager at the time of filing, despite all of these letters being written more than twenty years after the dates when both the letter writers and the Beneficiary were employed with H- I- S.A. The use of identical language and phrasing across the letters suggest that the language in the letters is not the authors' own. *Cf. Surinder Singh v. BIA*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an adverse credibility determination in asylum proceedings based in part on the similarity of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). Because the letters, or at least the parts of them describing the Beneficiary's duties with H- I- S.A., appear to have been drafted by someone other than the purported authors, they possess little credibility or probative value. This factor, combined with the lack of other documentary evidence of the Beneficiary's employment, leaves this discrepancy unresolved.

III. CONCLUSION

The Petitioner has not established that the Beneficiary meets the minimum requirements for the job offered, nor has it resolved the inconsistencies relating to her previous employment. It therefore has not established eligibility for the requested classification.

ORDER: The appeal is dismissed.