U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 09712900

DATE: MAY 20, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for a Skilled Worker

The Petitioner, a gasoline stations business, seeks to employ the Beneficiary as an in-house accountant. It requests skilled worker classification for the Beneficiary under the third preference immigrant category. 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" immigrant classification 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 training or experience.

The Director of the Texas Service Center denied the petition on the ground that the Petitioner did not establish that the Beneficiary had a least two years of qualifying experience, as required to meet the minimum requirement of the labor certification and to be eligible for classification as a skilled worker.

On appeal the Petitioner submits a brief and supporting materials, and asserts that the evidence of record establishes that the Beneficiary has the requisite experience to meet the terms of the labor certification and qualify for skilled worker classification.

In visa petition proceedings it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we determine that the Petitioner has not met its burden of proof. The Petitioner has not established that the Beneficiary gained the requisite experience to qualify for skilled worker classification and for the proffered position under the terms of the labor certification. Therefore, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification (ETA Form 9089) 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 (Form I-140) 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.

II. ANALYSIS

To be eligible for classification as a skilled worker a beneficiary must have at least two years of training or experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(B). A beneficiary must also meet the specific educational, training, experience, and other requirements of the labor certification underlying the petition. *Id.* All requirements must be met by the petition's priority date,[1] which in this case is September 28, 2018. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

A. Requirements of the Labor Certification

The requirements for the proffered position of in-house accountant are indicated in section H of the labor certification (Job Opportunity Information). The pertinent requirements read as follows:

4.	Education: Minimum level required:	High School
5.	Is training required for the job?	No
6.	Is experience in the job offered required?	Yes
6-A.	How long?	24 months
7.	Is an alternate field of study acceptable?	No
8.	Is an alternate combination of education and experience acceptable?	No
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	No

Thus, to meet the requirements of the labor certification and qualify for skilled worker classification, the Beneficiary must have (1) a high school level education, and (2) two years of experience as an in-house accountant.

B. Beneficiary's Qualifications

Section J of the labor certification (Alien Information) asserts that the Beneficiary exceeded the minimum educational requirement with a master's degree in business administration (MBA) from [redacted] University in [redacted] Georgia, completed in 2018. With its initial evidence the Petitioner submitted copies of the Beneficiary's educational credentials which indicate that she earned a Higher Secondary Certificate from a school in [redacted] Pakistan, in 1998 (awarded in 2002), bachelor's and master's degrees from the University [redacted] in 2004 and 2007, and the MBA from [redacted] University in February 2018. Thus, the Beneficiary exceeded the minimum educational requirement of the labor certification before the priority date of September 28, 2018.

[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).

Section K of the labor certification (Alien Work Experience) asserts that the Beneficiary also exceeded the minimum experience requirement, listing two jobs as an in-house accountant totaling close to six years of experience at the time the labor certification was filed in September 2018. The specific employers and dates of employment were listed as:

- [redacted] in [redacted] Georgia, starting on July 1, 2018, and ongoing as of the priority date on September 28, 2018.
- [redacted] in [redacted] Pakistan, starting on June 10, 2002, and ending on December 15, 2007.

As its initial evidence of the Beneficiary's work experience the Petitioner submitted copies of two "experience letters" including: (1) a letter dated September 21, 2018, from [redacted], Manager, on the letterhead of [redacted] in [redacted] Georgia, stating that the Beneficiary had been working with the company since July 1, 2018, as an in-house accountant, and describing her job duties; and (2) a letter dated December 15, 2007, from [redacted] Proprietor, on the letterhead of [redacted] in [redacted] Pakistan, stating that the Beneficiary was employed as an in-house accountant from June 10, 2002 through December 15, 2007, and describing her job duties.

The Director issued a request for evidence (RFE) on June 4, 2019, noting that the Beneficiary's prior nonimmigrant visa application indicated that she was employed by [redacted] not from 2002 to 2007 as an in-house accountant, but rather from August 7, 2010, to October 23, 2019 [*sic*],[2] as an assistant accountant, a different job with different duties from those claimed in the labor certification and employment verification letter submitted with the instant petition. In response to the RFE the Petitioner asserted that the Beneficiary was employed two different times by [redacted], the first time as an in-house accountant from June 2002 to December 2007 and the second time as an assistant accountant from August 2010 to October 2013. The Petitioner stated that the Beneficiary's experience as an assistant accountant was not listed in the labor certification because section K specifically instructed the listing of (1) any job the Beneficiary held within the past three years and (2) any earlier experience that qualified the Beneficiary for the job offered. Neither of those alternatives applied to the Beneficiary's prior job of assistant accountant. Nonetheless the Petitioner submitted another "experience letter" from the proprietor of [redacted] dated October 29, 2013, asserting that the Beneficiary was employed as an assistant accountant from August 7, 2010, to October 29, 2013, and describing her job duties. The Petitioner also stated that the Beneficiary's accountant position with [redacted] which began on July 1, 2018, ended on October 31, 2018, after which the Beneficiary worked for [redacted] in [redacted] Texas, from November 15, 2018, to March 4, 2019.

The Director issued a notice of intent to deny (NOID) on September 6, 2019, once again pointing to the different employment experience claimed for the Beneficiary in this proceeding and in the prior nonimmigrant visa application. The Director indicated that the assistant accountant position claimed with [redacted] from 2010 to 2013 was relevant experience for the proffered position, that the alleged employment with [redacted] from November 2018 to March 2019 was a job within the last three years, and that both should therefore have been listed in the labor certification accompanying the

[2] Other evidence in the record shows that the termination date of the claimed employment was actually October 29, 2013.

instant petition. The failure to do so, the Director stated, represented an unresolved inconsistency in the record and lessened the credibility of the Petitioner's evidence as a whole, citing *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), and *Matter of Leung*, 16 I&N Dec. 12 (Dist. Dir. 1976).

In response to the NOID the Petitioner supplemented its previously submitted evidence of the Beneficiary's employment by [redacted] with two additional letters from the proprietor, one entitled "Appointment Letter" and dated June 1, 2002, informing the Beneficiary that she would be hired as an in-house accountant on June 10, 2002, the other entitled "Rejoining Appointment Letter" and dated August 3, 2010, informing the Beneficiary that she had been re-hired as an assistant accountant starting on August 7, 2010. The Petitioner also submitted a photocopy of an "Employee Identity Card" from [redacted] with the Beneficiary's photograph and hand-written entries identifying her as an in-house accountant whose "date of joining" was June 10, 2002, as well as copies of selected monthly "Employee Attendance Registers" of [redacted] from June 2002 to August 2007 listing the Beneficiary and several other employees. Addressing the omission from the Beneficiary's nonimmigrant visa application of the alleged employment as an in-house accountant with [redacted] in the years 2002-2007, the Petitioner asserted that the application submitted in March 2015 only asked for the last five years of the Beneficiary's employment. Therefore, it was appropriate to enter the alleged employment with [redacted] as an assistant accountant in the years 2010-2013, but not the earlier alleged employment in the years 2002-2007. As for the omission from the labor certification of the Beneficiary's alleged employment with [redacted] from November 15, 2018, to March 4, 2019, the Petitioner pointed out that this employment had not yet begun at the time the labor certification application was filed with the DOL in late September 2018.

The Director denied the petition on October 22, 2019, ruling that the Petitioner had not resolved the inconsistencies previously discussed concerning the Beneficiary's employment history. In the Director's view, the employee attendance registers and the employee identity card were unreliable evidence of the Beneficiary's alleged employment by [redacted] in the years 2002-2007 because of their mostly hand-written information. The Director alluded to government records indicating that the Beneficiary was a student during some of the time she claimed to be employed by [redacted] The Director also noted that identical language appeared in the labor certification and various employment verification letters describing the Beneficiary's job duties which, according to the Director, "diminishes their probative value." The Director concluded that the Petitioner failed to establish that the Beneficiary had the requisite two years of qualifying experience.

On appeal the Petitioner reiterates its previous explanations regarding the alleged inconsistencies in the Beneficiary's employment history as presented in her nonimmigrant visa application of 2015 and the labor certification in this proceeding. Arguing for the credibility of the employee attendance registers and the employee identity card from [redacted] the Petitioner asserts that hand-written entries are standard for small businesses in a third world country like Pakistan. According to the Petitioner, no pay records are available from [redacted] because the business is no longer in operation, and no tax records were generated by the Beneficiary's employment with [redacted] because her salary was exempt from income tax in Pakistan. As for the employment verification letters from [redacted] whose dates range from 2002 to 2013, the Petitioner acknowledges that they were all prepared in 2019 on old letterheads purportedly kept by the former proprietor, that their contents were based on information furnished by the Beneficiary to support the instant petition, and

that the dates were inserted by the former proprietor to accord with the employment time frame each letter addressed. Finally, the Petitioner asserts, and submits supporting evidence, that the Beneficiary's academic studies during the time of her alleged employment with [redacted] involved night classes or external study, and thus would not have impinged on her workdays.

We agree with the Petitioner that the Beneficiary's employment histories as presented in her nonimmigrant visa application and in the labor certification underlying the instant petition accord with the instructions on those respective documents. The 83-page online nonimmigrant visa application contains a note on page 32 – beneath the heading "Previous Work/Education/Training Information" – which reads: "Provide your employment information for the last five years that you were employed." *travel.state.gov/content/dam/visas/PDF-other/DS-160-Example_11012019.pdf* (last visited May 19, 2021). Thus, the Beneficiary correctly reported her alleged employment as an assistant accountant with [redacted] from August 2010 to October 2013 on her nonimmigrant visa application in March 2015, and correctly omitted any prior employment with [redacted] in the years 2002-2007. As for the labor certification, it specifically instructs at the top of section K: "List all jobs the alien has held during the past 3 years. Also list any other experience that qualifies the alien for the job opportunity." Thus, the labor certification application filed with the DOL on September 28, 2018, correctly listed the job with [redacted] that began on July 1, 2018,[3] because it was a job held during the past three years, as well as the alleged in-house accountant position with [redacted] from June 2002 to December 2007 because it was experience that would qualify the Beneficiary for job opportunity. The alleged assistant accountant position with [redacted] in the years 2010-2013 was correctly omitted from the labor certification because it was neither a job within the past three years nor qualifying experience since the labor certification requires experience as an accountant, not as an assistant accountant with different job duties. Furthermore, we agree that the Beneficiary's employment with [redacted] from November 15, 2018, to March 4, 2019,[4] was properly omitted from the labor certification because it did not begin until after the labor certification application was filed with the DOL on September 28, 2018. While the job with [redacted] started and ended before the DOL's certification of the ETA Form 9089 on April 16, 2019, it would not have been qualifying experience under any circumstances because it post-dated the priority date of September 28, 2018. In accord with the foregoing discussion, we reject the Director's determination that there are any inconsistencies between the presentation of the Beneficiary's employment history in her 2015 nonimmigrant visa application and its presentation in the labor certification of this proceeding.

Nevertheless, we are not persuaded by the evidence of record that the Beneficiary actually had five years of qualifying experience as of the priority date (September 28, 2018). This issue hinges solely on whether the evidence establishes that the Beneficiary was employed by [redacted] as an in-house accountant in the years 2002-2007, since she had less than three months of employment as an in-house accountant with [redacted] before the priority date and the labor certification's requirement that the Beneficiary have two years of experience in the job offered means that her alleged employment by [redacted] from 2010 to 2013 as an assistant accountant, with different job duties, would not be qualifying experience. As noted previously, the letters submitted by the former proprietor of [redacted], a business no longer in operation, were all prepared in 2019 notwithstanding the earlier

[3] As evidence of the Beneficiary's employment by [redacted] the record includes a copy of the 2018 Form W-2, Wage and Tax Statement, issued to her by the company.

[4] The record includes a copy of the 2018 Form W-2, Wage and Tax Statement, issued by [redacted] to the Beneficiary.

dates typed on the letters. Thus, none of the letters is contemporaneous with the employment they claim to verify. We also note a substantive anomaly in the letters insofar as the "Appointment Letter" bearing the date of June 1, 2002, stated that the Beneficiary 's annual salary as an in-house accountant would be Rs 144,000, while her "Rejoining Appointment Letter" bearing the date of August 3, 2010, stated that her annual salary as an assistant accountant would be Rs. 216,000. The Petitioner has not explained why the Beneficiary's salary would be so much higher in the inferior position of assistant accountant than it was in the superior position of a full in-house accountant. According to the Beneficiary she contacted the former proprietor of [redacted] in 2019, who told her that he had no pay records but did have "access to attendance record[s]." Why the former proprietor could still provide attendance records, but no pay records, has likewise not been explained. Moreover, there is no verification on the attendance records themselves that they were prepared contemporaneously with the months they purport to cover between 2002 and 2007. Finally, the photocopied "Employee Identity Card" with the date of June 10, 2002, has a feature that calls its authenticity into question. Beneath a color photograph of the Beneficiary the name and address of the business, [redacted] is printed in dark ink that overlaps the upper left corner of three lines of printed language in lighter ink that are too small and indistinct to decipher. This overlap of the card's printed language suggests that the card is not genuine, does not date from the time of the Beneficiary's alleged employment in the years 2002-2007, and may have been manufactured specifically for the purposes of this proceeding.

For all of the reasons discussed above, the evidence of the Beneficiary's alleged employment by [redacted] as an in-house accountant in the years 2002-2007 is deficient. The documentation submitted by the Petitioner is strewn with inconsistencies and anomalies that have not been explained. As previously indicated by the Director, it is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, at 591-92. Doubt cast on any aspect of the petitioner's evidence also reflects on the reliability of the petitioner's remaining evidence. *See id.* Accordingly, we determine that the Petitioner has not established that the Beneficiary gained any qualifying experience with [redacted] and therefore did not meet the experience requirement of the labor certification or the experience requirement for skilled worker classification by the petition's priority date.

III. CONCLUSION

The Petitioner has not established that the Beneficiary had two years of experience as an in-house accountant by the priority date of September 28, 2018. Therefore, the Beneficiary does not qualify for the proffered position under the terms of the labor certification or for the requested visa classification of skilled worker.

ORDER: The appeal is dismissed.