U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF ARZE-

DATE: MAY 29, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a manufacturer of [redacted], seeks to employ the Beneficiary as a process engineer. It requests his classification under the third-preference immigrant category as a professional. 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 to work in a job requiring at least a bachelor's degree.

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the Beneficiary's possession of the minimum education required for the offered position or the requested classification. The Director also found that the record did not establish the Beneficiary's qualifying experience for the position.

On appeal, the Petitioner submits evidence of the accreditation of the Mexican school that issued the Beneficiary's degree and the length of the academic program he completed. The Petitioner also argues that, in assessing whether the Beneficiary had the requisite experience "in the job offered," the Director erred by focusing on the titles of the Beneficiary's former jobs, rather than on his duties.

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

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as a professional generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for an offered position, and that employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If DOL approves an offered position, an employer must next submit the labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS determines whether a beneficiary meets the

requirements of an offered position and a requested classification. If USCIS grants 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. THE EDUCATIONAL REQUIREMENTS

As previously indicated, a petition for a professional must demonstrate that a beneficiary has a U.S. bachelor's degree or a foreign equivalent degree. 8 C.F.R. § 204.5(l)(3)(ii)(C). A petitioner must also establish a beneficiary's possession, by a petition's priority date, of all DOL-certified job requirements of an offered position.[1] *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 an accompanying labor certification to determine the minimum requirements of an offered position. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Tongatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984) (holding that the immigration service "may make a *de novo* determination of whether the alien is in fact qualified to fill the certified job offer").

Here, the labor certification states the minimum requirements of the offered position of process engineer as a U.S. bachelor's degree or a foreign equivalent degree in industrial engineering, and three years of experience "in the job offered." On the labor certification, the Beneficiary attested that, by the petition's priority date, a Mexican school awarded him a bachelor's degree in industrial engineering. In support of his claimed educational qualifications, the Petitioner submitted copies of his academic transcript and a *titulo profesional* in industrial and systems engineering from the school. In response to the Director's written request for additional evidence (RFE), the Petitioner also submitted an independent evaluation of the Beneficiary's foreign diploma. The evaluation states that the credential equates to a U.S. bachelor's degree in industrial and systems engineering.

The Director found that the record lacked evidence that the school that issued the Beneficiary's diploma was accredited. The Director also found that the evaluation did not sufficiently explain how the credential equates to a U.S. bachelor's degree in the required field of study. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that the immigration service may reject or give less evidentiary weight to an expert opinion that conflicts with other evidence or "is in any way questionable").

On appeal, the Petitioner submits an amended evaluation stating that the institute attended by the Beneficiary received accreditation from both Mexican and U.S. educational authorities. The evaluator also stated that, if the Mexican school lacked accreditation, the original evaluation would have indicated so, or he would not have issued it. Corroborating the evaluation, the school's website states that Mexican authorities accredited the program in industrial and systems engineering at the campus attended by the Beneficiary. *See* [redacted] https:/[redacted] about-us/accreditation (last visited May 17, 2019). A preponderance of evidence therefore establishes that the school was accredited.

[1] This petition's priority date is April 17, 2018, the date the DOL accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

Also, the amended evaluation indicates that the Beneficiary's *titulo profesional* reflects completion of a five-year university program, and that the resulting degree was equivalent to a U.S. bachelor's degree. The record, including the Beneficiary's transcripts which show completion of 10 semesters of course work, support the evaluation's conclusions. A preponderance of evidence therefore establishes the Beneficiary's possession of the foreign equivalent of a U.S. bachelor's degree in industrial engineering.

The Petitioner has demonstrated the Beneficiary's possession of a U.S. bachelor's degree or a foreign equivalent degree from an accredited school in the requisite field of study. We will therefore withdraw the Director's contrary findings.

III. THE REQUIRED EXPERIENCE

As previously indicated, the Petitioner must also demonstrate the Beneficiary's possession, by the petition's priority date, of at least three years of experience "in the job offered." The Petitioner indicated on the labor certification that it will not accept experience in an alternate occupation.

On the labor certification, the Beneficiary attested that he gained almost 12 years of full-time, qualifying experience by the petition's priority date. He stated that a manufacturer of irrigation systems employed him, first in Mexico and later in the United States, from December 2005 to August 2017.

Pursuant to 8 C.F.R. § 204.5(l)(3)(ii)(A), the Petitioner submitted letters from the Beneficiary's former employer in support of the Beneficiary's claimed, qualifying experience. The Petitioner also submitted written job descriptions from the former employer of the positions that the Beneficiary held with the company. The Director, however, found that the Petitioner did not demonstrate the Beneficiary's possession of at least three years of experience in the job offered.

On appeal, the Petitioner argues that the Director improperly focused on the job *titles* of the Beneficiary's former positions. The Petitioner states that it intended the offered position to require at least three years of experience performing the job *duties* of the occupational classification of the offered position: "industrial engineer." *See* O*NET Online, https://www.onetonline.org (last visited May 20, 2019).[2]

We agree that the job *duties* performed by the Beneficiary must determine whether he has the requisite experience "in the job offered." But the duties of the occupational classification that DOL assigned to the offered position are irrelevant. Rather, experience "in the job offered" means "experience performing the key duties of the *job opportunity*." *Matter of Symbioun Techs., Inc.*, 2010-PER-01422, 2 (BALCA Oct. 24, 2011) (citing *Matter of Maple Derby, Inc.*, 1989-INA-00185 (BALCA May 15, 1991) (*en banc*) (emphasis added).[3]

[2] O*NET, the Occupational Information Network, is a free, online database containing hundreds of occupational definitions based on the Standard Occupational Classification (SOC), a U.S. government system of classifying jobs.

[3] Decisions of the Board of Alien Labor Certification Appeals (BALCA) do not bind us. But we may follow BALCA's

The labor certification states the following job duties of the offered position:

> Employer manufactures [redacted]. Analyze [redacted] designs for the medical and aerospace industries. Propose modifications to improve [redacted] performance consistent with RJG standards (e.g. the industry standard governing the production of [redacted]).[4] Continually improve product quality and reduce costs of production by developing and maturing programming and CNC machining processes, developing process specifications/documentation to ensure manufacturing systems are in place to ensure [redacted] are produced to required regulations, standards and specifications.[5] Develop and perform specific projects for continuous improvement utilizing Lean Six Sigma methodologies. Implement systems to optimize overall operational efficiency and establish key performance indicators to monitor and adjust production equipment for quality and productivity increase.

The letters and job descriptions from the Beneficiary's former employer do not establish his performance of the key duties of the offered position. The Beneficiary attested on the labor certification that his former employer manufactured irrigation systems. Contrary to the job description of the offered position, the Petitioner's evidence therefore does not indicate that the Beneficiary analyzed [redacted] designs "for the medical and aerospace industries." The evidence also does not indicate that the Beneficiary's prior positions involved proposing modifications "consistent with RJG standards," or developing and maturing "CNC machining processes." The record therefore does not establish the Beneficiary's possession of at least three years of experience "in the job offered."

Citing federal court cases, the Petitioner argues that its intention should control interpretation of the job requirements stated on the labor certification. *See SnapNames.com, Inc. v. Chertoff*, No.CV 06-65-MO, 2006 WL 3491005 (D. Or. Nov. 30, 2006); *Grace Korean United Methodist Church v. Chertoff*, 437 F.Supp.2d 1174 (D. Or. 2005). Because the Petitioner intended the offered position to require experience in the occupational classification of industrial engineer, the company contends that experience "in the job offered" is not required.

U.S. district court decisions, however, are not binding in other matters. *See Matter of K-S-*, 20 I&N Dec. 715, 718 (BIA 1993) (finding that federal district court cases do not bind in other matters even if published and in their own districts). Moreover, in *SnapNames.com* and *Grace Korean*, the drafters of the language at issue on the labor certification applications were the petitioners. *Snap.Names.com*, 2006 WL 3491005 at *1 (stating that the petitioner listed the educational requirements of the offered position as a "B.S. or equivalent"); *Grace Korean*, 437 F.Supp.2d at 1176 (stating that the petitioner required a prospective employer to have a bachelor's degree "or equivalent"). Here, DOL drafted the term "in the job offered," which appears in the instructions on

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reasoning on issues affecting employment-based immigrant petitions.

[4] "RJG" appears to refer to a training and consulting company that specializes in the [redacted] industry.

[5] "CNC" appears to refer to computer numerical control, the automated control of machining tools.

the labor certification application form. Thus, the Petitioner may not rely on its own interpretation of the term, disregarding the form's instructions and DOL's long-time interpretation of them.

Citing *Chintakuntla v. INS*, No. 99-CV-05211, (N.D. Cal. May 4, 2000), the Petitioner also argues that, when interpreting ambiguous terms on labor certification applications, USCIS agreed to consider the intentions of petitioners. The court's order in *Chintakuntla*, however, applied only to immigrant petitions for advanced degree professionals where accompanying labor certifications stated educational requirements of a bachelor's degree plus five years of experience. *See* Opportunity to File Untimely Motion to Reconsider Decisions Denying EB-2 Immigrant Visa Petitions, 65 Fed. Reg. 41093 (July 3, 2000).[6] Here, the Petitioner does not seek classification of an advanced degree professional and does not require a bachelor's degree and five years of experience for its position. As such, its emphasis on this case is misplaced. Also, the term "in the job offered" on the Petitioner's labor certification application is not ambiguous. DOL's long-time interpretation of the term governs.

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary's possession of the qualifying experience for the offered position. For this additional reason, we will affirm the petition's denial.

IV. ABILITY TO PAY THE PROFFERED WAGE

Although unaddressed by the Director, the record also does not establish the Petitioner's ability to pay the proffered wage of the offered position. A petitioner must demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must generally include copies of annual reports, federal tax returns, or audited financial statements. *Id.* If a petitioner employs at least 100 people, however, USCIS may accept a statement from a financial officer as proof of the petition's ability to pay. *Id.*

Here, the labor certification states the proffered wage of the offered position of process engineer as $81,578 a year. As previously noted, the petition's priority date is April 17, 2018. The Petitioner stated on both the petition and the labor certification that it employs eight people.

As of the appeal's filing, required evidence of the Petitioner's ability to pay the proffered wage in 2018, the year of the petition's priority date, was not yet available. Thus, in any future filings in this matter, the Petitioner must submit copies of annual reports, federal tax returns, or audited financial statements for 2018. The Petitioner may also submit evidence of wages it paid the Beneficiary in 2018, or materials in support of the factors stated in *Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

[6] *See also* Memorandum from Michael D. Cronin, Acting Assoc. Comm'r, Office of Programs, & William R. Yates, Deputy Exec. Assoc. Comm'r, Office of Field Ops., *Educational and Experience Requirements for Employment-Based Second Preference (EB-2) Immigrants*, 4 HQ 70/6.2, AD00-08 (Mar. 20, 2000).

V. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's qualifying experience for the offered position. We will therefore affirm the Director's denial of the petition. Contrary to section 291 of the Act, 8 U.S.C. § 1361, the Petitioner has not met its burden of establishing eligibility for the requested benefit.

ORDER: The appeal is dismissed.

Cite as *Matter of ARZE-*, ID# 4992474 (AAO May 29, 2019)