U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Other Worker

The Petitioner, a church, seeks to employ the Beneficiary as an administrative assistant. It requests classification of the Beneficiary as an unskilled worker under the third preference employment-based immigrant visa category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b) (3)(A)(iii). 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 less than two years of training or experience.

The Director of the Nebraska Service Center revoked the approval of the petition, concluding that the Beneficiary did not possess the experience required to perform the offered position. We dismissed the Petitioner's subsequent appeal. The matter is now before us on a motion to reopen.

The Petitioner bears the burden of establishing eligibility for the requested immigration benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. We will grant the motion to reopen and sustain the appeal. The revocation of the approval of the petition with be withdrawn.

Immigration as an unskilled 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 establish 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.[1]

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.

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[1] 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. *See* 8 C.F.R. § 204.5(d). In this case, the priority date is April 4, 2016.

The regulation at 8 C.F.R. § 103.5 permits an affected party to file a motion to reopen or a motion to reconsider on an unfavorable decision. Motions request a review by the same authority that issued the latest decision in the proceeding. 8 C.F.R. § 103.5(a)(1)(ii). This matter is properly before us because it is a motion to reopen our decision dismissing the Petitioner's appeal.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Resubmitting previously provided evidence or reasserting previously stated facts do not meet the requirements of a motion to reopen. The new facts must also be relevant to the grounds of the unfavorable decision. A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). If the motion is granted, USCIS will issue a new decision which may be favorable or unfavorable to the affected party.

At issue in this case is whether the Beneficiary possessed the minimum required experience for the offered position as set forth on the labor certification by the petition's April 4, 2016 priority date. *Matter of Wing's Tea House,* 16 I&N Dec. at 160. USCIS examines the job offer portion of the labor certification to determine a position's minimum requirements. We may neither ignore a certification term, nor impose additional requirements. *See Madany* v. *Smith,* 696 F.2d 1008, 1015 (D.C. Cir. 1983).

Here, the labor certification states that the offered position required a high school diploma and one year of experience as an administrative assistant. Section H.14 of the labor certification, "Specific skills or other requirements," states that the offered position requires "computer proficiency."

The labor certification states that the Beneficiary worked as an administrative assistant for a church in South Korea from March 2005 to May 2009. To establish a beneficiary's qualifying experience, the petition must contain an employment letter from the former employer that contains the employer's name, address, and title, and describes the beneficiary's experience in detail. 8 C.F.R. § 204.5(l)(3)(ii)(A).

After reviewing the Petitioner's motion, we conclude that the Petitioner has met the requirements of a motion to reopen set forth at 8 C.F.R. § 103.5(a)(2) and has established that it is more likely than not that the Beneficiary possessed at least one year of experience performing the duties of an administrative assistant before the priority date of the petition.[2]

ORDER: The motion to reopen is granted and the appeal is sustained. The Director's revocation of the approval of the petition is withdrawn.

[2] The preponderance of the evidence standard of proof governs this immigration benefit request. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010)*; see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965).