U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V-S- LLC

DATE: OCT. 13, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a software services and solutions business, seeks to employ the Beneficiary as a senior programmer analyst. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification *See* Immigration and Nationality Act, section 203(b)(2), 8 U.S.C. § 1153(b)(2). This "EB-2" employment-based immigrant classification allows a U.S. employer to sponsor a professional with a master's degree or bachelor's degree plus five years of experience for lawful permanent resident status.

The Director of the Nebraska Service Center found that, based on the date of the Beneficiary's baccalaureate degree diploma,[1] the Petitioner had not shown that the Beneficiary had acquired the five years of post-baccalaureate experience necessary to establish the equivalent of an advanced degree and to meet the terms of the labor certification prior to the visa petition's priority date. The Director denied the Petitioner's subsequent combined motion to reopen and motion to reconsider for this same reason.

On appeal, the Petitioner contends that the Beneficiary began to accrue the necessary five years of post-baccalaureate experience for classification as an advanced degree professional as of the date on which he passed his baccalaureate degree examination or on the date on which the University's registrar issued a certificate confirming his successful examination results. The Petitioner asserts that calculated from these dates, the Beneficiary's experience would be sufficient to establish his possession of the equivalent of an advanced degree. Alternatively, the Petitioner asserts that experience gained with it can be considered to meet the five years of experience required by the labor certification and for the requested classification.

Upon *de novo* review of the record, we will sustain the appeal.

In support of its claim that the Beneficiary was awarded his degree before the date on his diploma, the Petitioner has submitted the Beneficiary's diploma; his academic transcripts; the July 9, 2003, certificate from the [redacted] registrar; a May 16, 2016, statement from the Controller of

[1] The Beneficiary has a bachelor of engineering in information technology that the record establishes as the foreign equivalent degree of a U.S. bachelor's degree.

Examinations, [redacted] confirming the Beneficiary's June 2003 examination results; a June 24, 2016, "Provisional Certificate;" and evaluations of the Beneficiary's academic credentials prepared by professors associated with [redacted] and [redacted] The statute and regulations governing the EB-2 classification use the terms "degree" and "official academic record," not "diplomas." For EB-2 "bachelor plus five" petitions, the "initial evidence" rule requires the submission of an "official academic record" showing that a beneficiary has a foreign equivalent "degree." 8 C.F.R. § 204.5(k)(3)(i)(B). Therefore, an "official academic record" is not limited to a diploma.

Here, although we find the submitted provisional certificate and a university-issued statement of marks to be official academic records, neither is an official academic record that substantiates the claimed degree. The certificate, dated 13 years after the Beneficiary claims to have completed the degree, states only that the Beneficiary was "eligible" for the award of his degree as of June 2003. Further, although the certificate indicates that the Beneficiary completed the academic requirements for his degree, it does not state that all degree requirements were completed. It also does not reflect that [redacted] approved the award of the Beneficiary's degree prior to its February 7, 2004, award of his diploma. Similarly, the Beneficiary's statement of marks confirms only that he passed the final examination for his degree in June 2003, not his completion of all substantive degree requirements. Accordingly, the Petitioner has not established that the Beneficiary completed all substantive requirements for his degree and that [redacted] approved his degree at any time prior to the February 7, 2004, diploma date.

Nevertheless, a review of the record finds that as of the February 22, 2011, priority date, the Beneficiary had the five years of relevant experience required by the labor certification and for EB-2 classification, if we consider the Beneficiary's experience gained with the Petitioner. Between the date of the Beneficiary's diploma and the time the Beneficiary began working for the Petitioner, he accrued over four years and eight months of qualifying experience. On appeal, the Petitioner contends that we should also consider the Beneficiary's approximately two years of experience with the Petitioner gained before the priority date, because it was in a position that was not "substantially comparable" to the offered position.[2] We agree. Because the experience with the Petitioner was not in a position substantially comparable to the offered position, this experience may be used to meet the terms of the labor certification and for EB-2 classification.[3]

The Petitioner has not overcome the Director's determination that the date on which the Beneficiary completed all substantive requirements to earn his degree was February 7, 2004. However, for the

[2] The regulation at 20 C.F.R. § 656.17(i)(3) bars a petitioner from using its substantially comparable employment of a beneficiary to qualify him or her for a job opportunity. A definition of "substantially comparable" is found at 20 C.F.R. § 656.17(i)(5)(ii) and states that a substantially comparable job or position means a job or position requiring the performance of the same job duties more than 50 percent of the time. Here, the duties claimed by the Beneficiary as those he performed as a senior computer programmer and confirmed in an experience letter from the Petitioner are not substantially comparable those of the offered position.

[3] Experience in a position that is not substantially comparable may be allowed if the labor certification allows for experience in an alternate occupation, as it does in this case.

reasons discussed, we find the record to demonstrate that the Beneficiary has the minimum of five years of qualifying post-baccalaureate employment experience required for EB-2 classification and the job opportunity set forth in the labor certification.

ORDER: The appeal is sustained.

Cite as *Matter of V-S- LLC*, ID# 406964 (AAO Oc. 13, 2017)