U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF 24/7 B-C- LLC

DATE: OCT. 23, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a background check company, seeks to employ the Beneficiary as a research information 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 (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based "EB-2" classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that the Beneficiary possessed the required experience and skills for the proffered position. The Petitioner subsequently filed a motion to reopen and reconsider with additional evidence; however, the Director denied the motion on the same basis.

On appeal, the Petitioner asserts it has provided sufficient information to establish that the Beneficiary's experience with her prior employer was qualifying.

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

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer must obtain an approved labor certification from the U.S. Department of Labor (DOL).[1] *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, 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 U.S. workers similarly employed. Section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer may file an immigrant visa petition 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.

[1] The date the labor certification is filed, in cases such as this one, is called the "priority date."

A petitioner must establish that a beneficiary meets all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

II. ANALYSIS

At issue is whether the Beneficiary has the experience and skills requiremed for the proferred position. In order to determine what a job opportunity requires, we must examine "the language of the labor certification job requirements." *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine the certified job offer exactly as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). Our interpretation of the job's requirements must involve reading and applying the plain language of the alien employment certification application form. *Id.* at 834. Moreover, we read the labor certification as a whole to determine its requirements. "[The] Form ETA 9089 is a legal document and as such the document must be considered in its entirety." *Matter of Symbioun Techs., Inc.*, 2010-PER-01422, 2011 WL 5126284 (BALCA Oct. 24, 2011) (finding that a "comprehensive reading of all of Section H" of the labor certification clarified an employer's minimum job requirements).[2]

In this case, the labor certification requries 24 months of experience in the job offered; experience in an alternate occupation is not acceptable. According to the description on the labor certification, the offered position involves the following duties:

- "Responsible for researching, collecting and performing statistical analysis needed to monitor trends, patterns, and changes in regulations of criminal and consumer data."
- "Conducts research using bibliographic and various other data collection methods requiring frequent problem solving, and critical thinking to provide actionable recommendations in a clear, concise, business language."
- "Provide research data that will assist clients to make better decisions regarding FCRA regarding [sic] pre-screening services."

The Petitioner also stated that the position required:

> Knowledge of research and investigative methodology, its application to a variety of problems, and the methods employed in the presentation of results; principles, methods and techniques for research and data collection; principles and practices of utilizing computers for management reporting and analysis; computer based systems and

[2] Although we are not bound by decisions issued by the Board of Alien Labor Certification Appeals, we, nevertheless, may take note of the reasoning in such decisions when considering issues that arise in the employment-based immigrant visa process.

> associated principles and practices used for data gathering, organization, reporting and analysis, such as database management, graphics, word processing and spreadsheets

The Petitioner further required the following special skills in part H.14 of the labor certification: "2 years progressive experience producing detailed data-driven reports and analyses which has included utilizing a database program and spreadsheets for information reporting and analysis including responsibility for developing planning strategies and preparing comprehensive reports."

On the labor certification, the Beneficairy states that she has been employed as a research information analyst with the Petitioner since April 2010, and was employed as a librarian at [redacted] in Nigeria from November 1, 1993, to April 1, 2010.[3] The Petitioner provided two experience letters from [redacted] discussing the Beneficairy's employment there.

According to the 2014 experience letter from [redacted] the Beneficiary had worked as a librarian at the school from November 1993 to April 2010, and her duties were as follows:

> [The Beneficiary] was responsible for overseeing the daily operation of the library. Some of her duties included teaching users how to use research resources as well as carrying out necessary research activities. She conducted research using bibliographic and various other data collection methods requiring frequent problem solving, and critical thinking to provide recommendations in clear, concise, language.

The school also attested that the Beneficiary is proficient in Microsoft Office databases, power point for presentations, and managing information, and described her communication and educational skill sets.

After the Director notified the Petitioner that the submitted experience letter was insufficient to establish that the Beneficiary possessed the required experience in the job offered or the required skills, the Petitioner submitted a new letter from the school. In this new letter from 2016, [redacted] explained that the school serves children from "Foundation 2 (Reception) to Year 6," and that the Beneficiary's "core duties involve[d] data collection and research and presentation of information." According to the school, the primary duties required "research of information, analyzing the information, and presenting the information as necessary in the form of reports and other presentation methods." While serving as librarian at the elementary school, the Beneficiary "conducted research using bibliographic and various other data collection methods requiring frequent problem solving, and critical thinking to provide recommendations in clear, concise language."

On appeal, the Petitioner asserts that the Beneficiary's duties as a librarian at [redacted] were sufficiently similar to those listed on the labor certification for the position of research information analyst to establish that she has qualifying experience, and provides a chart comparing the duties of the

[3] The Beneficiary generally may not rely upon experience gained with the Petitioner. 20 C.F.R. § 656.17(i)(4). Here the Beneficiary's experience with the Petitioner was in the job offered and may not be considered as qualifying experience.

proffered position with those described in the school's letters. The Petitioner cites to DOL cases and contends that the relevant consideration is whether the actual job duties are similar rather than the job titles. We agree that the proper inquiry is whether or not the Beneficiary has the required amount of experience performing the key duties of the proffered position. If the Beneficiary's prior experience was performing those key duties, then the prior experience may be considered qualifying experience. *See Matter of Symbioun Techs., Inc.*, 2011 WL 5126284. However, the Petitioner here has not demonstrated the Beneficiary's prior experience was in a position where the key duties of the offered position were performed.

The letters from [redacted] contain general claims that the Beneficiary conducted research, data collection, and presented information and reports while working as an elementary school librarian, and that she has progressive experience. However, of the three duties of the offered position, the letters from the school only addresses one, that of her experience conducting "research using bibliographic and various other data collection methods requiring frequent problem solving, and critical thinking to provide recommendations in a clear, concise language."[4] As noted above, to be considered experience in the job offered, the experience must be that of performing the key duties of the offered job. The record here lacks evidence that the Beneficiary has any amount of experience performing the key duties of being "responsible for researching, collecting and performing statistical analysis needed to monitor trends, pattern, and changes in regulations of criminal and consumer data," and providing "research data that will assist clients to make better decisions regarding FCRA . . . pre-screening services." There is no mention of either of these duties or any experience working with criminal and consumer data or FCRA requirements in the experience letter from the school.

On appeal, the Petitioner claims that the Beneficiary's prior experience wherein she "worked on information reporting, spreadsheets, investigative methods, and research analyses techniques," and her "[c]ore duties involved data collection and research and presentation of information for specific purposes;" should be extrapolated to be considered experience in "researching, collecting and performing statistical analysis needed to monitor trends, pattern, and changes in regulations of criminal and consumer data." The Petitioner also contends that the Beneficiary's experience where she "collaborated with others and worked individually to produce a variety of informational and learning materials" and "[t]aught users how to use research resources" is evidence of her past experience providing "research data that will assist clients to make better decisions regarding FCRA . . . pre-screening services." However, despite the Petitioner's contention, the duties highlighted cannot be considered experience in the job offered, as they are clearly not related to work of the offered position. Moreover, given the context of the experience gained as an elementary school librarian, it does not appear possible that the Beneficiary could have gained experience researching trends, patterns and changes in regulations of criminal and consumer data or providing research regarding FCRA prescreening services, which are two out of the three duties stated on the labor certification.

[4] We note that although the proffered job involves communicating in a clear, concise, *business* language, the school does not claim that the Beneficiary has such experience.

Concerning the one duty the letter does discuss, that of conducting "research using bibliographic and various other data collection methods requiring frequent problem solving, and critical thinking to provide actionable recommendations in a clear, concise, business language," the Petitioner has not provided sufficient details about the nature of the Beneficiary's prior duties to demonstrate that her performance of bibliographic research and other data collection methods within an elementary school environment can be considered qualifying experience for the position of a research information analyst within a company that claims it reviews, collects, and assesses the background information of individuals and companies. For these reasons, we find that the Petitioner has not established that the Beneficiary has the required experience in the job offered.

Regarding the skills required in part H.14, the 2016 letter from the school asserted that, among other skills, the Beneficiary "gained progressive experience producing detailed data-driven reports and analyses, including experience developing planning strategies for the enhancement of [the school's] library services as well as specific school educational initiatives, which required extensive research and presentation." It is not clear from the information provided under what circumstance the Beneficiary would have routinely produced "detailed data-driven reports and analyses which has included utilizing a database program and spreadsheets for information reporting and analysis including responsibility for developing planning strategies and preparing comprehensive reports," in the context of her job as an elementary school librarian, such that we could conclude that she acquired at least two years of experience with these required skills. While the Beneficiary may have tangentially used some of the skills stated on the labor certification for certain school initiatives, the Petitioner has not established that she has required two years of experience with the special skills outlined in H.14.

Thus, the Petitioner has not established that the Beneficiary's prior employment history is qualifying experience for purposes of this petition or that she possess the experience in the skills, as required by the labor certification.

III. CONCLUSION

The Petitioner has not established that the Beneficiary has the minimum experience and special skills required by the terms of the labor certification.

ORDER: The appeal is dismissed.

Cite as *Matter of Matter of 24/7 B-C- LLC*, ID# 595681 (AAO Oct. 23, 2017)