U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11211985

Date: SEPT. 2, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Professional

The Petitioner seeks to employ the Beneficiary as a senior manager technical recruiter. It requests classification of the Beneficiary under the third-preference, immigrant classification for professional workers. 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. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Beneficiary met the minimum education and skill requirements for the offered position.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. EMPLOYMENT-BASED IMMIGRATION

Employment-based immigration 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) of the Act, 8 U.S.C. § 1182(a)(5). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position. Id. Labor certification also indicates that the employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. Id.

If DOL approves a position, an employer must next submit the certified labor application 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 considers whether a beneficiary meets the requirements of a certified position and a requested immigrant visa classification. If USCIS approves the 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. ANALYSIS

A petitioner must establish a beneficiary's possession of all DOL-certified job requirements of an offered position by a petition's priority date.[1] See 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 a position's minimum requirements. USCIS may neither ignore a certification term, nor impose additional requirements. See, e.g., Madany v. Smith, 696 F.2d 1008, 1015 (D.C. Cir. 1983).

Here, the accompanying labor certification states the minimum requirements of the offered position of senior manager technical recruiter as a U.S. bachelor's degree, or a foreign equivalent degree, in computer information systems, and 12 months of experience in the offered job. No alternate field of study is accepted. Experience in an alternate occupation is not accepted. Section H.14 of the certification, "Specific skills or other requirements," also states that the job requires "experience with but not limited to MySQL, SNS, EC2, CloudFront CDN, AWS, JIRA, Route 53, Auto Scaling, Oracle, SAS and SQL Server."

Section J of the labor certification states that the Beneficiary's highest level of education relevant to the job offered is a bachelor's degree in business administration from [redacted] University in India, completed in 2007. As evidence of this credential the Petitioner submitted copies of a degree of bachelor of science and marks memorandum issued to the Beneficiary by [redacted] University in 2005, and a degree of master of business administration and consolidated grade sheet issued to the Beneficiary by [redacted] University in 2007.

Section J also claims that the Beneficiary gained 12 months of employment experience, including experience with the specific skills listed in Part H.14, during his employment with [redacted] as a talent acquisition specialist from September 2007 to April 2009.

The Director found that the record lacked evidence that the Beneficiary possessed the requisite degree in computer information systems, the only field allowed by the terms of the labor certification, or that the Beneficiary gained the requisite expertise with the software applications and skills specified on the labor certification. The Director concluded that the Petitioner had not established that the Beneficiary qualified for the offered position and denied the petition.

A. Minimum Education Requirement

The Petitioner submitted two academic equivalency evaluations from The Trustforte Corporation, dated 2016 and 2019. Both evaluations assert that the Beneficiary's post-secondary studies at [redacted] University were equivalent to three years of academic studies toward a bachelor of business administration degree at an accredited U.S. college or university, and that these studies, combined with his advanced bachelor's- and graduate-level studies at [redacted] University, were equivalent to a bachelor of business administration from an accredited U.S. college or university. The 2019 evaluation states, "the nature of the courses and credit hours involved indicate that [the

[1] This petition's priority date is February 22, 2019, the date the DOL received the labor certification application for processing. See 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

Beneficiary] attained the equivalent of a four-year Bachelor Business Administration Degree from an accredited U.S. college or university."

The Director found that the record established "that the Beneficiary has attained a level of education comparable to a bachelor of business administration in the United States." The issue on appeal is whether the Beneficiary meets the minimum requirements of the labor certification, as completed by the Petitioner and certified by the DOL, where the labor certification requires a bachelor's degree, or foreign equivalent degree, in computer information systems, and does not allow for an alternate field of study.

In order to determine what a job opportunity requires, we must examine "the language of the labor certification job requirements." Madany v. Smith, 696 F.2d at 1015. 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 labor certification application form. Id. at 834.

In this case, the accompanying labor certification states that the only field of study acceptable for the offered position is computer information systems. The Petitioner could have indicated on the labor certification in section H.7 that an alternate field of study is acceptable, but it did not. Further, the Petitioner did not elaborate on, or qualify, the required field of study in section H.14. Thus, based on the plain language of the labor certification, the Beneficiary does not qualify for the offered position based on his foreign equivalent degree in business administration. See, e.g., Estrada-Hernandez v. Holder, 108 F. Supp. 3d 936, 947 (S.D. Cal. 2015) (holding that we reasonably interpret a job's requirements based on the plain language of a labor certification) (citations omitted).

On appeal, the Petitioner asks that we examine the Beneficiary's educational accomplishments comprehensively to find that his underlying post-secondary studies are in the field of computer information systems, and that the natural progression for the Beneficiary's career is graduate studies in business administration. In support of this, the Petitioner submits printouts from the U.S. Bureau of Labor Statistics website summarizing the occupation of computer information systems managers, highlighting that individuals in this occupation "help determine the information technology goals of an organization and are responsible for implementing computer systems to meet those goals."

But the offered position is not a computer information systems manager, it is a senior manager technical recruiter. Further, the two evaluations of the Beneficiary's credentials in the record that the Petitioner submitted state that the Beneficiary's underlying post-secondary studies equate to three years of study toward a bachelor of business administration degree. Neither of the evaluations submitted by the Petitioner equates any of the Beneficiary's educational accomplishments to a degree in computer information systems.

The Petitioner asserts that the Trusteforte evaluations "unnecessarily and heavily weighted Beneficiary's educational achievements at the master's degree level to reach a determination that

Beneficiary achieved a degree in Business Administration rather than a bachelor of science degree." However, the Petitioner does not submit independent, objective evidence to support this assertion.[2]

A preponderance of evidence does not demonstrate the Beneficiary's possession of a baccalaureate degree in the field of study required by the offered position. We will therefore affirm the petition's denial.

B. Specific Skill Requirement

As noted above, the accompanying labor certification states that the offered position of senior manager technical recruiter requires 12 months of experience in the offered job, and experience with MySQL, SNS, EC2, CloudFront CDN, AWS, JIRA, Route 53, Auto Scaling, Oracle, SAS and SQL Server. The labor certification claims that the Beneficiary gained employment experience, including experience with these applications, during his more than 18 months of employment with [redacted] The Petitioner has established that the Beneficiary has more than 12 months of experience in the offered position. The issue on appeal is whether the Petitioner has established that the Beneficiary has experience with the specific skills listed in section H.14, as required by the labor certification.

The record includes a 2018 sworn statement from a former human resources manager at [redacted] (listing the Beneficiary's technical skills as "JavaScript, VBScript, SQL Server, Oracle, MS Office, Windows, Unix/Linux, HTML, CSS"). The record also includes a 2019 letter from the same individual (listing the Beneficiary's additional technical competencies as "MySQL, SNS, EC2, CloudFront CDN, AWS, JIRA, Route 53, Auto Scaling and SAS.")

The Director found that the 2018 statement did not include all of the specific skills listed in Section H.14 of the labor certification and that the record did not demonstrate that the Beneficiary met the skills requirement for the offered position. The Director informed the Petitioner of this deficiency in a notice of intent to deny (NOID) the petition. The Director declined to consider the 2019 letter submitted in response to the NOID because the letter did not explain why certain experience was not included in the earlier sworn statement. The Director cited to Matter of Izummi, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998), stating that "a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition confirm to Service requirements."

On appeal, the Petitioner contends that Matter of Izummi does not apply in this matter, as the updated letter was submitted in response to the NOID and not in an attempt to make a material change to the

[2] The Petitioner requested an additional 30 days to submit a supplemental brief and supporting evidence on appeal. This request was granted and the Petitioner's brief was received timely. However, in its brief the Petitioner requests that the record be kept open to allow submission of additional evidence, stating that it "diligently attempted to seek a second opinion on Beneficiary's education from experts in the field" and was unable to do so. 8 C.F.R. § 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal, permitting "a written request . . . for additional time to submit a brief which may be granted "for good cause shown." The regulations do not require us to grant a petitioner unlimited time to supplement an appeal. Here, the Petitioner did not submit evidence documenting its attempt to obtain an additional advisory opinion on the Beneficiary's educational credentials and, to date, we have not received any additional evidence beyond the Petitioner's brief. Therefore, we consider the record closed with the receipt of the Petitioner's brief on appeal.

petition. We agree that the Director's reliance on Matter of Izummi is misplaced. However, USCIS may assign less weight to testimonial evidence when it is contradicted by other evidence in the record of proceeding. See Matter of Treasure Craft of California, 14 I&N Dec. 190, 194 (Reg'l Comm'r 1972). Based on the second letter's later submission, without explanation, we find the letter to be less credible.

Upon further review of the record, we find an additional inconsistency with the 2019 letter describing the Beneficiary's technical competency, which must be resolved in any further filings. The Petitioner asserts that the Beneficiary gained experience with Route 53 during his employment with [redacted] from 2007 to 2009. However, it appears from an online search of this technology that Route 53 first became available in December 2010, approximately 18 months after the Beneficiary's employment with [redacted] ended.[3] Without resolution and further information, this apparent inconsistency casts doubt on the potential accuracy of the content in the 2019 letter in the record. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. Id.

Without further information, we cannot determine that the Beneficiary possessed all of the specific skills required for the offered position. We will therefore affirm the petition's denial.

III. CONCLUSION

The Petitioner has not established that the Beneficiary meets the minimum requirements as set forth on the accompanying labor certification. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Skirball Cultural Ctr., 25 I&N Dec. 799, 806 (AAO 2012). The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

[3] See Announcing Amazon Route 53 – A new DNS Service from AWS available at https://aws.amazon.com/about-aws/whats-new/2010/12/06/announcing-amazon-route-53-dns-service/ (accessed August 20, 2020).