U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A- CORP.

DATE: JULY 18, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a software development business, seeks to employ the Beneficiary as a senior software engineer. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigration classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1152(b)(2). This "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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Beneficiary possessed five years of post-baccalaureate employment experience. This experience is required to meet the terms of the labor certification and to qualify for the requested EB-2 classification.

On appeal, the Petitioner submits additional evidence and contends that the Beneficiary has the required post-baccalaureate experience as the Beneficiary earned his degree before his diploma was formally issued.

Upon *de novo* review of the record, we will withdraw the Director's decision and remand this matter for further action consistent with this opinion.

I. LAW

Employment-based immigration is generally a three-step process. First, an employer obtains an approved ETA Form 9089, Application for Permanent Employment Certification (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 domestic workers similarly employed. Section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the

[1] The date the labor certification is filed, in cases such as this one, is called the "priority date." A beneficiary must be eligible as of that date, and so in this case, the Beneficiary must have had the five years of requisite experience by the date the labor certification was filed.

employer files 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 applies 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. Date of the Beneficiary's Degree

The initial issue in this case is whether the Beneficiary's five years of post-baccalaureate experience required for classification as an advanced degree professional is measured from the date of the Beneficiary's diploma or, as claimed by the Petitioner, the date the Beneficiary completed the requirements for his degree.

The Beneficiary has a bachelor of technology in computer science and engineering from (India), which the record establishes is the foreign equivalent of a U.S. bachelor's degree.

The Director found that the Beneficiary's post-baccalaureate experience did not begin to accrue until the university issued his diploma on February 23, 2012. Considering only experience gained from the diploma date onward, the Director found that the Beneficiary did not possess the five years of post-baccalaureate experience by the priority date.

On appeal, the Petitioner maintains that the Beneficiary accrued the requisite five years of post-degree experience because his degree was conferred when he completed all degree requirements on July 24, 2008 and not the issuance of his diploma in 2012.

In support of this claim, the record contains the following evidence: the Beneficiary's diploma, issued by on February 23, 2012, which reflects that he qualified for his degree in 2008; his "grade cards" for the years he attended the which is affiliated with and a statement issued on August 25, 2016, by the director, which indicates that the Beneficiary earned his degree on July 24, 2008.

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.[2] Accordingly, we must conduct a case-specific analysis to determine

[2] *See Matter of O-A-, Inc.*, Adopted Decision 2017-03 (AAO Apr. 17, 2017); *see also* USCIS Adjudicator's Field Manual, Appendix 22-1, Memorandum from Michael D. Cronin, Acting Associate Commissioner, USCIS HQ 70/6.2,

whether the Beneficiary completed all substantive requirements to earn the degree and whether the university approved the degree as demonstrated by an official academic record. To do this, we consider the individual nature of the university's requirements for the Beneficiary's program of study and his completion of those requirements. The Petitioner bears the burden to establish that all of the substantive requirements for the degree were met and that the degree was in fact approved by the responsible university body.[3]

Here, we find the record to demonstrate that, as of July 24, 2008, the Beneficiary had completed all substantive requirements for his bachelor of technology degree in computer science and engineering, and that the university had approved the degree. Therefore, for the purposes of calculating the required five-year period of post-graduate experience, we find the Beneficiary to have obtained his degree as of July 24, 2008. Accordingly, we will withdraw the Director's finding that he did not receive his degree until his diploma was issued in 2012.

Nevertheless, for the reasons discussed below, the visa petition cannot be approved because the evidence in the record does not establish that the Beneficiary has the five years of experience required by the labor certification and for classification as an EB-2 professional under section 203(b)(2) of the Act.

B. Beneficiary's Experience

A petition for an advanced degree professional must be accompanied by documentation showing that the Beneficiary is a professional holding an advanced degree. 8 C.F.R. § 204.5(k)(1). An "advanced degree" is defined as "[a]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree *followed by at least five years of progressive experience* in the specialty shall be considered the equivalent of a master's degree." 8 C.F.R. § 204.5(k)(2) (emphasis added).

In addition, a petitioner must establish a beneficiary's possession of all the education, training, or experience stated on an accompanying labor certification by a petition's priority date. 8 C.F.R. §§ 103.2(b)(1), (12); *see also Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In the present case, the labor certification requires the Beneficiary to have five years of experience in the offered position of senior software engineer or as a project lead, computer programmer analyst, analyst

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Educational and Experience Requirements for Employment-Based Second Preference (EB-2) Immigrants (March 20, 2000). https://uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-26573/0-0-0-31107.html (last visited July 17, 2017) ("Whether the alien beneficiary possesses the advanced degree should be demonstrated by evidence *in the form of a transcript from the institution* that granted the advanced degree. An adjudicator must similarly consider the *baccalaureate transcript* . . . .") (emphasis added).

[3] Along with any other evidence, petitioners must also submit a copy of a beneficiary's statement of marks or transcript to demonstrate years of study and coursework completed. *See* 8 C.F.R § 204.5(k)(3) (requiring the submission of an official academic record as evidence of a beneficiary's possession of an advanced degree or equivalent of an advanced degree).

programmer or the equivalent, and stipulates that such employment must have included experience with Java, JSP, HTML, Java Script, Shell Script, Spring, Hibernate, Oracle, Tomcat, Weblogic, WAS8, JBOSS, Unix, Solaris, Windows, Eclipse, RAD, SSRS, HermsJMS MQ, jQuery, AJAX, Apache POI, Jxls, Xstream, Ant, Maven, Apache, Axis2, and wro4j.

In Section K of the labor certification, the Beneficiary claims the following employment experience:

- Senior software engineer, from November 25, 2015, onward;
- Computer programmer analyst, from November 29, 2013, to November 24, 2015;
- Project lead, from December 10, 2010, to November 29, 2013; and
- Analyst programmer, from July 31, 2008, to December 9, 2010.

To establish a beneficiary's work experience in employment-based immigration proceedings, the regulation at 8 C.F.R. § 204.5(g)(1) requires that:

> [E]vidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

Here, to establish that the Beneficiary has the required five years of qualifying experience, the Petitioner has submitted the following evidence: a service certificate, issued by the assistant manager, human resources at (India) stating the dates of the Beneficiary's employment (July 31, 2008, through November 29, 2013) and position (last designated as a project lead); a letter from this same individual to the Beneficiary terminating his employment; a letter from entitled "Reminder of Obligations," regarding the contractual restrictions placed on the Beneficiary's future employment; a sworn statement signed by the Beneficiary regarding refusal to provide him with a letter describing his roles and responsibilities while working for the company; and two affidavits, one from a former colleague at and the other from a coworker at which describe the work he performed for these companies. The Petitioner submits no evidence in support of the Beneficiary's claim to have been employed by during the period November 29, 2013, through November 24, 2015.

On the labor certification, the Beneficiary claims to have been employed as an analyst programmer with in India from July 31, 2008, until December 9, 2010, and as a project lead with , in Michigan, from December 10, 2010, until November 29, 2013. However, the service certificate signed by the assistant manager of human resources at in India states that the company employed the Beneficiary during this entire period and that his "last designation" was as a project lead. An additional inconsistency is created by the Beneficiary's sworn statement in which, contrary to his claims on the labor certification, he indicates that he was

employed by [redacted] in [redacted] Michigan from July 31, 2008, to November 29, 2013, as a project lead. As a result, we do not find the record to provide reliable evidence of the identity of the Beneficiary's employer during the July 31, 2008, to December 9, 2010, time period, nor the specific job he performed. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Petitioner has also provided no evidence of any relationship between [redacted] and [redacted]

Further, the Petitioner has not submitted the experience letters that regulation requires to establish the Beneficiary's qualifying employment experience. 8 C.F.R. § 204.5(g)(1). While we note the Beneficiary's sworn statement in which he claims that [redacted], as a matter of corporate policy, does not provide reference or experience letters for prior employees, this assertion, by itself, is not sufficient to establish the company's unwillingness to document his employment. Further, we do not find the record to contain the email requesting [redacted] verification of this policy, which the Beneficiary's statement indicates is attached. Although we note the submitted statements from the Beneficiary's former coworkers at [redacted] and [redacted] they do not meet the regulatory requirements at 8 C.F.R. § 204.5(g)(1) and have not been considered in the absence of evidence establishing [redacted] unwillingness to provide experience letters. However, we note that even if the record did establish the [redacted] policy described by the Beneficiary, it would not explain why no experience letter from [redacted] has been submitted for the record.

In light of the inconsistencies in the Beneficiary's employment history and the absence of any letters from the Beneficiary's prior employers describing the duties he performed for them, the record does not establish that the Beneficiary has the five years of employment experience required by the labor certification and for classification under section 203(b)(2) of the Act.

III. CONCLUSION

The Petitioner has established that the Beneficiary earned a foreign degree equivalent to a U.S. baccalaureate degree in computer science in 2008. We will, therefore, withdraw the Director's decision in this matter. However, the record does not demonstrate that the Beneficiary had at least five years of qualifying post-baccalaureate employment experience as of the priority date of the petition. Therefore, the Petitioner has not established that the Beneficiary meets the requirements of the offered position stated on the labor certification or for classification as an EB-2 advanced degree professional. Accordingly, we will remand this matter to the Director for further consideration and the issuance of a new decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.