U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-C-, INC.

DATE: JUNE 16, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an information technology consulting company, seeks to employ the Beneficiary as a business 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 immigrant 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 minimum educational requirements of the job offer.

On appeal, the Petitioner asserts that the Director ignored other relevant information in the record and maintains that the Beneficiary is qualified for the offered position.

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 domestic 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 beneficiary must be eligible as of that date, and so in this case the Beneficiary must have had a master's degree or bachelor's degree and the five years' requisite experience, and otherwise meet the terms of the labor certification, by the date the labor certification was filed.

For this advanced degree professional position, the labor certification must provide that the job requires an advanced degree or its equivalent. *See* 8 C.F.R. § 204.5(k)(4)(i). In pertinent part, Department of Homeland Security regulations define the term "advanced degree" 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). To be eligible for this classification, a beneficiary must possess a master's degree or a bachelor's degree with five years of qualifying post-baccalaureate experience. 8 C.F.R. § 204.5(k)(3).

II. ANALYSIS

As required by statute, the petition is accompanied by an approved ETA Form 9089, Application for Permanent Labor Certification, (labor certification) which is certified by the DOL. The priority date of the petition, based on the date that the labor certification was filed, is January 20, 2016. The Petitioner must establish that the Beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(l), (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).

A. Beneficiary's Education

The required education, training, experience, and skills for the offered position are set forth at Part H of the labor certification. In this case, the labor certification states that the position requires a master's degree in "Computer Science, Engineering (any branch), or any related field."

At issue is whether the Beneficiary possesses the education required by the labor certification. On the labor certification, the Beneficiary listed her education as a master's degree in business administration (MBA) from [redacted] completed in 2010. With respect to her education, the Petitioner submitted copies of the Beneficiary's diploma and academic transcript from [redacted] and a credentials evaluation prepared by [redacted] an Associate Dean of Academic Affairs of the School of Business, [redacted] Connecticut. Dr. [redacted] noted that the Beneficiary was awarded an MBA from [redacted] in 2010, and stated that he found the Beneficiary to be suitable for the position of business analyst within the context of an H-1B nonimmigrant worker petition (Form I-129) that the Petitioner had filed on her behalf. However, the matter before us is an appeal from a denied immigrant worker petition (Form I-140) for a visa classification with different statutory and regulatory requirements. Although Dr. [redacted] indicated that he reviewed the Beneficiary's qualifications and the Petitioner's representations relating to the H-1B nonimmigrant petition, the assertions and evidence relating to that petition are not part of this proceeding. Dr. [redacted] did not suggest that he had reviewed the terms of the Petitioner's labor certification and determined that the Beneficiary's education is a master's degree is in a field related to computer science or any branch of engineering

for purposes of this petition. The Director concluded that the evidence did not demonstrate that the Beneficiary possesses a master's degree in computer science or any branch of engineering, or that her MBA is in any related field of study. Consequently, the Director found that the Petitioner did not establish that Beneficiary possesses the minimum educational requirements as listed on the labor certification.

On appeal, the Petitioner does not contend that an MBA is in a field of study related to computer science or any branch of engineering. Instead, the Petitioner claims that the Director misinterpreted the requirements of the offered job and states that because the instructions to the labor certification refer, in part, to "the job being offered," its response to Part H, Question 4-B on the labor certification is meant to be read as listing a minimum educational requirement of a master's degree in "any other field related to the position of Business Analyst." Based on this reasoning, the Petitioner contends that the Beneficiary's MBA is in a qualifying major field of study, and that the Director incorrectly concluded that the Beneficiary did not possess the minimum educational requirement of a master's degree in a field of study related to that of computer science or any branch of engineering.

The relevant instructions to the labor certification at Part H, Question 4 direct the Petitioner to:

> 4. Select the minimum level of education required to adequately perform the duties of the job being offered.
>
> 4-B. Enter the major field of study required in reference to Question 4 . . . .

The plain language of the instructions to the labor certification direct each petitioner to list the major field of study in reference to the minimum level of required education listed in Question 4. The Director logically read the phrase "or any related field" as relating to the fields of study that immediately preceded the phrase in the response to Part H, Question 4-B. The Petitioner's assertions that the Director should have read the phrase as modifying its answer to Part H, Question 3, where the job being offered was listed, is not supported by the language of the labor certification instructions. For this reason, the Petitioner's explanation does not demonstrate that the Director misinterpreted the minimum educational requirements.

The Petitioner asserts that the Director ignored the reference to the job being offered in Question 4; however, USCIS must read the terms of the labor certification as drafted. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401 (Comm'r 1986). When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). In this case, the Director properly considered all of the terms of the labor certification, as presented by the Petitioner.

Moreover, although the Petitioner emphasizes on appeal that it intended the educational requirement of the proffered position to be read as allowing for a master's degree "in any field related to the

position of Business Analyst," the Petitioner did not submit its recruitment materials to potentially establish that it intended, and expressed to U.S. workers, that it would accept degrees other than those specified on the labor certification. The Petitioner could have submitted such documentation in response to the Director's request for evidence or on appeal, but it did not.

The Petitioner also contends that DOL would not have certified the ETA Form 9089 if it believed that the language at Part H, Question 4-B was inadequate, ambiguous, or misleading and therefore the Beneficiary did not meet the academic requires for the position. However, DOL's role is limited to evaluating the minimum requirements of the position offered and determining whether there are sufficient workers who are able, willing, qualified, and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a). Relying in part on *Madany*, the U.S. Federal Court of Appeals for the Ninth Circuit considered an amicus brief from DOL and stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the [DHS] under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the [DHS's] decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983).

Consequently, DOL's certification of the ETA Form 9089 does not establish that the Beneficiary's MBA satisfied the minimum level of education that the Petitioner listed. The Petitioner's evidence does not establish that the Beneficiary has a master's degree in a program of study that meets the minimum requirements listed on the labor certification, i.e., a master's degree in computer science, engineering (any branch), or any related field. Because the Petitioner has not established that the Beneficiary meets the minimum educational requirements on the labor certification, the petition may not be approved.

B. Beneficiary's Experience

Although not discussed by the Director, we also find that the record does not establish that the Beneficiary possesses the 12 months of experience in the job offered or in an "Information Technology, SE, Programmer-analyst-Data or related" position that is .required by the terms of the labor certification. On the labor certification, the Beneficiary claims employment experience as a data analyst with [redacted] from November 8, 2010, until February 11, 2011; as a financial/business analyst

with [redacted] from August 15, 2006, until December 31, 2007; and as a financial/business analyst with [redacted] from February 1, 2005, until August 14, 2006.[2]

Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the Beneficiary. 8 C.F.R. § 204.5(g)(1). If such evidence is unavailable, USCIS may consider other documentation relating to the Beneficiary's experience. *Id.*

Here, the Petitioner has submitted a letter from the Beneficiary's former employer corroborating her approximately four months of qualifying experience with [redacted] However, the Petitioner has not submitted letters from her other two claimed employers. Rather, the record contains affidavits from the Beneficiary concerning her prior experience. Although we may consider other documentation regarding prior experience if the required evidence is unavailable, the Petitioner in this case has not stated that the required evidence is in fact unavailable. Moreover, the affidavits from the Beneficiary, absent corroborating documentation such as pay records or statements from former coworkers, are self-serving and do not constitute sufficient evidence to establish that the Beneficiary has the experience required by the labor certification.

As such, we find that the evidence submitted does not establish that the Beneficiary has the 12 months of experience required by the labor certification.

III. CONCLUSION

The Petitioner has not established that the Beneficiary has the education and experience required to qualify for the job offered under the terms of the labor certification.

ORDER: The appeal is dismissed.

Cite as *Matter of E-C-, Inc.*, ID# 457561 (AAO June 16, 2017)

[2] Although the labor certification also lists the Beneficiary's most recent work experience as a business analyst for the Petitioner; the Beneficiary generally may not rely upon experience gained with the Petitioner. 20 C.F.R. § 656.17(i)(4).