U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-B-C- INC.

DATE: MAR. 28, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a provider of systems and software development services, seeks to permanently employ the Beneficiary as a senior computer programmer. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This category allows a U.S. business to sponsor a foreign national with a master's degree, or a bachelor's degree followed by 5 years of experience, for lawful permanent resident status. *See* 8 C.F.R. § 204.5(2) (defining the term "advanced degree").

The Director of the Texas Service Center denied the petition. The Director concluded that the record did not establish the Beneficiary's possession of a master's degree in a field of study required for the offered position.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary's master's degree is in an acceptable field.

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 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 U.S. workers are not able, willing, qualified, and available for the offered position and that employment of a foreign national in the position will not hurt the wages and working conditions of U.S. workers with similar jobs. Section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer may file a Form I-140, Immigrant Petition for Alien Worker, with U.S. Citizenship and Immigration Services (USCIS). *See*

[1] In cases like this one, the date of a labor certification's filing becomes a petition's "priority date." 8 C.F.R. § 204.5(d). By that date, a beneficiary must meet all the job requirements of an offered position as specified on a labor certification. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977).

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.

At issue is whether the Beneficiary meets the requirements of the offered position that DOL certified. We must also consider whether the Petitioner and the Beneficiary otherwise qualify for the requested classification. *See, e.g., Tongatapu Woodcraft Haw., Ltd. v Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984) (holding that the immigration service "makes its own determination of the alien's entitlement to [the requested] preference status").

II. ANALYSIS

A. The Beneficiary's Educational Qualifications

In evaluating a beneficiary's qualifications, we must examine the job offer portion of a labor certification to determine the minimum requirements of an offered position. We may neither ignore a term of a labor certification, nor impose additional requirements. *See, e.g., Madany* v. *Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983).

In this case, the labor certification states the minimum requirements of the offered position of senior computer programmer as a master's degree in computer science, computer applications, engineering, or information technology. The labor certification states that the offered position does not require any training or experience. Also, the Petitioner will not accept an alternate combination of education and experience.

On the labor certification, the Beneficiary attested to her receipt of a U.S. master's degree in "engineering." The Petitioner submitted copies of a diploma and transcript from the indicating the Beneficiary's receipt of a master of science degree.

Contrary to the Beneficiary's attestation on the labor certification, however, the diploma and transcript identify the master degree's field of study as "[i]ndustrial [m]anagement." Because the labor certification does not list industrial management as an acceptable field of the study, the record does not establish her educational qualifications for the offered position.

On appeal, the Petitioner contends that the Beneficiary's degree meets the educational requirements of the offered position as a master's degree in engineering. The Petitioner notes that the Beneficiary's Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, identifies her major graduate field of study as "[i]ndustrial [e]ngineering."

The Form I-20, however, is not acceptable evidence of the Beneficiary's educational qualifications. To establish the educational qualifications of an advanced degree professional, a petitioner must submit "an official academic record." 8 C.F.R. § 204.5(k)(3). A school issues a Form I-20 for immigration purposes. *See* 8 C.F.R. § 214.2(f)(1)(A) (requiring a foreign student seeking admission

to the United States to present a Form I-20 issued by an approved school). Thus, the Form I-20 is an immigration record, rather than an official academic record. The form therefore does not establish the Beneficiary's educational qualifications for the offered position.

The Petitioner also submits a letter from a graduate coordinator at the university. The letter states that "[t]he registers [the industrial management] program as an Industrial Engineering graduate degree program." However, the record lacks corroborating evidence of the state's purported registration of the industrial management program. The record also does not indicate the purpose of the state's registration, or its criteria and significance. The registration of the Beneficiary's graduate program therefore does not establish her possession of the minimum educational requirements for the offered position.

Like the transcript, the coordinator's letter also lists engineering-related courses included in the Beneficiary's graduate program, such as: quality systems engineering; facilities engineering; and engineering economy. But the record does not compare or equate the Beneficiary's coursework in industrial management to U.S. graduate programs in engineering. The record therefore does not establish the Beneficiary's completion of the equivalent of a master's degree in engineering as the Petitioner claims.

The Petitioner asserts that many U.S. university diplomas omit fields of study or list "a 'generic' field that is not entirely representative of a person's actual course of study." For example, the Petitioner states that many U.S. master of business administration diplomas do not reflect underlying studies in the field of information technology.

The Petitioner's assertions may be correct. However, in this case the Beneficiary's transcript does list a field of specialization; it's just not in one of the fields listed as acceptable of the labor certification. The Petitioner bears the burden of demonstrating the Beneficiary's qualifications for the offered position. *See* section 291 of the Act, 8 U.S.C. § 1361 (placing the burden of proof on a petitioner). Here, the record does not establish the Beneficiary's possession of a master's degree in a field of study specified on the labor certification.[2]

For the foregoing reasons, the record does not establish the Beneficiary's educational qualifications for the offered position. We will therefore affirm the Director's decision and dismiss the appeal.

[2] We also note that the Petitioner could have further defined the fields of education that were acceptable in Part H.8 or H.14 of the labor certification, but did not do so. The Petitioner has also not submitted any job advertisements or recruitment material to indicate its willingness to accept education in a field other than those listed on the labor certification, or to demonstrate that U.S. workers were given notice that education in other fields could qualify them for the job offered.

B. The Petitioner's Ability to Pay the Proffered Wage

Although unaddressed by the Director, the record also does not establish the Petitioner's ability to pay the proffered wage.

A petitioner must demonstrate its ability to pay a proffered wage from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. *Id.*

In this case, the labor certification states the proffered wage of the offered position of senior computer programmer as $69,600 per year. The petition's priority date is August 29, 2015.

The record demonstrates the Petitioner's ability to pay the Beneficiary's individual proffered wage in 2015, the year of the petition's priority date. USCIS records, however, indicate the Petitioner's filing of at least 18 Form I-140 petitions for other beneficiaries since this petition's priority date.[3]

A petitioner must demonstrate its ability to pay the proffered wage of each petition it files from the petition's priority date onward. 8 C.F.R. § 204.5(g)(2). It therefore follows that the Petitioner must demonstrate its ability to pay the combined proffered wages of this petition and its other pending petitions. The Petitioner must demonstrates its ability to pay the combined proffered wages from this petition's priority date until the other beneficiaries obtain lawful permanent residence, or until their petitions were denied, withdrawn, or revoked. *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (affirming a petition's denial where a petitioner did not demonstrate its ability to pay the combined proffered wages of multiple beneficiaries).

The record does not indicate the priority dates or proffered wages of the Petitioner's other pending petitions, or whether it paid wages to the other beneficiaries. The record also does not indicate whether the other petitions were withdrawn, revoked, or denied, or whether the other beneficiaries obtained lawful permanent residence. The record therefore does not establish the Petitioner's continuing ability to pay the proffered wage.

In any future filings in this matter, the Petitioner must provide information about its other pending petitions and, if available, required evidence of its ability to pay beyond 2015. The Petitioner may also submit non-required evidence of its ability to pay, including evidence of the applicability of the additional factors stated in *Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

[3] USCIS records identify the other petitions by the following receipt numbers: and

III. CONCLUSION

The record does not establish the Beneficiary's possession of the minimum education required for the offered position as specified on the labor certification. We will therefore affirm the Director's decision.

ORDER: The appeal is dismissed.

Cite as *Matter of N-B-C- Inc.*, ID# 344932 (AAO Mar. 28, 2017)