U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6131701

Date: NOV. 27, 2019

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner, a healthcare services provider, seeks to employ the Beneficiary as a physical therapist pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The petition is for a Schedule A, Group I occupation. The U.S. Department of Labor (DOL) has determined that there are not sufficient U.S. workers who are able, willing, qualified, and available and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of aliens in Schedule A occupations. 20 C.F.R. § 656.5. Only professional nurses and physical therapists are on the current list of Schedule A, Group I occupations. 20 C.F.R. § 656.5(a).

Petitions for Schedule A occupations do not require the petitioner to test the labor market and obtain a certified ETA Form 9089, Application for Alien Employment Certification, from DOL prior to filing the petition with U.S. Citizenship and Immigration Services (USCIS). Instead, the petition is filed directly with USCIS with an uncertified ETA Form 9089, in duplicate. 8 C.F.R. §§ 204.5(a)(2) and (k)(4); *see also* 20 C.F.R. § 656.15.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not satisfy the notice of filing requirements at 20 C.F.R. § 656.10(d)(1).

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 withdraw the decision of the Director. The matter is remanded for the entry of a new decision consistent with the analysis below. 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.

I. ANALYSIS

As an initial matter, contrary to the Director's decision, the regulations at 20 C.F.R. § 656.10(d)[1] do not require a Petitioner to include "a complete description of the job requirements" or the "degree requirements" for the proffered position.

[1] The regulation at 20 C.F.R. § 656.10(d)(6) requires only a "description of the job and rate of pay."

However, for the reasons discussed below, we must remand the matter to the Director.

A. Notice of Filing

The Petitioner indicated that the Beneficiary will work at "homecare locations in [redacted]." According to Question 12 in the *Notice of Filing* section of the Department of Labor's PERM Frequently Asked Questions at https://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#q!234:

> If the employer knows where the Schedule A employee will be placed, the employer must post the notice at that work-site(s) where the employee will perform the work and publish the notice internally using in-house media--whether electronic or print--in accordance with the normal internal procedures used by the employer to notify its employees of employment opportunities in the occupation in question. The prevailing wage indicated in the notice will be the wage applicable to the area of intended employment where the worksite is located.
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> If the employer does not know where the Schedule A employee will be placed, the employer must post the notice at that work-site(s) of all of its current clients, and publish the notice of filing internally using electronic and print media according to the normal internal procedures used by the employer to notify its employees of employment opportunities in the occupation in question. The prevailing wage will be derived from the area of the staffing agencies' headquarters.
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> If the work-site(s) is unknown and the staffing agency has no clients, the application would be denied based on the fact that this circumstance indicates no bona-fide job opportunity exists. The employer cannot establish an actual job opportunity under this circumstance. A denial is consistent with established policy in other foreign labor certification programs where certification is not granted for jobs that do not exist at the time of application.

The Director should, therefore, determine whether the Petitioner's posting of the notice of filing at its headquarters was sufficient.[2]

B. Advanced Degree

The regulation at 8 C.F.R. § 204.5(k)(2) defines an "advanced degree" as:

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[2] According to the Frequently Asked Questions section of the Petitioner's website at http://[redacted]/foreign-trained-professionals/physical-therapists/[redacted]

> [Petitioner]'s clients include an entire range of treatment facilities. While it is impossible to say with certainty what assignment you will get – since you won't arrive in the United States before 12 to 24 months from the time you sign your contract – most of our assignments are with outpatient clinics, schools, after-school peds centers, nursing homes, adult daycare centers, and home healthcare. You will either be assigned to a single facility or split your time between two facilities. Furthermore, you will not necessarily be assigned to the same facility for your entire employment period with [Petitioner]. Many of our therapists like the opportunity of switching between work environments in order to enhance their experience base. If you, however, prefer to work at a single facility for the entire employment period, we will do our best to ensure it happens.

> [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. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The Petitioner does not claim, nor does the record establish, that the Beneficiary has at least five years of experience following a U.S. baccalaureate degree or a foreign equivalent degree. Therefore, in order to be eligible for the requested classification as a member of the professions holding an advanced degree, the Petitioner must establish that the Beneficiary possesses a U.S. academic or professional degree or a foreign equivalent degree above that of a baccalaureate.

Here, the Petitioner submitted an evaluation from the Foreign Credentialing Commission on Physical Therapy, Inc. (FCCPT). However, the FCCPT evaluation included coursework beyond the Beneficiary's master's degree from India and therefore, its evaluation does not establish that the Beneficiary holds an advanced degree. *See Snapnames.com, Inc.*, 2006 WL 3491005 at *11 (finding USCIS was justified in concluding that the combination of a three-year degree followed by the coursework required for membership in the [redacted] was not a single college or university "degree" for purposes of classification as a member of the professions holding an advanced degree). Where the analysis of a beneficiary's credentials relies on "equivalence to completion of a United States baccalaureate or higher degree," the result is the "equivalent" of an advanced degree rather than a "foreign equivalent degree."[3]

Therefore, the Director should determine whether the Beneficiary 1) holds an advanced degree as defined by the regulation at 8 C.F.R. § 204.5(k)(2) and 2) qualifies for classification as an advanced degree professional under section 203(b)(2) of the Act.

As the Petitioner was not previously accorded the opportunity to address the above, we will remand the record for further review of these issues. If the Director determines it is necessary, he may request any additional evidence considered pertinent to the new determination.

[3] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a United States baccalaureate or higher degree.") The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.