In Re: 10995253

Date: MAY 4, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner seeks to employ the Beneficiary as a computer research scientist under the second-preference, immigrant classification for members of the professions holding advanced degrees or their equivalents. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A).

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the Beneficiary's possession of an educational degree in the field of study required for the offered position.

The Petitioner appeals the decision and bears the burden of establishing eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as an advanced degree professional generally follows a three-step process. First, to permanently fill a position in the United States with a foreign worker, a prospective employer must 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 signifies that employment of a noncitizen 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 a petition, a designated noncitizen 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. THE REQUIRED FIELD OF STUDY

A petitioner must demonstrate a beneficiary's possession of all DOL-certified, job requirements of an offered position by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). This petition's priority date is April 5, 2019, the date DOL accepted the labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

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. "The job requirements, as described [on a labor certification application], must represent the employer's actual minimum requirements for the job opportunity." 20 C.F.R. § 656.17(i)(1). 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) (holding that "DOL bears the authority for setting the *content* of the labor certification") (emphasis added).

The accompanying labor certification states the minimum requirements of the offered position of computer research scientist as a U.S. doctorate, or a foreign equivalent degree, in "Computer Science" and two years of experience as a lead data scientist or in a related occupation. The labor certification also indicates that the Petitioner will not accept an alternate field of study.[1]

On the labor certification, the Beneficiary attested that, by the petition's priority date, an ⬚ university awarded her a doctorate in "Computer Science." Her employment experience is not at issue.

The Petitioner submitted a copy of the Beneficiary's university diploma. The diploma states her receipt, by the petition's priority date, of a doctorate in "Information Systems." The Petitioner also submitted an independent, professional evaluation of the Beneficiary's foreign educational credentials. The evaluation concludes that her ⬚ doctorate in information systems equates to a U.S. doctorate in computer science.

The Director issued a written notice of intent to deny (NOID) the petition. The NOID states:

> The beneficiary has the foreign equivalent of a Doctorate [as required by the labor certification]; however, the field of study is not Computer Science. Since no alternate field of study is listed as acceptable on [the labor certification], the beneficiary's Doctorate in Information Systems does not meet the required qualifications.

In response, the Petitioner asserted that, consistent with the requirements of the offered position, the evaluation states the Beneficiary's possession of the foreign equivalent of a U.S. doctorate in computer science. The Petitioner also submitted another evaluation from a different evaluator reaching the same conclusion.

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[1] In addition, part H.14 of the labor certification, "Specific skills and other requirements," states that the position requires experience using certain skills and technologies.

The Director correctly denied the petition. On the labor certification, the Petitioner listed the minimum requirements of the offered position as a doctorate degree in "Computer Science" and stated that the company would not accept a degree in an alternate field of study. The Beneficiary's [ ] diploma plainly states her receipt of a doctorate degree in "Information Systems." Part H.9 of the labor certification allows a foreign degree to equate to a U.S. doctorate degree. Part H.7, however, does not permit a doctorate in a field other than 'Computer Science," as the Petitioner specified that no alternate field of study was acceptable. The Petitioner allowed qualifying experience in an occupation other than the offered position. But the company did not similarly state its acceptance of a degree in another field of study. Also, on the labor certification, the Beneficiary attested to her possession of a degree in "Computer Science." Because the record shows the Beneficiary received a doctorate in "Information Systems" rather than in "Computer Science," the Petitioner has not demonstrated that the Beneficiary meets the minimum educational requirements of the offered position.

On appeal, the Petitioner again asserts that the evaluations demonstrate the Beneficiary's possession of the foreign equivalent of a U.S. doctorate in computer science. As the evaluations acknowledge, however, the Beneficiary's diploma plainly states her receipt of a doctorate in "Information Systems," not in the requisite field of "Computer Science."

Even if we disregarded the plain language of the Beneficiary's diploma, the evaluations would not establish her credential's equivalency to a U.S. doctorate in computer science. The first evaluation states that, based on the Beneficiary's coursework, academic credits, years of study, grades, and diploma, she received the equivalent of a U.S. doctorate degree. Citing "the credibility" of the [ ] university the Beneficiary attended and her hours of academic coursework, the evaluation further states her specific attainment of the equivalent of a U.S. doctor of philosophy degree in computer science. The evaluation, however, does not explain how a Ph.D. in "Information Systems" equates to one in "Computer Science." The evaluation mentions the Beneficiary's "specialized studies in Information Systems, and related areas" and her dissertation, entitled [ ] [ ] But the evaluation does not establish that the doctoral courses and practical studies completed by the Beneficiary in the field of information systems favorably compare to the curriculum of a U.S. doctoral program in computer science.

Similarly, the second evaluation reaches its conclusion without addressing how the Beneficiary's doctorate in "Information Systems" equates to a U.S. Ph.D. in "Computer Science." The evaluation states that the Beneficiary's coursework in information systems and her thesis in [ ] [ ] "comprise the required curriculum for a candidate seeking a university degree from an accredited institution of higher education in the United States." The evaluation, however, does not compare the doctoral curriculum in information systems that the Beneficiary completed to a U.S. doctoral curriculum in computer science.

Some U.S. universities treat information systems and computer science as separate fields of study. *See, e.g.,* Univ. of Kansas, "IT vs. Computer Science vs. Information Systems," https://it.eecs.ku.edu/bsit/it-vs-computer-science-vs-information-systems; Fairmont State Univ., "Differences between IS, CS, and IT," https://www.fairmontstate.edu/files/u205/files/IS_CS_IT.pdf (both last visited Mar. 12, 2021). The evaluations submitted by the Petitioner neither address perceived differences between information systems and computer science nor explain how a degree in one can equate to a degree in the other. The conclusory evaluations therefore would not demonstrate

the Beneficiary's possession of the foreign equivalent of a U.S. doctorate degree in the required field. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (allowing the immigration service to reject or give lesser evidentiary weight to expert testimony that conflicts with other evidence or "is in any way questionable").

The Petitioner also submits letters from professors at the [   ] university that issued the Beneficiary's degree. The letters, on the stationery of the university's "Faculty of Computers & Artificial Intelligence," state that information systems constitutes a concentration, or major, within the field of computer science. One letter states: "[T]he Computer Science field covers the areas of Information Systems, Software Engineering, Computer Architecture, Artificial Intelligence and others. Nevertheless, [the Beneficiary's] doctorate certificate states the main thesis specialization domain, namely, Information Systems. Yet, this specialization falls under the Computer Science domain." Another letter states that the Beneficiary's degree "is in Computer Science, the certificate showing only her major within that discipline." A letter from a U.S. professor of electrical engineering and computer science asserts that "degree nomenclature can often be different in International institutions. In particular, many universities identify the field of specialization. In [the Beneficiary's] case, her degree certificate states her specialization, which is within, and a part of Computer Science."

The letters, however, are not specific enough to demonstrate the Beneficiary's possession of a Ph.D. in computer science. The letters generally describe information systems as a concentration within the field of computer science. But the letters do not specifically establish "Information Systems" as a sub-field of "Computer Science" at the university that issued the Beneficiary's degree. Additionally, the Petitioner had a reasonable opportunity to submit evidence in response to the Director's NOID. We therefore decline to consider the letters on appeal. *See Matter of Soriano*, 19 I&N Dec. 564, 566 (BIA 1988) (barring consideration of evidence on appeal where a party received prior notice of required materials and a reasonable opportunity to provide them).

The labor certification application specifically asked the Petitioner: "Is there an alternate field of study that is acceptable?" Bound by regulation to list its "actual minimum requirements for the job opportunity," *see* 20 C.F.R. § 656.17(i)(1), the Petitioner did not indicate its acceptance of any field but "Computer Science."

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary's possession of an educational degree in the field of study required by the offered position. We will therefore affirm the petition's denial.

III. 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 of the offered position. A petitioner must demonstrate its continuing 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 generally include copies of annual reports, federal tax returns, or audited financial statements. *Id.*

The labor certification states the proffered wage of the offered position of computer research scientist as $68,000 a year. As previously indicated, the petition's priority date is April 5, 2019.

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At the time of the petition's decision, regulatory required evidence of the Petitioner's ability to pay the proffered wage in 2019 was not yet available. The Petitioner submitted a copy of its federal income tax return for 2018, which the Director used in determining the company's ability to pay. Contrary to 8 C.F.R. § 204.5(g)(2), the record lacks copies of the Petitioner's annual report, federal tax return, or audited financial statements for 2019, the year of the petition's priority date. The record therefore does not establish the Petitioner's ability to pay the proffered wage from the petition's priority date onward.

Regulatory required evidence of the Petitioner's ability to pay the proffered wage in 2019 should now be available. Thus, in any future filings in this matter, the Petitioner must submit copies of an annual report, federal tax return, or audited financial statements for 2019 and, if available, 2020. The Petitioner may also provide additional evidence of its ability to pay, including proof of any wages it paid the Beneficiary in relevant years or materials supporting the factors stated in *Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

IV. CONCLUSION

The record does not establish the Beneficiary's possession of an educational degree in the field of study required for the offered position. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.