U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20755053

Date: AUG. 5, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner seeks to employ the Beneficiary as a business development manager. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. Immigration and Nationality 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not submit sufficient documentation to establish the Beneficiary's qualifications. The Director dismissed the Petitioner's subsequent motion to reopen, concluding that the Petitioner submitted insufficient evidence to address and resolve the issues noted in its decision. The matter is now before us on appeal.

The Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). Upon *de novo* review, we will dismiss the appeal.

I. EMPLOYMENT-BASED IMMIGRATION

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a noncitizen in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See id.* Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS) with the certified labor certification. *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the noncitizen 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 petitioner must establish that an offered position is eligible for the requested employment-based classification (based on the minimum requirements stated on the labor certification), and that its beneficiary has the minimum education, work experience, and special skills required to perform the offered position (as those requirements are stated on the labor certification). These requirements must be satisfied by the priority date of the petition, which is the date the DOL accepted the labor certification for processing. 8 C.F.R. § 204.5(d). In this case, the priority date is June 29, 2020. The Petitioner's labor certification states that the position of business development manager has a minimum educational requirement of a U.S. master's in business administration (or foreign equivalent).

The Director denied the petition finding insufficient evidence to determine whether the Beneficiary met the minimum educational requirements of the position as specified in the labor certification. To support that determination, the Director noted discrepancies in the record regarding the Beneficiary's education. For example, the Director noted that the Beneficiary's transcript did not contain coursework that is typically related to a degree in business administration, and that the Petitioner provided a "Certified Course-by-Course Foreign Academic Evaluation" that was based on the English translations of his transcripts and degree certificates, but that these translations were not accompanied by properly executed translation certificates as required by 8 C.F.R. § 103.2(b)(3).

The Director issued a request for additional evidence (RFE) to obtain English translations of all foreign language documents submitted, and specified that any translations provided must contain a description of the degree granted. The RFE also provided the Petitioner notice that the record included a degree certificate from a high school, but not a master's degree in business administration. Finally, the RFE specifically requested a new equivalency evaluation equating the Beneficiary's foreign degree to a U.S. degree. The Petitioner responded to the RFE with an educational evaluation dated June 14, 2021, and an English translation of the Beneficiary's foreign language credentials. This evaluation found that the Beneficiary's two-year executive master of business administration (EMBA) degree from a Chinese university was "the equivalent of a two-year Master of Business Administration from the University of [redacted]." The Director's decision rested on the lack of evidence to determine the Beneficiary's educational credentials, and whether they met the minimum qualifications for the positions as specified in the labor certification. Furthermore, the Director noted the unresolved issue of the certified translation certificates not conforming to the requirements of 8 C.F.R. § 103.2(b)(3).

In its motion to reopen, the Petitioner argued that the Director erred by determining that the Beneficiary was not qualified for the position based on his foreign EMBA degree. The Petitioner further provided a document labeled "Affidavit of Translation of Foreign Documents," which stated that the attorney of record verified the English translations were "true and correct" translations. We note that this document was not signed by the same person purporting to be the individual providing the translation. The Petitioner also resubmitted the June 14, 2021 foreign equivalency education evaluation, and submitted a new English translation of the Beneficiary's purported EMBA degree certificate from his university in China. We note that the English translation of the Beneficiary's EMBA degree contained discrepant information. First, the photograph from that certificate was different from the one previously submitted. More importantly, the dates of his attendance were from

2015 to 2017, whereas the Petitioner had previously represented that the Beneficiary attended this program from 2013 to 2015. The date of conferral of his degree was also in 2017, whereas all other documentation in the file represented that the Beneficiary obtained his degree in 2015.

The Director dismissed the Petitioner's motion to reopen finding that the single-page "Affidavit of Translation of Foreign Documents" did not meet the standard set out in 8 C.F.R. § 103.2(b)(3) because a "single translation certification that does not specifically identify the document[s] . . . it . . . accompanies does not meet the requirements" of the regulation. The Director did not mention the name discrepancy noted above, which further diminishes the sufficiency of the single page translation certification. The Director's decision correctly questioned the authenticity and reliability of the foreign degree documents due to the lack of accompanying translation certificates, and because the dates of attendance, the photographs, and other pertinent information such as the course of study was different than those previously provided. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (a petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies and unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit.). The Petitioner has not resolved the discrepancies in the record.

On appeal, the Petitioner provides a letter, translation certifications with associated labels, and a letter from a professor at the University of [redacted] to establish the Beneficiary's qualifications for the position. The Petitioner does not argue that the Director erred or point to any misstatement of law or fact in the Director's decision dismissing its motion to reopen. Instead, the Petitioner reiterates it earlier assertions that the Beneficiary graduated from a Chinese university and earned an EMBA in 2015. As such, we decline to accept the new evaluation and translation certificates on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (requiring rejection of appellate evidence where a party received prior notice of the required materials and a reasonable opportunity to submit them). The Director's RFE notified the Petitioner of its need to submit additional evidence to determine the Beneficiary's qualifications, and afforded it a reasonable opportunity to respond. On appeal, the Petitioner has not attempted to explain why it did not submit this evidence earlier in the proceedings, and it does not appear that this evidence was not reasonably available. *See Oyeniran v. Holder*, 672 F.3d 800, 808–09 (9th Cir. 2012) ("It is not sufficient that the evidence physically existed in the world at large; rather, the evidence must have been reasonably available to the petitioner."). Therefore, we decline to review this evidence.

For the foregoing reasons, the record does not establish the Beneficiary's qualifications for the position. If the Petitioner pursues this matter further, it must explain the discrepancies noted above and submit additional independent objective evidence to support its assertions.

III. CONCLUSION

The record as presently constituted does not establish the Beneficiary's qualifications. As such, we must dismiss the appeal.

ORDER: The appeal is dismissed.