U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18185368

Date: AUG. 31, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for an Advanced Degree Professional

The Petitioner, an information technology company, seeks to employ the Beneficiary as a "technical architect." It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based "EB-2" immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The petition was initially approved, but the approval was subsequently revoked by the Director of the Nebraska Service Center. The Director determined that certain language in H.14 of the labor certification exceeded the "Kellogg language" and altered the minimum requirements of the labor certification in a way that could potentially allow a beneficiary to qualify for the job offered with less than a master's degree or a bachelor's degree and five years of postgraduate experience in the specialty, and thus did not support the requested classification of advanced degree professional. [1]

On appeal the Petitioner provides supporting evidence and an appeal brief asserting that the language does not alter the minimum requirements specified on its labor certification, which is consistent with the petition's classification request of advanced degree professional.

Upon *de novo* review of the evidence and arguments made on appeal, we conclude that the Petitioner has overcome the basis for revocation and we will therefore sustain the appeal.

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[1] The regulation at 20 C.F.R. § 656.17(h)(4)(ii) states:

> If the alien beneficiary already is employed by the employer, and the alien does not meet the primary job requirements and only potentially qualifies for the job by virtue of the employer's alternative requirements, certification will be denied unless the application states that any suitable combination of education, training, or experience is acceptable.

This regulation was intended to incorporate the Board of Alien Labor Certification Appeals (BALCA) ruling in *Francis Kellogg*, 1994-INA-465 and 544, 1995-INA 68 (Feb. 2, 1998) (*en banc*). The statement on the labor certification that an employer will accept applicants with "any suitable combination of education, training or experience" is commonly referred to as "*Kellogg* language."

ORDER: The appeal is sustained.