U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24227618

Date: MAR. 2, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree)

The Petitioner, a provider of information technology (IT) consulting services, seeks to permanently employ the Beneficiary as a senior Java software engineer. The company requests his classification under the second-preference, immigrant visa category 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). This category allows a prospective U.S. employer to sponsor a noncitizen for lawful permanent residence to perform work requiring at least a master's degree or its equivalent. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree").

After initially granting the filing, the Director of the Texas Service Center revoked the petition's approval and dismissed the Petitioner's following motion to reopen. The Director concluded that the Petitioner willfully misrepresented its required intent to employ the Beneficiary in the offered position. On appeal, we withdrew the revocation decision and remanded the matter. *See In Re: 1525587* (AAO Sep. 3, 2020).

On remand, the Director again revoked the petition's approval, this time concluding that the Petitioner did not demonstrate the Beneficiary's qualifying experience for the job. In this appeal, the company contends that the Director disregarded evidence and did not apply the appropriate standard of proof.

In these revocation proceedings, the Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of evidence. *Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988) (citation omitted). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we will affirm the Director's decision and dismiss the appeal.

I. LAW

Immigration as an advanced degree professional generally follows a three-step process. First, a prospective employer must apply to the U.S. Department of Labor (DOL) for certification that: (1) there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and (2) the employment of a noncitizen in the position would not harm wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

Second, an employer must submit an approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). Among other things, USCIS determines whether a noncitizen beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(k)(3)(i)(B).

Finally, if USCIS approves a petition, a beneficiary may apply for an immigrant visa abroad or, if eligible, "adjustment of status" in the United States. *See* section 245(a)(1) of the Act, 8 U.S.C. § 1255(a)(1).

"[A]t any time" before a beneficiary obtains lawful permanent residence, however, USCIS may revoke a petition's approval for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. If supported by a record, the erroneous nature of a petition's approval justifies its revocation. *Matter of Ho*, 19 I&N Dec. at 590.

USCIS properly issues a notice of intent to revoke (NOIR) a petition's approval if the unrebutted and unexplained record at the time of the NOIR's issuance would have warranted the petition's denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). USCIS properly revokes a petition's approval if a petitioner does not timely respond to a NOIR or the business's timely response does not overcome all alleged revocation grounds. *Id.* at 451-52.

II. ANALYSIS

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 February 5, 2008, the date DOL accepted the Petitioner's labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

In assessing a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine a position's minimum requirements. USCIS may neither ignore a certification term nor impose unstated requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority of setting the *content* of the labor certification") (emphasis added).

The Petitioner's labor certification states the primary job requirements of the offered position of senior Java software engineer as a U.S. master's degree or a foreign equivalent degree in computer science, engineering, or a "related field," plus two years of experience "in the job offered" or as a programmer analyst. Experience "in the job offered" means experience performing an offered position's key duties as stated on a labor certification. *E.g., Matter of Symbioun Techs., Inc.*, 2010-PER-01422, *3 (BALCA Oct. 24, 2011) (citations omitted). The key duties of the offered position listed on the Petitioner's labor certification include: "Oversee[ing] the design, development, testing and implementation of the entire application using OOA/OOD, design patterns, rational rose, UML, advanced java technologies including J2EE, JSP and XML;" "Ensur[ing] project is completed in a timely manner;" "Us[ing] Java scripts for client side validations and develop[ing] and deploy[ing] EJB on Weblogic and Websphere application server."

The labor certification also states the company's acceptance of an alternate combination of education and experience: a bachelor's degree followed by five years of experience. Further, part H.14 of the certification - "Specific skills or other requirements" - states that "[t]wo years of required experience must be experience performing design, development, testing and implementation in MVC architecture using J2EE, JSP, JDBC, OOA/OOD, Rational Rose, XML and deploying EJBs on Weblogic/Websphere application server."

The Director found the Petitioner's demonstration of the Beneficiary's possession of a foreign degree equating to a U.S. master's degree in computer science, and the record supports the finding. Thus, to demonstrate the Beneficiary's remaining qualifications for the offered position, the company must establish that he has at least two years of experience in the job offered or as a programmer analyst. Also, under part H.14 of the labor certification, the required two years of experience must have included "performing design, development, testing and implementation in MVC architecture using J2EE, JSP, JDBC, OOA/OOD, Rational Rose, XML and deploying EJBs on Weblogic/Websphere application server."

On the labor certification, the Beneficiary attested that, by the petition's priority date in February 2008, and before beginning work for the Petitioner in the offered position a month earlier, he gained about eight years of full-time qualifying experience with IT companies. He stated the following work history:

- About 15 months as a programmer analyst in the United States, from October 2006 through December 2007 (Employer 6);
- About 15 months as a senior developer/software engineer in the United States, from July 2005 through September 2006 (Employer 5);[1]
- About six months as a software engineer in the United States, from January 2005 through June 2005 (Employer 4);
- About eight months as a senior software engineer in India, from May 2004 through December 2004 (Employer 3);
- About 19 months as a senior software engineer in India, from October 2002 through April 2004 (Employer 2); and
- About 33 months as a software engineer in India, from January 2000 through September 2002 (Employer 1).

To demonstrate qualifying experience, a petitioner must submit letters from a beneficiary's former employers. 8 C.F.R. § 204.5(g)(1). The letters must include the employers' names, titles, and addresses, and descriptions of the beneficiary's experience. *Id.* "If such evidence is unavailable, other documentation relating to the alien's experience . . . will be considered." *Id.*

The Petitioner initially submitted letters from four of the Beneficiary's claimed six former employers. These documents, however, do not demonstrate his qualifying experience for the offered position.

[1] The labor certification application form does not completely state the job's title. The title on the form reads: "Sr. Java Developer/Soft En." The Director interpreted the incomplete title to mean "Senior Java Developer/Software Engineer," and the Petitioner did not object. Thus, like the Director, we interpret the incomplete title as senior Java developer/software engineer.

A. The Beneficiary's Claimed U.S. Experience, October 2006 to December 2007 (Employer 6)

The Director's NOIR on remand notes that the copy of a 2008 letter from Employer 6 does not establish the Beneficiary's possession of the requirements listed in part H.14 of the labor certification. The letter does not indicate that his duties involved performance of "design, development, testing and implementation in MVC architecture using J2EE, JSP, JDBC, OOA/OOD, Rational Rose, XML and deploying EJBs on Weblogic/Websphere application server." The letter states that the Beneficiary used Rational Rose to design and generate "Class, Sequence, State-Chart and Activity UML diagrams" and "parse[d] the XML object return from the web service." But the letter does not indicate the Beneficiary's use of Rational Rose and XML in the "design, development, testing and implementation in MVC architecture" or his use of the other technologies listed in part H.14. The letter also does not indicate whether he used Rational Rose and XML for the required two years stated in part H.14.

The NOIR also notes discrepancies between the 2008 letter and Employer 6's 2007 letter supporting a prior petition for the Beneficiary. The 2007 letter states his employment not as a programmer analyst, but as a "Software Engineer." Also, unlike the 2008 document, the 2007 letter does not state his experience with Rational Rose or XML. Rather, the prior letter indicates his use of other technologies, including "JSP." The discrepancies in the letters regarding the Beneficiary's job title, duties, and technologies used cast doubt on his claimed qualifying experience with Employer 6. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies).

Further, the NOIR notes additional discrepancies on the Beneficiary's 2010 application for a U.S. nonimmigrant work visa. The visa application states his work for Employer 6 as a "Software Engineer" but describes duties different than those listed in both of the employer's prior 2007 or 2008 letters. For example, Employer 6's 2007 letter describes the Beneficiary as "experienced in design, development and implementation and of the enterprise applications using the 'Sun Solaris, Windows NT, Oracle, C++, JAVA, JSP, GUI, HTML, SQL, PL/SQL' technology stack." In contrast, the visa application states that he "worked with business users to collect the requirements" and used: "RSA IDE to design the application;" "Java, J2EE, LDAP Frameworks to develop the application;" and "Test Director to log the defects." These additional discrepancies cast further doubt on the Beneficiary's claimed qualifying experience with Employer 6. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record).[2]

B. The Beneficiary's Claimed U.S. Experience, July 2005 through September 2006 (Employer 5)

The NOIR notes that the letter from Employer 5 states that the Beneficiary's "last designation held with us was Senior Java Developer Analyst." This job title does not match "Sr. Java Developer/Soft En.," the title listed for the Beneficiary with Employer 5 on the labor certification. The letter also

[2] The copy of the 2008 letter also contains a line across the page, above the signatory's signature, name, and title. The line's existence and location suggest the copying of the letter's signature portion onto the bottom of the document, casting doubt on the letter's authenticity. *See Matter of O-M-O-*, 28 I&N Dec. 191, 193-95 (BIA 2021) (allowing administrative tribunals to question the authenticity of documents containing "obvious defects" or "readily identifiable" "hallmarks of fraud"). The Director did not notify the petitioner of the letter's questionable authenticity. Thus, in any future filings in this matter, the company should explain the line on the copy and provide the original 2008 experience letter as proof of its authenticity.

suggests his work for Employer 5 in more than one position, indicating that, during his tenure, he may have performed additional job duties beyond those listed in the letter. The letter indicates the Beneficiary's use of JSP. But, contrary to the requirements of part H.14 of the labor certification, the document does not demonstrate his performance of "design, development, testing and implementation in MVC architecture" or his use of J2EE, JDBC, OOA/OOD, Rational Rose, XML and deploying EJBs on Weblogic/Websphere application server.

The NOIR also notes that the Beneficiary's 2010 visa application describes his purported duties with Employer 5 differently than stated in the employer's letter. The letter describes him as "experienced in design, implementing and developing the enterprise applications using the 'SunSolaris, Windows NT, Oracle, C++, JAVA, JSP, GUI, HTML, SQL, PL/SQL' technology stack." In contrast, the visa application states that he "collect[ed] the business requirements;" and used "Rational Software for design [of] the application;" "Myeclipse, Java, Hibernate to develop the application;" and "Jira Tool for defect logging." Thus, the discrepancies among Employer 5's letter, the labor certification, and the visa application also cast doubt on the Beneficiary's claimed qualifying experience with Employer 5. *See Matter of Ho*, 19 I&M Dec. at 591.

C. The Beneficiary's Claimed U.S. Employment, January 2005 through June 2005 (Employer 4)

The NOIR notes that the letter from Employer 4 states "[h]is last designation held with us was Software Engineer." The letter suggests his employment in multiple positions and therefore his potential performance of additional job duties for Employer 4. The letter mentions his use of "J2EE" and "JSP." But, contrary to part H.14 of the labor certification, the letter does not demonstrate his "design, development, testing and implementation in MVC architecture" or his use of JDBC, OOA/OOD, Rational Rose, XML and deploying EJBs on Weblogic/Websphere application server.

The NOIR also notes that Employer 4 described the Beneficiary's job title and duties differently in a 2007 letter supporting his prior petition. The 2007 letter states his employment as a "Programmer Analyst" involved in "analyz[ing], design[ing], develop[ing] and implement[ing] e-Commerce and Middleware systems based on Oracle, Java, VB 6.0, COM, C++, Business Objects, Crystal Reports, Windows NT/2000." In contrast, Employer 4's more recent letter states his employment as a "Software Engineer," with experience "in design, implementing and developing the enterprise applications using the 'Java, J2EE, Oracle, C++, JSP, GUI, HTML, SQL, PL/SQL' technology stack." The discrepancies in the job title, duties, and technologies cast doubt on the Beneficiary's claimed, qualifying employment with Employer 4. *See Matter of Ho*, 19 I&N Dec. at 591.

D. The Beneficiary's Claimed Indian Experience, January 2000 to September 2002 (Employer 1)

The NOIR notes that, contrary to 8 C.F.R. § 204.5(g)(1), the letter from Employer 1 lacks a description of the Beneficiary's experience. The letter therefore does not establish his claimed, qualifying experience with this employer.

In attempt to support this claimed employment, the Petitioner's response to the NOIR on remand included affidavits from the Beneficiary and two of his purported co-workers at Employer 1. As the Director found, however, the Petitioner did not demonstrate the unavailability of the required letter from Employer 1. *See* 8 C.F.R. § 204.5(g)(1) (requiring USCIS to consider other evidence of

qualifying experience *if letters from former employers are "unavailable"*) (emphasis added). The decision also notes that the record lacks independent, corroborating evidence of the co-workers' claimed employment by Employer 1 at the time of the Beneficiary's purported tenure with it. The affidavits therefore do not establish the claimed, qualifying experience.

E. The Beneficiary's Other Claimed Experience in India

The Petitioner did not submit letters from Employer 2 or 3. Rather, the Petitioner provided affidavits from purported former co-workers of his at Employers 2 and 3. As the Director's decision notes, however, the Petitioner did not demonstrate the unavailability of the required letters from Employers 2 and 3. *See* 8 C.F.R. § 204.5(g)(1). The record also lacks independent, corroborating evidence of the affiants' work for the employers at the time of the Beneficiary's claimed tenures with them. The Petitioner therefore also has not established the Beneficiary's claimed qualifying experience with Employer 2 or 3.

Overall, as the Director found, the discrepancies between all the letters from the purported former employers and other evidence render them unreliable proof of the Beneficiary's claimed qualifying experience.

F. The Petitioner's Arguments

On appeal, the Petitioner contends that USCIS errs by focusing on the Beneficiary's former job titles rather than on the duties he performed. The company asserts:

> The fact that the Beneficiary may have held multiple roles when he was employed at these companies is immaterial because this evidence attests to the fact that he performed these specific duties, as described therein, regardless of the particular titles that might have immaterial differences.

The Petitioner contends that, while experience in the specific job offered may qualify a candidate for the offered position, the "alternate occupation" of programmer analyst includes "a broader category of jobs." The company notes that 8 C.F.R. § 204.5(g)(1) does not require letters from former employers to include a noncitizen's job titles. According to the company, this omission establishes the "immateriality" of job titles "as compared to the duties performed by the Beneficiary."

The Petitioner does not persuade us that its alternate occupation of programmer analyst includes "a broader category of jobs." If the Petitioner accepts experience in a broader category of jobs, the company should have indicated so on the labor certification application. *See* 20 C.F.R. § 656.17(i)(1) ("The job requirements, as described, must represent the employer's actual minimum requirements for the job opportunity"). The company cites a U.S. Bureau of Labor Statistics' overview of statistics by occupation and USCIS information about "How USCIS Determines Same or Similar Occupational Classifications for Job Portability Under AC 21." The Petitioner, however, does not explain how either of these sources relate to the interpretation of an alternate occupation on a labor certification application. Also, the plain language of the certification application form suggests the form's use of the terms "job" and "occupation" interchangeably. Part H.10 of the form asks: "Is experience in an alternate *occupation* acceptable?" (emphasis added). If an employer marks "Yes," part H.10-B

instructs the business to: "Identify the *job* title of the acceptable alternate *occupation*." (emphasis added). Thus, part H.10-B indicates that an alternate occupation has a specific "job title," rather than multiple job titles. In part H.10-B, the Petitioner listed only the job title "Programmer Analyst." We therefore do not find the company's interpretation of the term "alternate occupation" on a labor certification to be persuasive.

Moreover, the discrepancies regarding the Beneficiary's claimed, qualifying experience include more than inconsistent job titles. As previously indicated, his 2010 visa application states different job duties and use of different technologies than those listed for the same jobs by his purported former employers in their letters. Further, letters from some of the purported former employers describe different job duties and technologies than indicated in their corresponding prior letters. Thus, focusing on the Beneficiary's job duties, as the Petitioner urges, does not resolve all the inconsistencies of record or demonstrate his possession of the required amount of experience with all the technologies listed in part H.14.

The Petitioner also asserts its demonstration of the unavailability of letters from the Beneficiary's purported former employers in India. The company notes his affidavit stating that his former Indian employers were not "willing to provide any kind of letter about my experience as their employee."

The Beneficiary's assertion of the letters' unavailability, however, is not enough. "Simply going on record without documentary supporting evidence is not sufficient for purposes of meeting the burden of proof in these proceedings." *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citation omitted). USCIS cannot consider other evidence of a beneficiary's experience unless letters from former employers are "unavailable." 8 C.F.R. § 204.5(g)(1). The Petitioner has not demonstrated that: it or the Beneficiary tried to obtain letters from his purported former employers in India; the employers no longer do business; or the regulatory required letters are otherwise unavailable. Because the Petitioner did not demonstrate the unavailability of letters from these purported former employers, we cannot consider the affidavits from his purported company co-workers. Even if we could, the Petitioner has not submitted independent evidence to corroborate the co-workers' claimed employment by the Beneficiary's former employers during his purported tenures with the companies.

III. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's qualifying experience for the offered position. We will therefore affirm the revocation of the petition's approval.

ORDER: The appeal is dismissed.