U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25679274

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 software development and other information technology services, seeks to permanently employ the Beneficiary as a systems analyst. The company requests amendment of a prior, approved petition for him 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").

The Director of the Texas Service Center denied the amendment request. The Director concluded that the Petitioner did not establish itself as the "successor in interest" of the employer listed on the accompanying certification from the U.S Department of Labor (DOL). Specifically, the Director found that, because the intended worksite listed on the labor certification includes the certification employer's headquarters in a state other than the Petitioner's home state, the Petitioner's job offer differs from the certification employer's offer. On appeal, the Petitioner contends that the job opportunities are the same because, despite the different locations of the companies' headquarters, both offers require the Beneficiary's relocation to multiple client sites throughout the United States.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the differing headquarter locations would have likely resulted in job offers with different proffered wages and required tests of the U.S. labor market in different geographical areas. Thus, the job offers differ, and the Petitioner has not established its claimed successorship or entitlement to file this appeal. We will therefore reject the appeal as improperly filed.

I. LAW

Immigration as an advanced degree professional generally follows a three-step process. First, a prospective employer must obtain DOL certification that: (1) there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and (2) the permanent 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).

II. ANALYSIS

The record indicates the Beneficiary's work for the labor certification employer at the time of the certification application's filing and approval in 2011. After the application's approval, the labor certification employer filed a Form I-140, Immigrant Petition for Alien Worker, for the Beneficiary, which USCIS approved in December 2011.

Evidence indicates that, in 2013, another company acquired all the labor certification employer's stock shares and began employing the Beneficiary. The Petitioner contends that, in 2019, it similarly acquired the company that took over the labor certification employer and began employing the Beneficiary. The Petitioner requests amendment of the approved 2011 petition to allow the company to use the labor certification as the "successor in interest" of both the certification employer and its first, purported successor.

A. Successors in Interest

A labor certification remains valid only for the noncitizen, the geographical area of intended employment, and the "particular job opportunity" stated on the certification. 20 C.F.R. § 656.30(c)(2); *see also Matter of Sunoco Energy Dev. Co.*, 17 I&N Dec. 283, 284 (Reg'l Comm'r 1979) (affirming a petition's denial where the petitioner offered a job in a state other than the one listed in the proposed worksite on the accompanying labor certification). Because a job offer from a different employer constitutes a different job opportunity, a petitioner generally cannot use a labor certification filed by another business. *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481, 482 (Comm'r 1986). An exception exists, however, if the petitioner is a successor in interest of the labor certification employer. *Id.*

For immigration purposes, a successor in interest must demonstrate its acquisition of rights and obligations needed to carry on a predecessor's business or a discreet part of it. *See generally* 6 *USCIS Policy Manual* E.(3)(A), https://www.uscis.gov/policy-manual. A successor must:

- Fully describe and document how it acquired all or part of a predecessor's business;
- Demonstrate that, except for its substitution as the proposed employer, its job offer matches the one stated on the labor certification; and

- Establish all elements of petition eligibility, including the ability of it and predecessors to continuously pay the offered position's proffered wage from the filing's priority date onward.

Matter of Dial Auto, 19 I&N Dec. at 482-83 (Comm'r 1986); 6 *USCIS Policy Manual* at E.(3)(F).

Also, we must reject an appeal filed by an entity "not entitled to file it." 8 C.F.R. § 103.3(a)(2)(v)(A)(*1*). In petition proceedings, the business that filed the petition is generally the "affected party" with standing to appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B). Thus, unless the Petitioner establishes itself as the labor certification employer's successor, it lacks authorization to file this appeal, and we must reject the submission as improperly filed.

We now consider the Petitioner's claimed successorship, beginning with the Director's finding of insufficient evidence that the company's job offer matches the one stated on the labor certification.

B. Comparing the Job Offers

USCIS policy requires a successor's job offer to:

> remain unchanged with respect to the rate of pay, metropolitan statistical area,[1] job description, and job requirements specified on the permanent labor certification. USCIS denies successor-in-interest claims where the position with the successor is changed such that the rate of pay, job description, or requirements specified on the permanent labor certification no longer relate to the labor market test.
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> In other words, officers should deny any successor claim where the changes to the rate of pay, job description, or job requirements, as stated on [the] permanent labor certification, if made at the time that the permanent labor certification was filed with DOL, could have affected the number or type of available U.S. workers who applied for the job opportunity.

6 *USCIS Policy Manual* E.(3)(F)(1).

The proffered wage, job description, and job requirements of the Petitioner's job offer mirror those of the offer listed on the labor certification. Both systems analyst position offers: have an annual proffered wage of $96,554; describe the job as involving "technology architecture, systems, software and resources across multiple modules;" and require a master's degree in business administration, computer science, or a related field of study, plus one year of experience in the job offered or as a software/systems designer, developer, analyst, or related occupation.

As the Director found, the job offer on the labor certification states the area of intended employment as the certification employer's headquarters in Virginia and various client sites throughout the United

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[1] On a labor certification application, the "area of intended employment" means the region within normal commuting distance of the intended worksite's address. 20 C.F.R. § 656.3. DOL considers any place within the same "Metropolitan Statistical Area (MSA)" as the intended worksite to be within normal commuting distance. *Id.* A MSA is a geographic entity based on a county or group of counties with at least one urbanized area. U.S. Ctrs. for Disease Control & Prevention, Nat'l Ctr. for Health Statistics, "Metropolitan statistical area (MSA)," https://www.cdc.gov/nchs/hus/sources-definitions/msa.htm#:~:text=A%20geographic%20entity%20based%20on,are%20measured%20by%20commuting%20patterns.

States. The Petitioner's job offer on the petition also states that the area of intended employment includes various client sites throughout the United States. But the Petitioner's offer also lists the intended worksite as including the company's headquarters in New Jersey.

In labor certification proceedings, the headquarters location of an employer offering a position at multiple, unanticipated worksites affects determinations of the proffered wage rate and the geographic recruitment area in which to test the U.S. labor market. DOL Field Memorandum No. 48-94, "Policy Guidance on Alien Labor Certification Issues," 4 (May 5, 1994); *see also Matters of Amsol, Inc.*, 2008-INA-00112, *17 (BALCA Sep. 3, 2009) ("The [headquarters] location is very important because it will dictate the prevailing wage determination and influence where the labor market test is performed.")

The Petitioner contends that its job offer matches the one on the labor certification because both involve work in unanticipated locations throughout the United States. But the labor certification offer - based on the certification employer's headquarters in Virginia - lists an annual proffered wage of $96,554 and states the placement of newspaper advertisements for the position in [redacted] Under USCIS policy, we must consider the effect of a purported successor's job offer "if made at the time that the permanent labor certification was filed with DOL." 6 *USCIS Policy Manual* E.(3)(F)(1). If the Petitioner had made its job offer at the same time as the original labor certification filing, the proffered wage of its offered position would have likely differed because of the location of its headquarters in New Jersey. Also, under DOL policy, the Petitioner would have placed newspaper ads for the job in central New Jersey, the location of the company's headquarters. The differences in the proffered wage and recruitment area "could have affected the number or type of available U.S. workers who applied for the job opportunity." *See id.* Thus, consistent with USCIS policy, the Director properly found the Petitioner's job offer to differ from the one stated on the labor certification, barring the company's claimed successorship.

On appeal, the Petitioner submits evidence that, since October 2019, it has leased an office in the same metropolitan statistical area as the headquarters of the labor certification employer and that it has two clients with facilities in that MSA to where it might assign the Beneficiary in the future. The Director, however, issued a request for evidence providing the Petitioner with notice and a reasonable opportunity to explain the effects of its headquarters' location on its job offer. We therefore decline to consider the Petitioner's evidence on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). Even if we considered the appellate evidence, it would not change our opinion. The Petitioner does not assert that, despite the differing location of its headquarters, the proffered wage and geographical recruitment area of its job offer would have matched those of the offer listed on the labor certification.

Because the Petitioner has not demonstrated that its job offer matches the one stated on the labor certification, the company does not qualify as the certification employer's successor in interest or as an entity entitled to file this appeal. We will therefore reject the appeal.

C. Evidence of the Claimed Successorship

The Petitioner also did not demonstrate that, since 2019, it remains the labor certification employer's successor in interest. *See generally* 6 *USCIS Policy Manual* E.(3)(F) (requiring a claimed successor to fully describe and document how it acquired all or part of a purported predecessor's business).

The Petitioner submitted evidence that, in October 2013, the labor certification employer's first purported successor began employing the Beneficiary. The Petitioner's operations manager-HR claims that the Petitioner began employing him in 2019, when it "acquired" the first purported successor.

The Petitioner, however, submitted copies of stock certificates showing its acquisition of the first purported successor in December 2013, not in 2019. Moreover, online articles and the annual report of the Petitioner's parent company for 2019-20 indicate that, in 2019, the Petitioner did not *acquire* the first purported successor, but rather "*sold*" it. (emphasis added). *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies). Thus, because evidence indicates that the Petitioner may no longer own the first purported successor, the record does not establish the full chain of its claimed successorship, both now and at the time of the petition's filing in February 2022. *See* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to demonstrate eligibility "at the time of filing the benefit request" and continuing through its adjudication). For this additional reason, the Petitioner has not established itself as the labor certification employer's successor or an entity entitled to file this appeal.

The Director did not notify the Petitioner of this apparent deficiency. Thus, in any future filings in this matter, the company must explain the evidentiary discrepancies regarding its claimed 2019 acquisition of the labor certification employer's first purported successor and demonstrate its continuing possession of the rights and obligations needed to carry on the first purported successor's business or a discreet part of it.

III. CONCLUSION

The Petitioner has not established itself as the labor certification employer's successor and, thus, as an entity entitled to file this appeal. We must therefore reject the submission as improperly filed.

ORDER: The appeal is rejected.