U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35524190

Date: DEC. 20, 2024

Appeal of Texas Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner seeks to temporarily employ the Beneficiary under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to file a petition with U.S. Citizenship and Immigration Services (USCIS) to temporarily employ a qualified foreign worker in a position that requires both: (a) the theoretical and practical application of a body of highly specialized knowledge; and (b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Texas Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker (petition), concluding the record did not establish that the U.S. Department of Labor's (DOL) ETA Form 9035 & 9035E, Labor Condition Application for Nonimmigrant Workers (LCA) properly corresponded with the offered position, nor that the LCA was certified for the position in which the beneficiary would be employed. The Director also determined the Beneficiary was not qualified to occupy the duties of this occupation. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LEGAL FRAMEWORK

The purpose of DOL's LCA wage requirement is "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers." *See* Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States, 65 Fed. Reg. 80,110, 80,110-11 (proposed Dec. 20, 2000) (to be codified at 20 C.F.R. pts. 655–56) (indicating that the wage protections in the Act seek "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers" and that this "process of protecting U.S. workers begins with [the filing of an LCA] with [DOL]."). *See also Aleutian Cap. Partners, LLC v. Scalia*, 975 F.3d 220, 231 (2d Cir. 2020) (quoting 20 C.F.R. §

655.0 and finding that a primary goal of U.S. nonimmigrant foreign worker programs like the H-1B Program is to ensure that "the employment of the foreign worker in the job opportunity will not adversely affect the wages or working conditions of similarly employed U.S. workers.").

The LCA also serves to protect H-1B workers from wage abuses. A petitioner submits the LCA to the DOL to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to other employees with similar duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a); *Venkatraman v. REI Sys., Inc.*, 417 F.3d 418, 422 & n.3 (4th Cir. 2005); *Patel v. Boghra*, 369 F. App'x 722, 723 (7th Cir. 2010); *Michal Vojtisek-Lom & Adm'r Wage & Hour Div. v. Clean Air Tech. Int'l, Inc.*, No. 07-97, 2009 WL 2371236, at *8 (Dep't of Labor Admin. Rev. Bd. July 30, 2009).

Before filing a petition for H-1B classification, the regulation requires petitioners to obtain certification from DOL that the organization has filed an LCA in the occupational specialty in which its foreign national personnel will be employed. 8 C.F.R. § 214.2(h)(4)(i)(B)(*1*). While DOL certifies the LCA, USCIS determines whether the LCA's attestations and content corresponds with and supports the H-1B petition. *See* 20 C.F.R. § 655.705(b) ("DHS determines whether the petition is supported by an LCA which corresponds with the petition . . . ."). *See also Matter of Simeio Solutions*, 26 I&N Dec. 542, 546 n.6 (AAO 2015). An employer "reaffirms its acceptance of all of the attestation obligations by submitting the LCA to [USCIS] in support of the Petition for Nonimmigrant Worker, Form I-129, for an H-1B nonimmigrant." 20 C.F.R. § 655.705(c)(1).

When comparing the standard occupation classification (SOC) code or the wage level indicated on the LCA to the claims associated with the petition, USCIS does not purport to supplant DOL's responsibility with respect to wage determinations. There may be some overlap in considerations, but USCIS' responsibility at its stage of adjudication is to ensure that the content of the DOL-certified LCA "corresponds with" the content of the H-1B petition.

The regulation at 20 C.F.R. § 655.705(b) was amended by 65 Fed. Reg. 80,110, 80,210 (proposed Dec. 20, 2000). The plain language of the regulation clearly states: "In [accepting an employer's petition with the DOL-certified LCA attached], the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the labor condition application is a specialty occupation . . . , and whether the qualifications of the nonimmigrant meet the statutory requirements for H-1B visa classification." *See also Parzenn Partners, LLC v. Baran*, No. 19-CV-11515-ADB, 2020 WL 5803143, at *8–9 (D. Mass. Sept. 29, 2020). USCIS may consider DOL regulations when adjudicating H-1B petitions. *See Int'l Internship Programs v. Napolitano*, 853 F. Supp. 2d 86, 98 (D.D.C. 2012), *aff'd sub nom. Int'l Internship Program v. Napolitano*, 718 F.3d 986 (D.C. Cir. 2013); *ITServe All., Inc. v. United States Dep't of Homeland Sec.*, 71 F.4th 1028, 1037–38 (D.C. Cir. 2023); *United States v. Narang*, No. 19-4850, 2021 WL 3484683, at *1 (4th Cir. Aug. 9, 2021), *cert. denied,* 142 S. Ct. 1360 (2022) (finding that USCIS adjudicators evaluate whether the employment proposed in an H-1B petition will conform to the wage and location specifications in the LCA).

"In construing a statute or regulation, we begin by inspecting its language for plain meaning." *Sullivan v. McDonald*, 815 F.3d 786, 790 (Fed. Cir. 2016) (quoting *Meeks v. West,* 216 F.3d 1363, 1366

(Fed.Cir.2000)). "[W]e attempt to give full effect to all words contained within that statute or regulation, thereby rendering superfluous as little of the statutory or regulatory language as possible." *Sullivan*, 815 F.3d at 790 (quoting *Glover v. West,* 185 F.3d 1328, 1332 (Fed.Cir.1999)). The most basic canon of statutory—as well as regulatory—construction consists of interpreting a law or rule by examining the literal and plain language. *See Carbon Fuel Co. v. USX Corp.*, 100 F.3d 1124, 1133 (4th Cir. 1996). The inquiry ends with the plain language as well, unless the language is ambiguous. *United States v. Pressley*, 359 F.3d 347, 349 (4th Cir. 2004).

Here, the plain language of the regulation is dispositive: USCIS is authorized to determine the corollary nature of the offered position's elements as represented in an LCA when compared with those same elements as represented on the Form I-129, as well as the Petitioner's actual position requirements. Furthermore, the Act prescribes DOL's limited role in reviewing LCAs stating that "[u]nless the [DOL] Secretary finds that the application is incomplete or obviously inaccurate, the Secretary shall provide the certification . . . ." Section 212(n)(1)(G)(ii) of the Act. USCIS precedent also states:

> DOL reviews LCAs "for completeness and obvious inaccuracies" and will certify the LCA absent a determination that the application is incomplete or obviously inaccurate. Section 212(n)(1)(G)(ii) of the Act. In contrast, USCIS must determine whether the attestations and content of an LCA correspond to and support the H-1B visa petition.

Simeio Solutions, 26 I&N Dec. at 546 n.6. It is unclear how USCIS is to carry out its responsibilities to determine whether the LCA corresponds with and supports the H-1B petition without performing such a review. To illustrate, when DOL certifies an LCA, it does not perform any meritorious review of an employer's claims to ensure the information is true. DOL's Office of Inspector General, 06-21-001-03-321, *Overview of Vulnerabilities and Challenges in Foreign Labor Certification Programs* 11 (2020) (describing the DOL Employment and Training Administration's role as "simply rubber-stamping during the application certification process"). In summary, when filing an LCA and an H-1B petition, a petitioner subjects itself to two authorities as it relates to the LCA: (1) to DOL through the certification process, or through a prevailing wage determination, and (2) to USCIS by way of our authority to ensure that the LCA corresponds with and supports the petition.

Further, when DOL certifies an LCA, it does not perform any meritorious review of an employer's claims to ensure the information is true. DOL's Office of Inspector General, 06-21-001-03-321, *Overview of Vulnerabilities and Challenges in Foreign Labor Certification Programs* 11 (2020) (describing the DOL Employment and Training Administration's role as "simply rubber-stamping during the application certification process"). In other words, employers do not receive an evaluative determination from DOL on whether the LCA's content and the specifics were appropriate and accurate.

As specified within the Act, by simply submitting the LCA to DOL without also obtaining a prevailing wage determination, a petitioner has only received DOL's certification that the form is complete and does not contain obvious inaccuracies. *Id.* In fact, the DOL "is not generally permitted to investigate the veracity of the employer's attestations on the LCA prior to certification." *Aleutian Cap. Partners, LLC*, 975 F.3d at 225–26 (quoting *Cyberworld Enter. Techs., Inc. v. Napolitano*, 602 F.3d 189, 193

(3d Cir. 2010)). In other words, it did not receive an evaluative determination from DOL on whether the LCA's content and the specifics were appropriate and accurate.

In order to determine whether the "attestations and content" (e.g., the SOC code and the wage level) as represented on the LCA corresponds with the information pertaining to the offered position as represented on the Form I-129, we follow DOL's guidance, which provides a five-step process for determining the appropriate SOC code and wage level. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009) (DOL guidance), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

The DOL guidance contains the same publicly available procedure an employer, or their representative, should follow to not only find the correct SOC code (i.e., utilizing the Occupational Information Network (O*NET)), but also to calculate the appropriate wage level. We note this is the same process the DOL utilizes to issue a Prevailing Wage Determination (PWD). Absent a PWD from DOL, we will not automatically accept the presumption that the Petitioner provided DOL with the full spectrum of information relating to the offered position's requirements when it filed the LCA, which could affect the appropriate wage level for the position in this petition.[1]

II. ANALYSIS

The Petitioner initially provided the position's description with nine elements and provided additional details relating to each duty in response to the Director's request for evidence (RFE). For the sake of brevity, we will not quote the duties; however, we note that we have closely reviewed and considered them.

The Petitioner filed the LCA in this case and designated the position to fall under the Data Scientists occupation and the 15-2051 SOC code. The Director issued an RFE notifying the Petitioner that the correct classification for the position appeared to instead be under a higher paying occupational code, Computer and Information Research Scientists, 15-1221. After the Petitioner's responded to the notice, the Director denied the petition because the organization did not provide an LCA that was certified for the specialty occupation in which the Beneficiary would be employed. We note the Director did not provide any analysis to address the Petitioner's arguments when it responded to the RFE.

In this situation, we do not agree with the Director that the Petitioner selected the incorrect SOC code for the LCA. Both Data Scientists and Computer and Information Research Scientists focus on some of the same type of responsibilities. But the work the Petitioner proposes appears to be a better fit under the Data Scientists occupation. For example, Computer and Information Research Scientists focus on advancing technology through innovative research and experimentation. Their work concentrates on a higher-level operation to solve broader problems. Data Scientist on the other hand are more in the weeds of actual data and providing actionable insights into that data. It is this

[1] A petitioner may file Form ETA-9141, Application for Prevailing Wage Determination with DOL. USCIS will accept PWDs as sufficient, provided the Petitioner establishes that it fully disclosed to DOL all of the offered position's relevant requirements relating to the five-step process for determining an appropriate wage level, as outlined in the DOL guidance.

actionable data problem solving that the offered position is designed to address. As a result, the Data Scientists SOC code is the most appropriate. Accordingly, we withdraw the Director's adverse determination as it relates to the correct SOC code selected for the LCA. As the Beneficiary's qualifications determination stems from that same LCA determination, we also withdraw the Director's conclusion as it relates to the Beneficiary's qualifications. We conclude her educational background is directly related to the offered position's duties.

Within the remanded matter, the Director should be mindful to evaluate each of the position's duties, to include the percentage of time that the beneficiary would spend performing each job duty, and to compare and contrast those with the tasks, knowledge, and work activities generally associated with an O*NET SOC occupation to ensure the Petitioner's Level I wage rate was appropriate. *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009) (DOL guidance), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_ Guidance_Revised_11_2009.pdf.

Most notably, the Director should focus on Step 4 as described in the DOL guidance to determine whether the offered position's responsibilities would necessitate adding any points to the DOL's Appendix C: Worksheet for Use in Determining OES Wage Level, resulting in a higher wage level rating. The DOL guidance under Step 4 provides the following:

> Make note of machines, equipment, tools, or computer software used. Consider how the employer's requirements compare to the O*NET Tasks, Work Activities, Knowledge, and Job Zone Examples. Consider whether the employer's requirements indicate the need for skills beyond those of an entry-level worker.
>
> In situations where the employer's requirements are not listed in the O*NET Tasks, Work Activities, Knowledge, and Job Zone Examples for the selected occupation, then the requirements should be evaluated to determine if they represent special skills. The requirement of a specific skill not listed in the O*NET does not necessitate that a point be added. If the specific skills required for the job are generally encompassed by the O*NET description for the position, no point should be added. However, if it is determined that the requirements are indicators of skills that are beyond those of an entry level worker, consider whether a point should be entered on the worksheet in the Wage Level Column.

The Director may wish to address what appears to be duties that are more complex than an entry-level worker would perform. We offer examples. Consider one of the duties comprising at least 20 percent of the position's time: "Build *industry leading* recommendation system, and *develop highly scalable classifiers and tools* leveraging machine learning." (Emphasis added). Contrast that advanced level of work to the following task in O*NET: "Apply feature selection algorithms to models predicting outcomes of interest, such as sales, attrition, and healthcare use."

Further, when the Petitioner filed the petition, it included the following responsibility: "Build full-stack search engine system [e.g., front- and back-end development for the application] and combine information retrieval technology with modern machine learning methods from related fields such as natural language processing (NLP), computer vision (VC), and recommender system." This

appears to be much more advanced than a similar O*NET task: "Analyze, manipulate, or process large sets of data using statistical software."

We would expect an entry-level data scientist—one operating at a Level I wage rate—to perform basic data collection and cleaning, basic data analysis, apply preexisting machine learning models or basic algorithms, and to assist senior team members with data-related projects instead of performing complex model development and advanced analytical work. If the Director determines the offered position requires skills beyond those of an entry-level worker, that would result in an increase in the wage level designated on the LCA to a Level II wage rate and an increase in the annual wage of approximately $36,000 over what the Petitioner indicated it would pay to the Beneficiary.

Additionally, the Director may wish to inquire to determine whether the Petitioner was fully transparent about the offered position's actual prerequisites. The Petitioner's website currently presents a position by this same job title at the same location bearing very similar if not less complex duties. But that apparently less complex position would require an increase in the wage level over the Level I rate the Petitioner designated on the LCA here because the similar position includes the requirement of a bachelor's degree and more than two years of experience.

DOL guidance provides a five-step process for determining the proper wage level for the offered position. Step two of this process compares the experience described in the O*NET Job Zone to the requirements for the offered position. Data Scientists are classified in Job Zone 4 with a Specialized Vocational Preparation (SVP) rating of "7.0 < 8.0." This SVP rating means that the occupation requires "over 2 years up to and including 4 years" of specific vocational training. A bachelor's degree expends two years, permitting the Petitioner to require up to two years of experience as the position's prerequisite before it must increase the wage level. If an employer requires a bachelor's degree and more than two years of work experience, a wage level increase is required as follows:

Amount of Experience	Experience and SVP Range	Wage Level Requirement
Up to and including two years	Less than the experience and SVP	No increase
More than two years and up to three years	Low end of the experience and SVP	One level increase
More than three years and up to four years	High end of the experience and SVP	Two level increase
More than four years	Greater than the experience and SVP	Three level increase[2]

See the DOL guidance pp. 9–10. If the position in this petition had the same requirements as the similar one on the Petitioner's website, based on the DOL guidance, that would have also increased the required wage rate by one level. Based on both of these factors we discuss, this would result in an additional annual wage increase commensurate with a Level III wage rate, which would almost be $100,000 more than the amount the Petitioner would pay the Beneficiary of this petition.

[2] *See* the DOL guidance.

We further observe that the signature of the Petitioner's representative is identical and indistinguishable, to include each line, loop, slant, spacing, and pen lift. This is an indication that these apparent signature images may have been copied from another source and electronically transferred onto the submitted immigration forms, to include the LCA. Because of the above factors, the Director may wish to evaluate and consider whether it is more likely than not that the image of the signature on the immigration forms before them is not a valid signature as required by the regulation. 8 C.F.R. § 103.2(a)(7)(ii)(A). To be valid here, regardless of how the filing party transmits the immigration form to USCIS, any signature must be on an original immigration form "containing an original handwritten signature, unless otherwise specified." *See generally* 1 *USCIS Policy Manual* B.2(B), https://www.uscis.gov/policy-manual. If the record does not establish that the immigration forms before the Director were personally signed by the Petitioner's representative, the Director may wish to consider whether those forms were properly completed and filed. 8 C.F.R. § 103.2(b)(1).

Also, we note that it appears some of the Petitioner's operations may cease to exist in the near future and the Director may elect to inquire whether a bona fide position will continue to exist after those business-related changes take place.

Because we disagree with the Director's assessment relating to which occupational profile applies to the offered position, and because it appears the Director's determination on whether the Beneficiary was qualified to occupy such a position rested on that error, we are also withdrawing their adverse conclusion on the beneficiary qualifications issue.

III. CONCLUSION

Accordingly, we will remand the matter to the Director to consider the LCA issue again and to enter a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issue. As such, we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.