



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 22685755

Date: FEB. 17, 2023

Appeal of Nebraska Service Center Decision

Form 1-140, Immigrant Petition for Alien Worker (Advanced Degree)

The Petitioner, a bank, seeks to employ the Beneficiary as a quantitative risk modeling and analytics manager. 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 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. The Director concluded that the accompanying certification from the U.S. Department of Labor (DOL) does not support the offered position.

The Petitioner bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). The AAO reviews the questions in this matter de novo. See *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 case for entry of a new decision consistent with the following analysis.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the DOL. See section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). 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 foreign national in the position will not adversely affect the wages and working conditions of U.S. workers similarly employed. See section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer must submit the approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204 of the Act, 8 U.S.C. § 1154. The immigrant visa petition must establish that the foreign worker qualifies for the offered position, that the foreign worker and the offered position are eligible for the requested immigrant classification, and that the employer has the ability to pay the proffered wage. Third, if USCIS approves the petition, the foreign national may apply 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 petition for an advanced degree professional must generally be accompanied by a valid, individual labor certification. 8 C.F.R. § 204.5(k)(4)(i). A labor certification remains valid only for the particular job opportunity, foreign national, and geographic area of intended employment stated on it. 20 C.F.R. § 656.30(c)(2). A petitioner must establish its intent to employ the beneficiary in accordance with the terms and conditions of the labor certification. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg’l Comm’r 1966). If a job opportunity changes during a petition’s pendency, the validity of an accompanying labor certification may expire. *Matter of United Inv. Grp.*, 19 I&N Dec. 248, 249 (Comm’r 1984).

For a job offer to remain as DOL-certified, “the facts of employment or intended employment must remain as stated and the specific employer-employee relationship stipulated and intended must continue both in present fact and prospectively.” *Id.* USCIS must assess whether “there has been any other material change in the job opportunity covered by the original labor certification.” 6 USCIS Policy Manual E.6(A), <https://www.uscis.gov/policy-manual>.

In this case, the labor certification was filed with the DOL on June 10, 2021, and certified in November 2021, identifying the offered position as “Modeling Analyst Senior” with the following terms and conditions:

- In section F (Prevailing Wage Information), the proffered position is categorized under the SOC/O*NET code of 15-2041 with the occupational title of Statisticians, a skill level of Level II, and a prevailing wage of \$93,205;
- In section G (Wage Offer Information), the offered wage is between \$100,000 to \$115,000 per year; and
- In section H, (Job Opportunity Information), the job duties are stated as:

Support Corporate Risk Management and compliance operations by developing quantitative predicting models needed to analyze risk management activities, including credit, legal, strategic, and reputational risk considerations. Conduct comprehensive capital analysis and review (CCAR) credit modeling, CCA pre-provision net revenue modeling, current expected credit loss (CECL) credit modeling and fair lending analytics. Provide quantitative support to manage risks associated with [] balance sheet and provide cross-functional statistical support to different areas within our organization. Lead the development of models and techniques to facilitate the forecasting of credit losses for the [] balance sheet, including commercial and industrial lending, commercial real estate, and all types of consumer lending products, such as residential mortgage, home equity lines and loans, auto loans, recreational and marine loans, and securities portfolio characteristics and relevant economic variables. Develop models using SAS, including effective documentation of model development to meet standards set by the model governance group and external regulators. Assist in the

preparation of the annual and semi-annual capital planning forecast and stress tests. Mentor junior modelers within the Corporate Risk Management division.

However, as pointed out by the Director in a request for evidence notice, the labor certification identifies the offered position title as “Modeling Analyst Senior,” while the petition identifies a different position title, “Quantitative Risk Modeling and Analytics Manager.” Part 6 of the petition included basic information about the proposed employment indicating wages as \$113,875 per year and the “Nontechnical Job Description” as, “Develop models needed to analyze risk management activities, including credit, legal, strategic, and reputational risk considerations to support Corporate Risk Management and compliance operations.”

With the Petitioner’s reply to the notice, they submitted a letter from the Petitioner’s Quantitative Risk Modeling and Analytics Managing Director who explained the Beneficiary joined the Petitioner as a Modeling Analyst (Junior), was promoted to Modeling Analyst Senior, and was promoted to his current position of Quantitative Risk Modeling and Analytics Manager in December 2020. The Petitioner’s official stated, “[t]he core job duties remain the same with added job opportunities and pay increase at each level.” He then goes on to state,

[the Beneficiary] remains an Individual Contributor (that is, his responsibilities substantially involve hands-on model development) but with greater responsibility for project management. As a project manager, for example, he has assumed the operational ownership of SAS MIP (model implementation platform), where [REDACTED] CECL models are implemented and production is executed. Otherwise, every job duty as described . . . remains the same: the Quantitative Risk Modeling and Analytics Manager performs all the duties that a Modeling Analyst Senior performs.

(emphasis added).

The Director concluded that “[t]he evidence does not establish that the specific job offered on [the petition] (Quantitative Risk Modeling and Analytics Manager), is the same job opportunity certified on the labor certification (Modeling Analyst Senior).” However, when reviewing the job opportunity covered by the original labor certification, USCIS must assess a petition “to ensure that the position offered is the same or similar to the position that the DOL certified and that the beneficiary meets the qualifications for the position.” 6 USCIS Policy Manual, *supra* (emphasis added). The Director should have reviewed the petition to ensure the job opportunity certified in the labor certification is the “same or similar”, instead of the “same”. Therefore, we withdraw finding of the Director on this issue.

On appeal the Petitioner argues the Director disregarded the job duties of the offered position, and instead focused on the change of job title. The Petitioner asserts that the job opportunity in the labor certification and the proffered position in the petition are one and the same with the Director failing to see that the “additional job duty is within the umbrella of an already enumerated job duty in the labor certification.” The Petitioner argues that the Director erred in presupposing that the proffered job has “increased job opportunities, pay increase, and greater responsibilities.”

The letter from the Petitioner's official states that while "[t]he quantitative modeling and analytics team consists of three positions, that, of Junior, Senior, and Manager. The core job duties remain the same with added job opportunities and pay increase at each level." The letter then goes on to state that "[the Beneficiary] remains an Individual Contributor (that is, his responsibilities substantially involve hands-on model development) but with greater responsibility for project management." We agree with the Petitioner that the specific duties of the proffered position, not only the job title, should be considered when comparing it with the job in the labor certification. However, the record is not clear whether the Beneficiary's job position as a Quantitative Risk Modeling and Analytics Manager is the same or similar to the labor certified position of Modeling Analyst Senior.

As noted by the Director, the Beneficiary was promoted in December 2020, with added responsibilities of project management.¹ While the Petitioner asserts that the job opportunity is the same as the job approved in the labor certification, the letter from the Petitioner's official indicates the jobs have differences, including responsibilities, opportunities, and pay. The Petitioner asserts that the Beneficiary's job duties were unaffected by his change of job title with the exception of the additional project management responsibilities. While a promotion from a senior analyst to project manager may be an advancement in pay within the proffered wage range between \$100,000 to \$115,000 as stated in the labor certification, it also raises questions of whether the Beneficiary may have assumed some higher level responsibilities that are not reflected in his list of job duties, thereby having a material change to the job opportunity covered by the labor certification.

The record needs to be clarified to determine whether the position listed on the labor certification is the same or similar to the position offered to the Beneficiary, and not materially different than the original position. In comparing the job duties of both roles, the Petitioner should provide a breakdown of the specific amount of time spent on each new or expanded responsibility, namely the project management responsibilities. The Petitioner should also describe the key differences in more detail, including whether the Beneficiary directs and supervises other employees when performing the additional project management responsibilities. It is unclear whether adding the project management responsibilities also specifically added managing employees, and whether any direct reports might have changed the assigned wage for the position, or the wage level of the position.² Without more information and details regarding the expanded duties of project management, we are precluded from determining that the position on the labor certification is the same or similar to the offered position.

On both the labor certification and the petition, the proffered position was identified under the standard occupational code (O*NET-SOC) of 15-2041, which encompasses the occupational title of statisticians. It is not clear from the record whether the Petitioner, when advertising and hiring generally for the positions of Modeling Analyst Senior, and Quantitative Risk Modeling and Analytics Manager, imposes the same education, experience, and special skills requirements for both positions,

¹ Section K of the labor certification indicates the Beneficiary was employed by the Petitioner as a "Modeling and Analytics Manager" since December 9, 2020, six months prior to the Petitioner filing the labor certification in June 2021. The labor certification also indicates the job advertisements were placed in April 2021, after the Beneficiary was promoted. The record is not clear why the Petitioner submitted the labor certification for the position of Modeling Analyst Senior.

² In determining the appropriate wage level for a position, DOL will consider the number or range of people to be supervised. See U.S. Dep't of Labor, Emp't & Training Admin., Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs (rev. Nov. 2009), available at https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/NPWHC_Guidance_Revised_11_2009.pdf.

and whether both positions would receive a wage under the same O*NET code wage level resulting in the same wage determination. If, as Quantitative Risk Modeling and Analytics Manager, the Beneficiary would supervise other workers, that too could change the required prevailing wage determination. The record does not contain any job advertisements, or other related evidence, to make that comparison. Thus, it is not clear whether U.S. workers would be apprised of the actual job, its requirements, or position description. As such, U.S. workers may not have been given proper consideration for the job at issue in this proceeding during the recruitment period of the labor certification process.

The labor certification process requires an employer to test the labor market by placing advertisements for an offered position and soliciting applications from U.S. workers. See 20 C.F.R. § 656.17(e) (stating requirements for “pre-filing recruitment” of job opportunities). DOL “makes a determination either to grant or deny the labor certification on the basis of whether or not . . . [t]here is in the United States a worker who is able, willing, qualified, and available for and at the place of the job opportunity.” 20 C.F.R. § 656.24(b)(2). Thus, “[t]he outcome of this labor market test is of paramount importance.” See, e.g., *Zodiac Solutions*, 2015-PER-00179, slip op. at *3 (BALCA Feb. 22, 2019). Accordingly, DOL has specific advertising requirements. For example, an ad for an offered position in a newspaper or professional journal must “[n]ot contain wages or terms and conditions of employment that are less favorable than those offered to the alien.” 20 C.F.R. § 656.17(f)(7).

For the reasons discussed above, we withdraw the Director’s findings. The record requires further development to determine whether the job opportunity described in the labor certification is the same or similar as that described in the petition, and thus whether the labor certification is valid for the petition. We will therefore remand the matter. The Director may also request any other evidence that may be deemed necessary to determine the Petitioner’s eligibility for the requested immigration benefit.

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