U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26380570

Date: JUN. 5, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a provider of software development and consulting services, seeks to permanently employ the Beneficiary as a computer systems analyst. The company requests her classification under the second-preference, immigrant visa category for members of the professions holding "advance 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 work in a job requiring at least a bachelor's degree followed by five years of progressive experience in the specialty. 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree").

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the Beneficiary's qualifying experience for the offered position and that she and the company willfully misrepresented her former job titles on the accompanying certification from the U.S. Department of Labor (DOL). On appeal, the Petitioner denies the misrepresentations and contends that, in finding insufficient evidence of the Beneficiary's qualifying experience, the Director misapplied law.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the 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 Director should have focused on the job duties of the Beneficiary's former positions rather than on their titles. The Director also did not notify the company of evidentiary deficiencies regarding the Beneficiary's claimed experience. We will therefore withdraw the Director's decision and remand the matter for entry of new decision.[1]

I. LAW

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

[1] The Petitioner requests oral argument in this matter. *See* 8 C.F.R. § 103.3(b). We do not believe the case's resolution requires in-person discussion. We therefore deny the request.

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

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 April 12, 2019, the date DOL accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

When assessing a beneficiary's qualifications for an offered position, USCIS must examine the job-offer portion of an accompanying labor certification to determine the position's minimum job requirements. USCIS may neither ignore certification terms 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 for setting the *content* of the labor certification") (emphasis in original).

The Petitioner's labor certification states the minimum educational requirements of the offered position of computer systems analyst as a U.S. bachelor's degree, or a foreign equivalent degree, in computer science, science, technology, engineering, mathematics, business, or a "closely related field." The labor certification also states that the job requires at least five years of experience "in the job offered." The Petitioner indicated that it would not accept experience in an alternate occupation.

Further, part H.14 of the labor certification, "Special skills and other requirements," states:

> Position requires 1 yr experience working with at least 1 or more of the following technologies which may be satisfied through the use of 1 or multiple technologies listed here at different times during the requisite 1 yr experience: Oracle, SQL, Java, J2EE, Websphere, Weblogic, Cloud Tools, Automation, Validation, Software of User Acceptance Testing, .NET, SAP, Digital Analytics, Big Data Architecture, Data Security, Or Microservices.

The Beneficiary's educational qualifications are not at issue. The record demonstrates her possession of a foreign bachelor's degree equating to a U.S. bachelor of science degree in engineering. A bachelor's degree followed by at least five years of progressive experience in an applicable specialty

meets the educational requirements of the requested immigrant visa category. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree").

On the labor certification, the Beneficiary attested that, by the petition's 2019 priority date and before she most recently began working for the Petitioner in February 2016,[2] she gained more than six years of full-time, qualifying experience in India. She stated that she worked for information technology companies - including the Petitioner's parent company - as a "computer systems analyst" during the following periods:

- About one year three months from October 2014 to January 2016;
- About one year five months from May 2013 to October 2014; and
- About three years nine months, including about: one year three months from February 2012 to May 2013; and about two years six months from December 2007 to June 2010.

A. The Alleged Material Misrepresentations

The Director issued a notice of intent to deny (NOID) the petition, noting inconsistencies in the Beneficiary's purported former job titles. She attested on the labor certification that she gained qualifying experience with each former employer as a "computer systems analyst," the offered position's title. But the Petitioner submitted evidence indicating that none of the foreign companies employed her under the title of computer systems analyst. A job-offer letter and affidavit from a former supervisor at her claimed most recent Indian employer state her job title as "technical specialist." Letters from the company that purportedly employed her from May 2013 to October 2014 and an affidavit from a claimed former supervisor at the firm identify her position as "senior software engineer." Also, a letter from the Petitioner's parent states that it first employed her as a "programmer analyst trainee," then as a "programmer analyst," and finally as an "associate - projects." The NOID alleges that the Petitioner and Beneficiary "misrepresented the beneficiary's previous job titles and claimed work experience as a Computer Systems Analyst in order for the beneficiary to qualify for the offered position, as listed on the labor certification."

Misrepresentations are willful if they are deliberately made with knowledge of their falsity. *Matter of Mensah*, 28 I&N Dec. 288, 293 (BIA 2021) (citations omitted). Information is material when it has a natural tendency to affect an adjudicator's official decision or tends to close a line of inquiry that would predictably have disclosed other relevant facts. *Id.* at 293-94 (citations omitted).

Willfully misrepresenting a material fact on an accompanying labor certification justifies a petition's denial. USCIS approves a filing, in part, if "the facts stated in the petition are true." Section 204(b) of the Act. A petition includes any supporting evidence - including a labor certification. 8 C.F.R. § 103.2(b)(1). Thus, USCIS cannot approve a petition if the facts stated on an accompanying labor certification are false. Also, a beneficiary's willful misrepresentation of a material fact in a petition renders the noncitizen inadmissible to the United States. Section 212(a)(6)(C)(i) of the Act.

[2] A labor certification employer cannot rely on experience that a noncitizen gained with it, unless the noncitizen gained the experience in a position substantially different than the offered one or the employer can demonstrate the impracticality of training a U.S. worker for the offered position. 20 C.F.R. § 656.17(i)(3). The Petitioner does not assert that the Beneficiary qualifies for the offered position based on experience with the company. The record shows that she also worked for the Petitioner from 2010 to 2012.

On appeal, the Petitioner denies that it and the Beneficiary misrepresented her former job titles. The company contends that its labor certification lists her occupational classification as "computer systems analyst," which encompasses many of her former duties. But the labor certification application form clearly requires listing of the Beneficiary's former "job titles," not her former occupational classification. We therefore find that the labor certification misrepresents the Beneficiary's former job titles.

Nevertheless, the record does not support the misrepresentations' materiality. When assessing noncitizens' qualifications for offered positions, adjudicators must focus on job duties, not job titles. *Matter of Maple Derby, Inc.*, 1989-INA-185, *4 (BALCA May 15, 1991) (*en banc*); *see also Matter of Sumeru Inc.*, 2013-PER-01241, *4 (BALCA Apr. 24, 2017) (applying *Maple Derby*'s holding under current DOL labor certification regulations). In *Maple Derby*, a labor certification application for an accountant's position required seven years of experience "in the job offered." *Matter of Maple Derby*, 1989-INA-185 at *1. Without comparing the offered position's job duties to those of the noncitizen's prior positions, DOL's certifying officer found that the noncitizen had only six months of experience as an "accountant" and that his experience in other positions - such as "assistant accountant" - did not qualify him for the job. *Id.* at *2. But the Board of Alien Labor Certification Appeals (BALCA) found that the term "in the job offered" means experience performing "the major job duties of the offered position" as indicated on the labor certification. *Id.* *3; *see also Matter of Symbioun Techs., Inc.*, 2010-PER-00224, *3 (BALCA Oct. 24, 2011). BALCA ruled that experience in one job does not necessarily qualify a candidate for another job with the same title. *Id.* at *4. The Board stated: "As the title given a job by an employer may not be determinative of the scope of duties and level of education and experience required, the Board's focus must extend to the underlying job duties for the position." *Id.*

BALCA decisions do not bind us. *See* 8 C.F.R. § 103.10(b) (stating that, in proceedings involving the same issues, officers and employees of the Department of Homeland Security must follow precedent decisions of the Board of Immigration Appeals (BIA) and U.S. Attorney General). But an administrative agency should defer to the reasonable, regulatory interpretation of a sister agency that Congress charged with promulgating the rule. *Martin v. Occupational Safety & Health Comm'n*, 499 U.S. 144, 152 (1991). *Maple Derby* is a reasonable decision that the entire BALCA decided. Also, BALCA is part of DOL, the agency charged with administering the labor certification process. *See* section 212(a)(5)(A)(i) of the Act. We will therefore defer to the decision.

As in *Maple Derby*, the Beneficiary's prior experience in jobs with titles other than "computer systems analyst" does not necessarily render her unqualified for the offered position. Rather, in assessing her qualifications for the offered job, USCIS must focus on the duties of her former positions, not their titles. Because the Agency must examine job duties, the misrepresented titles of the Beneficiary's former jobs should not have influenced USCIS' decision on her qualifications. *See Matter of Mensah*, 28 I&N Dec. at 293-94 (discussing materiality).

Also, the labor certification states job duties of the Beneficiary's claimed former positions that differ from each other and those of the offered position. The duties of her purported former jobs also reflect tasks stated in the letters and affidavits of the corresponding companies and coworkers. Thus, although the labor certification misrepresents the Beneficiary's former job titles, the document does not appear

to misrepresent her former job duties. For these reasons, the job titles of her claimed former positions are immaterial.

The NOID also states that the names of the Beneficiary's purported former supervisors who provided letters do not match those of the supervisors she listed in a 2015 application for a U.S. nonimmigrant work visa. But the Petitioner's NOID response contained evidence that the Beneficiary had multiple, concurrent supervisors at each of her former employers. Thus, the record does not sufficiently support the invalidity of the affidavits from her purported former supervisors. We will therefore withdraw the Director's finding that the Petitioner and Beneficiary willfully misrepresented material facts regarding her qualifying experience.

B. The Beneficiary's Experience

While the record contains insufficient evidence of material misrepresentations, the Petitioner has not demonstrated her qualifying experience for the offered position.

To demonstrate claimed 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 names, addresses, and titles of the former employers, and describe the beneficiary's experience. *Id.* "If such evidence is unavailable, other documentation relating to the alien's experience . . . will be considered." *Id.*

As proof of the Beneficiary's claimed experience with her most recent employer in India from October 2014 to January 2016, the Petitioner submitted two letters from company officials to the Beneficiary. A 2014 letter offers her the position of technical specialist. A 2015 letter informs her of her assignment to work at the company's U.S. affiliate. Contrary to 8 C.F.R. § 204.5(g)(1), however, neither letter describes the Beneficiary's experience with the company. The letters therefore do not demonstrate her claimed qualifying experience with the purported employer in the job offered.

The Petitioner also submitted an affidavit from one of the Beneficiary's purported former supervisors at the company describing her experience and copies of her payroll records at the company from November 2014 and January 2016. The Petitioner, however, did not establish unavailability of a regulatory required letter from the company that describes her experience. *See* 8 C.F.R. § 204.5(g)(1). Thus, USCIS cannot consider the additional evidence of the Beneficiary's claimed experience from October 2014 to January 2016. Even if the Agency could consider the additional evidence, the record would lack supporting proof of the company's employment of the purported supervisor during the Beneficiary's tenure.

The Petitioner also submitted a letter and a certificate from the company that the Beneficiary claims employed her from May 2013 to October 2014. The 2013 letter addresses her and offers her the position of senior software engineer. The 2014 certificate states the company's employment of her as a senior software engineer from May 2013 to October 2014. Neither document, however, describes her experience with the company. *See* 8 C.F.R. § 204.5(g)(1). The documents therefore do not demonstrate the Beneficiary's qualifying experience with the company in the job offered. The Petitioner also submitted an affidavit from one of her purported former supervisors at the company describing the Beneficiary's experience. The Petitioner, however, did not demonstrate the unavailability of a company letter describing the Beneficiary's experience. Thus, under 8 C.F.R.

§ 204.5(g)(1), we cannot consider the additional evidence of her claimed experience. Also, because the record lacks documentary evidence of the purported former supervisor's employment by the company during the Beneficiary's tenure, the affidavit would not sufficiently establish her qualifying experience with the company.

The Petitioner submitted a letter that appears to establish the Beneficiary's qualifying experience with the company's Indian parent. But the experience amounts to three years nine months, less than the five years of experience that the offered position requires. The record therefore does not demonstrate the Beneficiary's qualifying experience for the offered position.

The Director did not notify the Petitioner of these evidentiary deficiencies regarding the Beneficiary's claimed experience. We will therefore remand the matter. On remand, the Director should notify the company of the deficiencies and afford it a reasonable opportunity to respond.

If supported by the record, the Director may notify the Petitioner of any other potential denial grounds. The Director, however, must afford the company a reasonable opportunity to respond to all issues raised on remand. Upon receipt of a timely response, the Director should review the entire record and issue a new decision.

III. CONCLUSION

The record does not support the Director's findings of material misrepresentations on the accompanying labor certification. But the Petitioner has not demonstrated the Beneficiary's qualifying experience for the offered position.

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