U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24845354

Date: APR. 19, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Other Worker)

The Petitioner seeks to permanently employ the Beneficiary as a nursing assistant. It requests the Beneficiary's classification under the third-preference, immigrant visa category as an "other worker" requiring less than two years of training or experience. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 C.F.R. § 1153(b)(3)(A)(iii).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish the Beneficiary has met the minimum training and experience requirements stated on the ETA Form 9089, Application for Permanent Employment Certification (ETA 9089). The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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 dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification (ETA Form 9089) from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). 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 domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition (Form I-140) with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. 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

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(D) requires that a petition filed under this classification must be accompanied by evidence a beneficiary "meets any educational, training and experience, and other requirements of the labor certification."

In section H.14 of ETA Form 9089, the Petitioner listed the proffered petition's "Specific skills or other requirements":

> Employer requires: 1. Must be a high school graduate. 2. Must have completed at least 2 months post-high school Nursing Assistant training. 3. Must have 3 months experience working as a healthcare worker at a healthcare facility (any position). 4. Must have BLS CPR certificate. 5. CNA certification preferred but not required.

As documentation the Beneficiary "completed at least 2 months post-high school Nursing Assistant training," the Petitioner submitted her "Certificate of Completion" from [redacted] College's "Nursing Assistant Training Program" indicating that she participated in the program from "October 24, 2020 to December 7, 2020" (45 days). The Director determined that the Beneficiary's Nursing Assistant training accounted for only 45 days of the required two months of training and therefore she did not meet the minimum training requirement stated on the labor certification.

On appeal, the Petitioner contends that the two months' Nursing Assistant training requirement "leaves room for interpretation. It does not mention days (as the [Director] calculated 45 days and claims the requirement is for 60 days) but rather mentions a type of training which routinely takes approximately 2 months." In addition, the Petitioner states that the dates of the program "did in fact reflect 45 calendar days, however, if you take into account the weekend days, the course equivalent [*sic*] to 60 business days." The record, however, does not include corroborating evidence showing that the Beneficiary's Nursing Assistant program included weekend training days. Nonetheless, even including weekends, the training program falls short of "at least 2 months" as specified in the labor certification.

The Petitioner further argues that "the Beneficiary continued at the [redacted] College and completed additionally the Home Health Aide Training Program . . . for an additional 6 weeks. . . . Thus, she clearly has more than the 2 months training required under any interpretation."[1] The appellate submission includes a memorandum from [redacted] College indicating that Beneficiary was registered in the school's Home Health Aide Training Program until January 19, 2021. The Petitioner also submits information about California's Certified Nurse Assistant "Licensing and Certification Program" and "Home Health Aide Requirements in California." The Beneficiary's additional Home Health Aide Training program, however, reflects training for a different occupation and therefore we cannot conclude that she has completed at least two months of "Nursing Assistant training."

In order to determine what a job opportunity requires, we must examine "the language of the labor certification job requirements." *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must

[1] The Petitioner has not provided evidence indicating that training as a "Home Health Aide" constitutes "Nursing Assistant" training.

examine the certified job offer exactly as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). Our interpretation of the job's requirements must involve reading and applying the plain language of the alien employment certification application form. *Id.* at 834. Here, the Petitioner has not demonstrated that the Beneficiary has at least two months of Nursing Assistant training. Accordingly, she does not meet the minimum training requirement of the labor certification.

In his decision, the Director discussed an additional ground for denying the petition. The Director stated that the Beneficiary did not meet the requirement for three months of experience working as a healthcare worker at a healthcare facility. Since our finding that the Beneficiary does not meet the labor certification's minimum training requirement is dispositive of this appeal, we will not address the experience issue at this time. However, we reserve this issue for future proceedings. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

We will dismiss the appeal because the Petitioner has not established that the Beneficiary has the training required by the terms of the labor certification.

ORDER: The appeal is dismissed.