U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29243957

Date: DEC. 20, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a seller and repairer of computer equipment, seeks to permanently employ the Beneficiary as a computer hardware engineer. The company requests his classification under the employment-based, third-preference (EB-3) immigrant visa category as a "professional." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). U.S. businesses may sponsor noncitizens for permanent residence in this category to work in jobs requiring at least bachelor's degrees. *Id.*

The Acting Director of the Texas Service Center denied the petition. Finding inconsistent evidence of the Beneficiary's job duties with his former employers, the Director concluded that the Petitioner did not demonstrate his possession of the minimum experience required for the offered job. On appeal, the Petitioner contends that the Director overlooked evidence of the Beneficiary's qualifying experience.

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 company's evidence consistently states the Beneficiary's former job duties and will therefore withdraw the Director's contrary decision. But, because the Petitioner did not establish the Beneficiary's experience with equipment and technologies required by the job offer and seeks to rely on experience that he gained with the company, we will remand the matter for entry of a new decision consistent with the following analysis.[1]

I. LAW

Immigration as a professional generally follows a three-step process. First, a prospective employer must apply to the U.S. Department of Labor (DOL) for certification that: there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and a noncitizen's employment in

[1] The Petitioner's Form I-290B, Notice of Appeal or Motion, states that, within 30 days of the appeal's filing, the business would provide a brief, evidence, or both. As of this decision's date, we have not received any additional materials from the Petitioner.

the position would not harm wages and working conditions of U.S. workers with similar jobs. 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). Section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F); 8 C.F.R. § 204.5(l)(3)(i). 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(l)(3)(ii)(C).

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 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

A petitioner must demonstrate that a beneficiary met all DOL-certified requirements of an offered job 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 March 7, 2022, 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, USCIS must examine the job-offer portion of an accompanying labor certification to determine the job's minimum requirements. The Agency 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 job of computer hardware engineer as a U.S. bachelor's degree, or a foreign equivalent degree, in science, technology, engineering, mathematics, or a related field. Also, parts H.10, H.11, and H.14 of the labor certification state that the job requires two years of experience in "PC computer architecture and associated elements (i.e., processing hardware, operating systems, board support packages, messaging middleware, networking standards/protocols, data storage)."

On the labor certification application, the Beneficiary attested that, by the petition's priority date, he gained more than 18 years of full-time, related experience. He stated that he worked as follows:

- About six years and six months as a senior computer analyst for the Petitioner in the United States, from September 2015 until the petition's priority date in March 2022;
- About seven years and two months as a computer systems analyst for the Petitioner in the United States, from July 2008 to September 2015;
- About two years and one month as a remote software developer for [redacted], a U.S. environmental technologies business, from April 2003 to May 2005; and
- About two years and eight months as a computer technician for [redacted], a now-defunct Canadian computer hardware and software retailer, from March 2000 to November 2002.

As proof of qualifying experience, a petitioner must submit letters from a beneficiary's former or current employers. 8 C.F.R. § 204.5(l)(3)(ii)(A). The letters must contain the employers' names,

addresses, and titles, and describe the beneficiary's experience. *Id.* "If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered." 8 C.F.R. § 204.5(g)(1).

A. The Purported Inconsistencies

The Director based the petition's denial primarily on purported inconsistencies in the Petitioner's evidence. The Director found that letters and a copy of an employment contract from the Beneficiary's former employers describe his former job duties differently than those to which he attested on the labor certification. The Director found that the purported job-duty discrepancies cast doubt on the Beneficiary's claimed qualifying experience. *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).

The record, however, does not support the purported inconsistencies. On the labor certification, the Beneficiary attested that he performed the following duties at [redacted]: "Design and program software applications. Document, implement and support development cycle. Case test and debug the implemented software packages." In a 2006 letter, a former company project manager stated that, while working there, the Beneficiary "designed, developed, and tested software components integrated with [a] hardware product. [He] has also collaborated with hardware engineers to ensure that software and hardware components are fully compatible and optimized for performance." The letter also states that the Beneficiary "wrote and programmed software in optimized and scalable software architectures based on computer systems requirements, and documented, implemented, and supported the software development process." In a 2023 letter, the former project manager further described the Beneficiary's role as "developing the software for the soil analyzer project we worked on." He stated that the Beneficiary "was an integral part of the team that wrote the controlling software architecture and analyzer software, working closely with our hardware engineering team."

The labor certification's description of the Beneficiary's job duties at [redacted] omits duties stated in the former project manager's letters, including integrating software with hardware and collaborating with the hardware engineering team. But, by stating that the Beneficiary "designed, developed, and tested software components," "develop[ed] the software for the soil analyzer project," "wrote and programmed software in optimized and scalable software architectures," and "was an integral part of the team that wrote the controlling software architecture and analyzer software," the letters sufficiently indicate that, as the labor certification states, he designed and programmed software applications and documented, implemented, and supported the software development cycle. Also, by stating that the Beneficiary "designed, developed, and tested software components," one of the letters indicates that he tested and debugged software packages as stated on the labor certification. Thus, contrary to the Director's findings, the job duties in the [redacted] letters do not conflict with the corresponding duties stated on the labor certification.

Also, neither a letter nor an employment contract from [redacted] conflicts with the labor certification's description of the Beneficiary's job duties at that company. The labor certification describes his [redacted] duties as: "Build and install computer systems. Troubleshoot and repair laptops, desktops, servers. Onsite installation of server environment." In a 2004 letter, a former company business integration manager stated that the Beneficiary "was responsible for designing, installing, and maintaining

computers and servers within our organization." His "daily tasks included troubleshooting hardware and software issues, performing routine maintenance, and providing technical support to our employees." [redacted] employment contract with the Beneficiary states that he will perform "duties such as server implementation, maintenance, and troubleshooting." The contract also states that he will be "responsible for the installation, configuration, and repair of computer systems and software applications as needed."

The [redacted] letter and employment contract include a few duties omitted from the Beneficiary's corresponding tasks described on the labor certification. But, by stating that he "was responsible for designing, installing, and maintaining computers and servers," was involved in "troubleshooting hardware and software issues," and was "responsible for the installation, configuration, and repair of computer systems," the documents sufficiently indicate that, as the labor certification states, he: built and installed computer systems; troubleshot and repaired laptops, desktops, and servers; and performed onsite installation of servers. Thus, the [redacted] documents do not conflict with the corresponding job duties listed on the labor certification.

The record neither supports the purported inconsistencies in the Petitioner's evidence nor casts doubt on the Beneficiary's claimed former duties. We will therefore withdraw the Director's contrary findings.

B. The Equipment and Technologies Listed on the Labor Certification

The alleged inconsistencies in the Petitioner's evidence did not warrant the petition's denial. Nevertheless, the company has not demonstrated the Beneficiary's qualifying experience for the offered job.

As previously indicated, the job's requirements stated on the labor certification include two years of experience in "associated elements (i.e., processing hardware, operating systems, board support packages, messaging middleware, networking standards/protocols, data storage.)" The initials "i.e." stand for the Latin words *id est*, or "that is." *See, e.g.*, Merriam-Webster Dictionary, "The Difference Between 'i.e.' and 'e.g.,'" www.merriam-webster.com/grammar/ie-vs-eg-abbreviation-meaning-usage-difference#. Writers use the initials to introduce a word or phrase that restates the prior statement. *Id.* Text following 'i.e.' is meant to clarify the prior statement.[2] *Id.* Thus, on the Petitioner's labor certification, the parenthetical phrase "(i.e., processing hardware, operating systems, board support packages, messaging middleware, networking standards/protocols, data storage)" clarifies the term "associated elements." Thus, the Beneficiary must have at least two years of experience with processing hardware, operating systems, board support packages, messaging middleware, networking standards/protocols, and data storage.

The documents from the Beneficiary's former employers indicate his experience with operating systems. But the materials do not specify his experience with the other designated equipment and technologies, including: processing hardware, board support packages, messaging middleware, networking standards/protocols, and data storage. Thus, the Petitioner has not demonstrated the

[2] In contrast, the initials "e.g." stand for the Latin words *exempli gratia*, or "for example." *Id.* Texts following "e.g." lists examples of things mentioned in prior statements. *Id.*

Beneficiary's qualifying experience. *See Rosedale & Linden Park Co. v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) ("The Court - like the [immigration service] - must examine the certified job offer exactly as it is completed by the prospective employer.")

The Petitioner also indicates its reliance on experience that the Beneficiary gained while working for the company. In response to the Director's request for additional evidence, the Petitioner submitted a letter detailing the Beneficiary's duties at the business. Also, on appeal, the company's president states: "We firmly believe that [the Beneficiary's] extensive experience working at [the Petitioner] for over 17 years should not be disregarded." A labor certification employer, however, cannot rely on experience that a noncitizen gained with it, unless they acquired the experience in a job substantially different than the offered one or the employer can demonstrate the impracticality of training a U.S. worker for the job. 20 C.F.R. § 656.17(i)(3).[3]

The Director did not address the equipment and technologies listed on the labor certification or the Petitioner's reliance on the Beneficiary's experience with the company. We will therefore remand the matter.

On remand, the Director should ask the Petitioner to submit evidence of the Beneficiary's experience with the equipment and technologies specified on the labor certification. The Director should also inform the company that, to rely on the Beneficiary's experience with it, it must demonstrate his acquisition of the experience in a job substantially different than the offered one, or the impracticality of training a U.S. worker for the job.

If supported by the record, the Director may notify the Petitioner of 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 enter a new decision.

III. CONCLUSION

The Petitioner's evidence of the Beneficiary's claimed qualifying experience consistently states his former job duties. But the company has not demonstrated his experience with all the required equipment and technologies specified on the labor certification, and the Director did not address the business's reliance on experience that he gained with the company.

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

[3] A job substantially differs from an offered one if it requires performance of the same duties less than 50% of the time. 20 C.F.R. § 656.17(i)(5)(ii).