U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27694453

Date: JULY 27, 2023

Appeal of Nebraska Service Center Decision

Form I-129, Petition for a 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 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 Director of the Nebraska Service Center denied the petition, concluding that the record did not establish the Beneficiary has education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States bachelor's or higher degree required for the specialty occupation and has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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. LABOR CONDITION APPLICATION

Before addressing the basis upon which this petition was denied—the Director's determination that the Beneficiary did not have the qualifications to perform services in a specialty occupation—we will first discuss an issue we have identified on appeal that precludes the petition's approval. As we will discuss, the Petitioner has not established that it submitted a labor condition application (LCA) that corresponds to the H-1B petition it purports to support.

The Petitioner is offering the Beneficiary the position of principal program manager and submitted an LCA certified for a position located with the "Information Technology Project Managers"

occupational category corresponding to the Standard Occupational Classification (SOC) Occupational Information Network (O*NET) code 15-1199.09.[1]

A certified LCA memorializes the attestations a petitioner makes regarding the employment of the noncitizen in H-1B status. *See* 20 C.F.R. § 655.734(d)(*1*)-(*6*). Whilst the U.S. Department of Labor (DOL) is responsible for certifying that the Petitioner has made the required LCA attestations, USCIS evaluates whether the submitted LCA corresponds with the Petitioner's H-1B petition. 20 C.F.R. § 655.705(b) ("DHS determines whether the petition is supported by an LCA which corresponds with the petition...."); *Matter of Simeio Solutions*, 26 I&N Dec. 542, 546 n.6 (AAO 2015). *See also ITServe Alliance, Inc. v. DHS*, 590 F. Supp. 3d 27, 40 (D.D.C. 2022) (noting 20 C.F.R. § 655.705 requires USCIS "to check that the [H-1B] petition matches the LCA"); *see also United States v. Narang*, No. 19-4850, 2021 WL 3484683, at *1 (4th Cir. Aug. 9, 2021)(per curiam)("[USCIS] adjudicators look for whether [the] employment [listed in the H-1B petition] will conform to the wage and location specifications in the LCA").

The petition contains a wage lower than the required wage specified in the LCA. The Petitioner attested in the LCA that it would protect workers from wage abuse by paying a required wage no lower than the higher of the actual or prevailing wage for the occupational classification in the area of intended employment to employees with similar duties, experience, and qualifications. *See* 20 C.F.R. § 655.731. The LCA reflects a prevailing wage rate of $95,555 in the area of intended employment and a wage range of $104,900 to $194,700 for the Beneficiary. But the Petitioner states in the Form I-129 that it will pay the Beneficiary wages of $103,439.96 per year.

As the LCA in the record was certified with a required wage higher than the wage the Petitioner included in the Form I-129, it does not correspond to and support the petition. An H-1B petition cannot be approved without a corresponding LCA. *See* section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1); 20 C.F.R. § 655.731(a). So the petition is unapprovable as filed, irrespective of whether the Petitioner can demonstrate that the Beneficiary is qualified to perform the duties of a specialty occupation under section 214(i)(1) of the Act and the regulations at 8 C.F.R. § 214.2(h)(4)(ii).

The dispositive nature of this deficiency does not require us to evaluate the matter before us any further. However, for the reasons below, the petition would not have been approved even if the Petitioner had submitted a corresponding LCA with the Form I-129 because the Beneficiary is not qualified to perform the duties of a specialty occupation under section 214(i)(2) of the Act and the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(C).

II. BENEFICIARY QUALIFICATIONS

Long-standing legal standards require that the Director first determine whether the proffered position qualifies for classification as a specialty occupation and then move to determine whether the Beneficiary was qualified for the position at the time the nonimmigrant petition was filed. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988). The Director has concluded that

[1] Subsequent to the filing of the petition, the DOL's Bureau of Labor Statistics (BLS) advised that the "Information Technology Project Managers" entry at 15-1199.09 was no longer in use and to use the "Information Technology Project Managers" entry at 15-1299.09.

the proffered position here is a specialty occupation, and we see no error in that determination. But upon review of the record in its totality, we conclude the Petitioner has not established that the Beneficiary is qualified to perform the duties of a specialty occupation under section 214(i)(2) of the Act and the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(C). The record does not contain material, relevant, or probative evidence of the Beneficiary's qualifications to perform the duties of a specialty occupation.

A. Legal Framework

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an individual applying for classification as an H-1B nonimmigrant worker must possess a license if it is required for the occupation, have earned a bachelor's or higher degree in a specific specialty related to the job duties, or have earned the equivalent of a bachelor's or higher degree in a specific specialty related to the job duties based on having experiences in the specialty equivalent to the completion of the degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The supplementing regulations at 8 C.F.R. § 214.2(h)(4)(iii)(C) restate the statute and require meeting one of four criteria to qualify to perform services in a specialty occupation:

(1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
(2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
(3) Hold an unrestricted state license, registration or certificate which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
(4) have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D) provides five methods by which a petitioner can satisfy 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*):

(1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
(2) The result of recognized college-level equivalency examinations or special credit programs such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
(3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
(4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training and/or work experiences in areas related to the specialty and that the noncitizen has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

B. Unqualified Beneficiary

The Beneficiary earned a bachelor of arts degree in international business with a concentration in modern languages from the University [redacted] Scotland, United Kingdom. The Petitioner concedes at appeal that the Beneficiary is not qualified to perform the proffered specialty occupation's duties under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*1*)-(*3*). The Beneficiary does not hold a United States bachelor's or higher degree required by the specialty occupation from an accredited college or university. They likewise do not hold a foreign degree determined to be equivalent to a United States bachelor's or higher degree required for the specialty occupation from an accredited college or university. The Petitioner also did not demonstrate that the Beneficiary holds an unrestricted State license, registration, or certification which authorizes them to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment.

When the occupation does not require a license and the Beneficiary does not have the required U.S. degree or its foreign degree equivalent in the field required for entry to the specialty occupation, our analysis revolves around whether the Petitioner established that the Beneficiary possesses the education, specialized training and/or progressively responsible experience in the specialty equivalent to the completion of the required U.S. degree or its foreign degree equivalent and has progressively responsible experience in job position in the specialty constituting a recognition of expertise as required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*).

The Director based their decision on the insufficiency of the evaluations of the Beneficiary's education and work experience the Petitioner provided. As we have stated before, we may exercise our discretion and consider evaluations of a beneficiary's foreign education as advisory. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). Most relevantly, the record of proceeding contains:

- A credential evaluation report submitted with the initial petition from [redacted] evaluator, [redacted] concluding that the Beneficiary's bachelor of arts degree from Scotland, United Kingdom is equivalent to a U.S. bachelor's degree in international business with a concentration in modern languages;
- An expert opinion and evaluation of beneficiary qualifications submitted with the RFE response from [redacted] dean and professor of management, [redacted] Business, [redacted] University, concluding that the Beneficiary's bachelor of arts degree from Scotland, United Kingdom, is equivalent to a U.S. bachelor of arts degree with concentrations in international business and modern languages;
- An evaluation submitted with the appeal by [redacted] professor of computer science, [redacted] University, concluding that the combination of the Beneficiary's bachelor of arts degree from Scotland, United Kingdom and work experience is equivalent to a U.S. bachelor's degree in computer information systems; and
- A letter from the Beneficiary's former employers.

The evaluations submitted by the Petitioner are also accompanied by either the writer's curriculum vitae; a self-authored statement of "expertise," letter(s) from their employing institutions attesting to their authorization to grant college-level credit or training and/or work experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training/work experience, and/or documentation either from an internal policy document or printed from publicly available internet sources describing the institution's policy for granting academic credit.

The sole expert opinion submitted by the Petitioner concluding the Beneficiary had the education in a specific specialty required to perform the duties of their proffered specialty occupation was authored by [redacted] professor of computer science, [redacted] University.[2] We may exercise our discretion and consider opinion statements like the evaluations submitted by the Petitioner as advisory. *See*, 19 I&N Dec. 817 at 820. But opinion statements like evaluations hold less weight where there is cause to question or doubt the opinion, or if the opinion is not in accord with other information in the record as is the case here. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*) requires that an evaluation to document eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) be issued by an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit.

[redacted] employer, [redacted] University [redacted], is an accredited university without a program to grant college-level credit for work experience. The letter from [redacted] executive dean, industrial enterprise and dean of engineering attests to the existence of a program to grant credit to students for specific industry related experience and training. But the printouts [redacted] submits from [redacted] website dated July 7, 2014 contradict those letters. These printouts describe two methods by which a matriculated [redacted] student can seek college-level credit. [redacted] may provide college-level credit for professional training or for "life-learning"/"prior learning credit."[3] [redacted] "life-learning" or "prior learning credit" appears to contemplate a scenario where an individual's non-traditional experiences can be evaluated for the "lessons" that the experiences provided. [redacted] lists "marriage certificates, newspaper clippings, photographs, letters from individuals involved in the experience, etc." as documentation to support "life-learning" or "prior-learning." Neither method provides an avenue for the evaluation of work experience as required by regulation. So, [redacted] does not appear to have a program to grant college-level credit for work experience. And since [redacted] does not have a program for granting credit based on work experience it follows that [redacted] is not an official with authority to grant credit based on work experience. So [redacted] evaluation does not satisfy the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*) to establish the Beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*).

Moreover, each evaluation submitted by the Petitioner suffers from the same infirmity undercutting its reliability. Both the credential evaluations and the education/experience evaluation conclude that the Beneficiary's Scottish bachelor of arts degree is the single source equivalent of a corresponding

[2] The other evaluations submitted by the Petitioner evaluated the Beneficiary's credentials only and concluded that the Beneficiary had earned education in a field which did not give them the theoretical and practical knowledge in a specialty required to perform the duties of the Petitioner's proffered specialty occupation.

[3] The Petitioner does not argue, nor does the record contain applicable evidence such as documentation of seat hours, syllabus or table of contents, verification of completion, etc. that the Beneficiary has any training which could be awarded credit under [redacted] policy.

U.S. bachelor's degree. A United States baccalaureate degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). And the Educational Database for Global Education (EDGE), maintained by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), reflects that baccalaureate degrees earned from institutions of higher education in Scotland, United Kingdom, are comparable to three years of university study in the United States and not a single source U.S. baccalaureate degree in a corresponding field or discipline. So the conclusion of each evaluation the Petitioner submitted was not persuasive when each individual credential and education/experience evaluation concluded that the Beneficiary had earned the single source equivalent of a U.S. bachelors degree based on their bachelor of arts degree earned from an institution of higher education in Scotland, United Kingdom.

And there is insufficient evidence in the record to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(*2*), (*3*), or (*4*). So we will turn to 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) which grants USCIS the authority to make our own determination on the Beneficiary's qualifications. Specifically, we can evaluate that an individual has earned the equivalent of the degree required by the specialty occupation through a combination of education, specialized training and/or work experiences in areas related to the specialty and that the noncitizen has achieved recognition of expertise in the specialty occupation as a result of such training and experience. We may determine equivalency by accepting three years of specialized training and or work experience demonstrated by the individual for each year of college level training the noncitizen lacks. Additionally, the noncitizen must demonstrate recognition of expertise by one of the following:

> (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
>
> (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
>
> (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
>
> (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
>
> (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record is not sufficient to satisfy 8 C.F.R. § 214.2(h)(4))(iii)(D)(*5*) either. The record of proceedings provides insufficient work-experience evidence for us to reasonably conclude that the Petitioner has satisfied any one of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*)(*i*)-(*v*).[4] So we cannot conclude that the evidence of the Beneficiary's work experience qualifies for recognition of any years of college-level credit by correct application of the H-1B beneficiary-qualification regulations' "three-for-one" standard. Based upon the findings articulated above, we conclude that the totality of the evidence regarding the Beneficiary's foreign education and work experience does not satisfy any criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (h)(4)(iii)(D).

[4] Though acknowledged, the letters regarding the Beneficiary's work experience lack the detail necessary to meet these requirements.

III. CONCLUSION

We conclude that the totality of the evidence regarding the Beneficiary's foreign education and work experience does not satisfy any criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (h)(4)(iii)(D). And this petition is not approvable because it was filed without a corresponding LCA. It is the Petitioner's burden to provide competent and credible evidence by a preponderance of the evidence. The Petitioner has not met its burden for the reasons set forth above. The appeal must be dismissed.

ORDER: The appeal is dismissed.