U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-G-B- LLC

DATE: JULY 5, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a chain of franchised pet bakeries that also provides other canine services, seeks to employ the Beneficiary as a franchise business operation specialist. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based "EB-3" immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires at least two years of training or experience.

The Director of the Texas Service Center denied the petition on the ground that the Petitioner did not establish that the Beneficiary had two years of qualifying experience in the job offered plus two to four years of operational experience in retail, service or similar work environments, as required by the terms of the labor certification.

On appeal the Petitioner submits no new evidence, but asserts that the documentation previously submitted establishes that the Beneficiary has the requisite experience to meet the particular requirements of the labor certification.

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 from the U.S. Department of Labor (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 files an immigrant visa petition 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.

To qualify for classification as a skilled worker a beneficiary must have at least two years of training or experience. 8 C.F.R. § 204.5(l)(3)(ii)(B). A beneficiary must also meet the specific educational, training, experience, or other requirements of the labor certification. *Id.* All requirements must be met by the petition's priority date.[1] *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

II. ANALYSIS

At issue in this case is whether the Beneficiary met the requirements of the labor certification by the priority date of March 11, 2015. The labor certification that accompanied the Petitioner's Form I-140, Immigrant Petition for Alien Worker, states that the minimum requirements for the proffered position of franchise business operation specialist are a high school education or a foreign educational equivalent, 24 months of experience in the job offered, and two to four years of operational experience in retail, service, or similar work environments. The labor certification states that the Beneficiary completed a high school level education at [redacted] Comprehensive School in [redacted] United Kingdom, in 1983. The labor certification also states that the Beneficiary has the requisite two years of experience in the job offered, listing two prior jobs as a chef in [redacted] Florida, for [redacted] Arms, a British pub and eatery, from February 1, 2012, to May 1, 2014, and for [redacted] from May 1, 2012, to September 15, 2013, followed by a job as franchise support for the Petitioner from October 1, 2013, to the present (which was March 11, 2015, the date the labor certification was filed with the DOL).

As no evidence of the Beneficiary's education and experience was submitted with the petition, the Director issued a request for evidence (RFE). In response the Petitioner submitted copies of (1) a document from [redacted] Secondary School certifying that the Beneficiary passed a series of examinations on June 25, 1983; (2) a letter from the Petitioner stating that the Beneficiary had been employed since October 2013, initially as a pet industry trainee and since 2014 as a full-fledged franchise operation specialist; (3) some additions to the labor certification listing three additional jobs for the Beneficiary in [redacted]. Only one of the three jobs was supported by a verification letter, in this case two letters from [redacted] School in July 2003 indicating that the Beneficiary had been employed in a teaching capacity since February 2002. In response to a second RFE, which advised the Petitioner that the Beneficiary's employment at the [redacted] School was neither experience in the job offered nor operational experience in retail, service, or similar work environments, the Petitioner submitted an undated letter from the owner/operator of [redacted] Pub & Eatery[2] stating that the Beneficiary was employed from February 1, 2012, to May 1, 2014, in a job that was similar to a franchise business operation specialist. No evidence was submitted of the Beneficiary's alleged employment by [redacted] in the years 2012-2013, as claimed on the labor certification.

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[1] The priority date of a petition is the date the underlying labor certification is filed with the DOL. *See* 8 C.F.R. § 204.5(d). In this case the priority date is March 11, 2015.

[2] The record demonstrated that the [redacted] Pub & Eatery was formerly the [redacted] Arms.

A. Experience Requirements of the Labor Certification

In denying the petition the Director found that the only experience the Beneficiary had in the job offered was with the Petitioner, that such experience apparently began in May 2014 following the initial training period from October 2013, and that consequently the Beneficiary had only ten months of qualifying experience in the job offered by the priority date of March 11, 2015, which was less than the two years required by the labor certification.[3] In addition, the Director found that the letter from [redacted] Pub & Eatery did not describe the Beneficiary's job duties with enough specificity to establish that the position she held from February 2012 to May 2014 constituted experience in the job offered or operational experience in retail, service, or similar work environments, as required by the labor certification.

On appeal the Petitioner presents no new evidence of the Beneficiary's work experience. Nor does the Petitioner contest the Director's finding that the Beneficiary's employment by the Petitioner since October 2013 included only ten months of experience in the job offered by the priority date of March 11, 2015, and thus did not meet the labor certification requirement of 24 months experience in the job offered.

The focus of the Petitioner's appeal is on the Beneficiary's 27 months of employment by [redacted] Pub & Eatery from February 2012 to May 2014. In determining whether employment experience meets the requirements of the labor certification we look to the duties of the job, not its title. *See Matter of Symbioun Technologies, Inc.*, 2010-PER-01422 (BALCA 2011).[4] The Petitioner claims that the Beneficiary's work at the pub/restaurant constituted both experience as a franchise business operation specialist and operational experience in retail, service, or similar work experience, thus fulfilling both experience requirements in the labor certification. The only supporting evidence cited by the Petitioner, however, is the previously submitted letter from the business's owner/operator, [redacted] who described the Beneficiary's position alternately as a customer relations manager and a restaurant manager and stated that more than 50% of her job duties at the pub/restaurant were the same as her current duties as a franchise business operation specialist with the Petitioner. The letter provided no further details about the Beneficiary's specific job duties except to say that she managed a staff of 10 employees. The letter from [redacted] is inconsistent with the information provided in the labor certification, which identified the Beneficiary's job title at the pub/restaurant as "chef" and described her job duties succinctly as "short order cook" with a "food manager and food

[3] Though not mentioned by the Director, none of the Beneficiary's experience with the Petitioner would constitute qualifying experience for the job offered unless it was gained in a position not substantially comparable to the proffered position of franchise business operation specialist or the Petitioner can show that it was no longer feasible to train a worker for the position. *See* 20 C.F.R. § 656.17(i)(3)(i) and (ii). In this case the record indicates that at least some of the Beneficiary's experience with the Petitioner up to the priority date was in a substantially similar position to the job offered, and this fact is acknowledged by the Petitioner and the Beneficiary in the labor certification. There is no evidence, and the Petitioner does not assert, that it was no longer feasible to train a worker for the position.

[4] While we are not bound by decisions issued by the Board of Alien Labor Certification Appeals (BALCA), we may nonetheless take note of the reasoning in such decisions when considering issues that arise in the employment-based immigrant visa process.

service employee training certificate." Neither the job title nor the job duties stated in the labor certification accord with [redacted]s claim that the Beneficiary was employed as a customer relations manager or restaurant manager.

It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. See Matter of Ho, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's evidence also reflects on the reliability of the petitioner's remaining evidence. See id. The Petitioner has not reconciled the inconsistencies between the labor certification and [redacted]'s letter concerning the nature of the Beneficiary's employment with [redacted] Pub & Eatery. Accordingly, the record does not establish that the Beneficiary's employment with the pub/restaurant included any experience as a franchise business operation specialist or operational experience in retail, service, or similar work environments.

We also note that the Beneficiary's claimed experience at [redacted] Arms from February 2012 to March 2014 overlaps with her claimed employment with [redacted] and the Petitioner. All of the jobs were listed as 40 hours per week on the labor certification. It is unclear how the Beneficiary held two simultaneous fulltime jobs throughout her claimed employment with [redacted] Arms. This unexplained overlap raises further questions about the credibility of the Beneficiary's claimed employment experience. See id.

For the reasons discussed above, the Petitioner has not established that the Beneficiary met the labor certification requirements of two years of experience in the job offered and two to four years of operational experience in retail, service, or similar work environments by the priority date of March 11, 2015.

B. Educational Requirement of the Labor Certification

Though not addressed by the Director in his decision, we note that the only evidence of the Beneficiary's education – the document from [redacted] Secondary School in [redacted] certifying her passage of a series of examinations in June 1983 – does not state that the Beneficiary completed her education at the school. The Petitioner has not submitted any other evidence that the Beneficiary was awarded a certificate of completion of secondary school. In the absence of any additional documentation showing that the Beneficiary has the foreign equivalent of a U.S. high school level education, we cannot find that the Beneficiary meets the minimum educational requirement of the labor certification.

III. CONCLUSION

The Petitioner has not established that the Beneficiary meets the educational and experience requirements of the labor certification. The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision.

In visa petition proceedings it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of W-G-B- LLC*, ID# 4929110 (AAO July 5, 2019)