U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28077273

Date: AUG. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a book publisher, seeks to permanently employ the Beneficiary as a chef on private yachts. The company requested her 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. 8 C.F.R. § 204.5(l)(3)(i).

The Acting Director of the Texas Service Center denied the petition. The Director concluded that the petition lacks the following requirements:

- An application for permanent labor certification;
- Evidence of the Petitioner's ability to pay the offered position's proffered wage; and
- Proof of eligibility for the requested immigrant visa category, including evidence that the offered job requires a bachelor's degree and that the Beneficiary has the foreign equivalent of a U.S. bachelor's degree.

On appeal, the Petitioner submits additional evidence, indicating that the Beneficiary intended to self-petition under a different immigrant visa category as a noncitizen of "exceptional ability" requesting a "national interest" waiver of that category's job-offer requirement. *See* section 203(b)(2)(B)(i) of the Act. But we must adjudicate the appeal based on the petition as filed.

We lack appellate jurisdiction over employment-based, immigrant visa petitions without U.S. Department of Labor (DOL) certifications under section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). Dep't of Homeland Sec. Delegation No. 0151.1 (effective Mar. 1, 2003) (quoting former 8 C.F.R. § 103.1(f)(3)(iii)(B)). The Petitioner requested the offered position's designation under Schedule A, Group II. *See* 20 C.F.R. § 656.5(b). DOL has pre-determined under section 212(a)(5)(A)(i) of the Act that there are insufficient U.S. workers able, willing, qualified, and available for the job and that a noncitizen's permanent employment in the job would not harm wages and working conditions of U.S. workers similarly employed. *See* 20 C.F.R. § 656.5.

The Petitioner omitted a labor certification application. *See* 20 C.F.R. § 656.15(a). We therefore lack jurisdiction over this appeal.

ORDER: The appeal is rejected.