U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25463031

Date: FEB. 15, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner provides rehabilitation services and seeks to permanently employ the Beneficiary as a registered nurse. The company requests her classification under the third-preference, immigrant visa category for "skilled workers." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. 1153(b)(3)(A)(i). This category allows prospective, U.S. employers to sponsor noncitizens for lawful permanent residence to perform work requiring at least two years of training or experience. *Id.*

The Director of the Nebraska Service Center denied the petition. The Director concluded that the offered position's requirements do not establish its need for at least two years of training or experience. On appeal, the Petitioner contends that the Director overlooked the job's requirement for a California registered nursing license. The company asserts that the license, in turn, requires at least two years of post-secondary education, which - for immigration purposes - counts as training.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of 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 will withdraw the petition's denial and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Immigration as a skilled worker usually follows a three-step process. First, to permanently fill a position with a foreign worker, a prospective, U.S. employer must obtain 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). If DOL approves a position, an employer must next submit the certified labor application 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). Finally, if USCIS grants a petition, a noncitizen beneficiary may apply abroad for an immigrant visa or, if eligible, "adjustment of status" in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

DOL, however, has already determined that the United States lacks sufficient nurses and that employment of noncitizens in these "Schedule A" positions will not harm the wages or working conditions of U.S. workers in similar jobs. 20 C.F.R. § 656.5. Thus, DOL authorizes USCIS, in immigrant visa petition proceedings, to adjudicate Schedule A labor certification applications. 20 C.F.R. § 656.15(a). Therefore, USCIS rules not only on this petition, but also on its accompanying labor certification application. *See* 20 C.F.R. § 656.15(e) (describing USCIS's Schedule A labor certification determinations as "conclusive and final").

II. ANALYSIS

An application for Schedule A designation of a skilled worker position must demonstrate that the job requires at least two years of training or experience. 8 C.F.R. § 204.5(l)(2), (4). "Relevant post-secondary education may be considered as training for the purposes of this provision." 8 C.F.R. § 204.5(l)(2) (defining the term "skilled worker").

The Petitioner's Schedule A application (and its request for a prevailing wage determination) specifies that the offered position of registered nurse requires neither education, training, nor experience. Part H.14 of the application, "Specific skills or other requirements," states the job's need for "Current RN licensure from the State of Practice." As the Petitioner offers the position in California, part H.14 indicates the job's need for a California registered nursing license.

The Petitioner's Schedule A application does not specify the underlying requirements for a California registered nursing license. On appeal, however, the company submits evidence that the license generally requires at least an associate of science degree in nursing.[1] *See* Cal. Bd. of Registered Nursing, "Steps to Become a California Registered Nurse," https://www.rn.ca.gov/careers/steps.shtml. Associate nursing degrees require at least two years of post-secondary studies. *Id.* And, under 8 C.F.R. § 204.5(l)(2), USCIS would consider this relevant, post-secondary education as training. Thus, the Petitioner contends that, consistent with the requested immigrant visa category, the Schedule A application demonstrates the position's requirement of at least two years of training.

Interpreting the Schedule A application as a whole, its job requirements appear to contradict each other. *See Matter of Symbioun Techs., Inc.*, 2010-PER-01422, *5 (BALCA Oct. 24, 2011) (making "a comprehensive reading" of the job-offer portion of a labor certification application to determine a position's minimum requirements). Asked to indicate the job's minimum level of required education in part H.4 of the application, the Petitioner marked "None." Yet, as the company's evidence shows, the license requirement in part H.14 implicitly requires education. Faced with this apparent contradiction, the Director should have issued a RFE or NOID, providing the Petitioner a chance to explain the position's requirements. *See* 1 *USCIS Policy Manual* E(6)(F)(3), https://www.uscis.gov/policy-manual ("If . . . the evidence in the record does not establish eligibility for the benefit sought, the officer should issue an RFE or NOID").

[1] If a petitioner received notice of an evidentiary deficiency and a prior chance to submit the proof, we generally do not accept the evidence on appeal. *See Matter of Izaguirre*, 27 I&N Dec. 67, 71 (BIA 2017) (citation omitted). Before denying this petition, however, the Director did not request additional evidence (RFE) or issue a notice of intent to deny (NOID). *See* 8 C.F.R. § 103.2(b)(8)(iii). We will therefore consider the appellate evidence.

Because the Director has not seen the Petitioner's appellate evidence, we will withdraw the petition's denial and remand the matter. On remand, the Director should consider the evidence and determine whether it establishes the offered position's need for a skilled worker. The Director should also: review the entire record; consider the petition's compliance with all other applicable laws, regulations, and policies; and enter a new decision.

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