U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9298325

Date: SEPT. 28, 2020

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner, a global wealth management company, 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 California Service Center denied the petition, concluding that the record did not establish that the proffered position qualifies as a specialty occupation.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, the Director's decision is withdrawn. The matter will be remanded to the Director for further consideration and action.

I. SPECIALTY OCCUPATION

Upon review, the evidence of record establishes that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. Also, the degree required for the proffered position constitutes a body of highly specialized knowledge that relate directly to the duties of the proffered position. Therefore, we conclude that the evidence of record satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*), and the Petitioner has established that the proffered position qualifies for classification as a specialty occupation. The Director's decision will be withdrawn.

The Petitioner cannot be approved, however, because it appears that the submitted labor condition application (LCA) may not correspond with the H-1B petition. More specifically, it is not clear if the Petitioner properly classified the proffered position at a Level I wage. Additionally, the record does

not establish that the Beneficiary is qualified to perform the duties of the proffered position. The petition will be remanded to the Director for further consideration and action and entry of a new decision.

II. LABOR CONDITION APPLICATION

The purpose of the LCA wage requirement is "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers."[1] It also serves to protect H-1B workers from wage abuses. While the Department of Labor (DOL) certifies the LCA, U.S. Citizenship and Immigration Services determines whether the LCA's content corresponds with the H-1B petition. *See* 20 C.F.R. § 655.705(b) ("DHS determines whether the petition is supported by an LCA which corresponds with the petition,....").

In this matter, the Petitioner describes the proffered position as an "associate wealth advisor," and submitted an LCA under the standard occupational classification (SOC) code of 13-2052 (Personal Financial Advisors) at a Level I prevailing wage.

In response to the Director's request for evidence, the Petitioner explained that the associate wealth advisor will be responsible for providing expert financial advice for the Petitioner's clients, noting that its company specifically focuses on entrepreneurs and families from European and Asian countries, with an emphasis on Chinese clients. The Petitioner further stated that the associate wealth advisor "needs to have a deep understanding of the global economy and the relationship between the Chinese and US economies. . . ." In addition to possessing an expertise in finance, the Petitioner stated that the associate wealth advisor "must be able to speak Chinese to engage with Chinese-speaking clients." The Petitioner also noted that the Beneficiary is a native Dutch speaker, and that her Dutch language skills and European cultural understanding will be beneficial to the Petitioner's business.

To assess whether the wage level listed on the LCA corresponds with the proffered position, the Director should apply DOL's guidance, which provides a five-step process for determining the appropriate wage level. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009).

In this matter, the Director should focus on step 4 of the DOL guidance regarding whether the proffered position contains any special skills or other requirements which would warrant a wage level increase. As noted above, the proffered position requires working with investors based in foreign countries, specifically China, and the Petitioner claims that it needs "an Associate Wealth Advisor that can not only provide expert financial planning services, but do so in Chinese-speaking and Dutch-speaking cultural contexts." A foreign language requirement generally requires an increase in the wage level unless the foreign language requirement is a normal requirement for the occupation.

Furthermore, the Petitioner indicated that in addition to a bachelor's degree, it requires "experience" in the field of financial planning and/or investment advising for entry into the proffered position, and repeatedly states that the associate wealth advisor must have "expertise" in the field. It is not clear if

[1] *See* Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States, 65 Fed. Reg. 80,110, 80,110-11 (proposed Dec. 20, 2000) (to be codified at 20 C.F.R. pts. 655-56).

these requirements are special and atypical for the occupation and thus, may also require an increase in the wage level.

III. BENEFICIARY'S QUALIFICATIONS

The Director should also determine whether the Beneficiary is qualified to perform the duties of the proffered position.

We consider the information contained in the DOL's *Occupational Outlook Handbook (Handbook)* regarding the duties and educational requirements of the wide variety of occupations it addresses.[2] The *Handbook* states the following about the occupation of personal financial advisors:

> Personal financial advisors who directly buy or sell stocks, bonds, or insurance policies, or who provide specific investment advice, need a combination of licenses that varies with the products they sell. In addition to being required to have those licenses, advisors in smaller firms that manage clients' investments must be registered with state regulators and those in larger firms must be registered with the Securities and Exchange Commission. Personal financial advisors who choose to sell insurance need licenses issued by state boards. Information on state licensing board requirements for registered investment advisors is available from the North American Securities Administrators Association.[3]

In addition, 8 C.F.R. § 214.2(h)(4)(v)(A) states:

> General. If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

Here, it appears that the Beneficiary must possess a state or local license based on the nature of the position as described. The Director, therefore, should also determine whether the Beneficiary possesses the requisite license(s) that the occupation requires.

IV. CONCLUSION

As the Petitioner was not previously accorded the opportunity to address the above, we will remand the record for further review of these issues. The Director may request any additional evidence considered pertinent to the new determination.

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[2] We do not maintain that the *Handbook* is the exclusive source of relevant information.

[3] Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, https://www.bls.gov/ooh/business-and-financial/personal-financial-advisors.htm#tab-4 (last visited Sept. 15, 2020).

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.