U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF U-T-T-, INC.

DATE: APR. 11, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a provider of language services, seeks to employ the Beneficiary as a Romanian translator/project coordinator. It requests her classification as a professional under the third preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This category allows a U.S. business to sponsor a foreign worker with a bachelor's degree or its foreign equivalent for lawful permanent resident status.

The Director of the Texas Service Center denied the petition. The Director concluded that the record did not establish, as required, that the Beneficiary's possessed the minimum education required for the offered position or the requested classification.

On appeal, the Petitioner submits additional evidence, asserting the Beneficiary has the required educational qualifications.

Upon *de novo* review, we will dismiss the appeal.

I. LAW AND ANALYSIS

A. The Employment-Based Immigration Process

Employment-based immigration generally constitutes a three-step process. First, a prospective U.S. employer must obtain an approved ETA Form 9089, Application for Permanent Employment Certification (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). Next, the employer files a Form I-140, Immigrant Petition for Alien Worker, with U.S. Immigration and Citizenship Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154 . Finally, if USCIS approves the petition, a 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.

By approving the labor certification in this case, the DOL certified that U.S. workers are not able, willing, qualified, and available for the offered position of Romanian translator/project coordinator. *See* section 212(a)(5)(A)(i)(I) of the Act. The DOL also certified that the Beneficiary's permanent

employment in the position will not hurt the wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5)(A)(i)(II).

At issue is whether the Beneficiary meets the requirements of the offered position certified by the DOL. USCIS must also determine whether the Petitioner and the Beneficiary qualify for the requested classification. *See, e.g., Tongatapu Woodcraft Haw., Ltd. v Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984) (holding that the immigration service "makes its own determination of the alien's entitlement to [the requested] preference status").

B. The Beneficiary's Possession of the Minimum Required Education

A petition for a professional must document that a beneficiary holds a U.S. bachelor's degree or a foreign equivalent degree. 8 C.F.R. § 204.5(l)(3)(ii)(C). A petitioner must also establish a beneficiary's possession of all the education specified on an accompanying labor certification. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). In evaluating a beneficiary's qualifications, we must examine the job offer portion of a labor certification to determine the minimum requirements of an offered position. We may neither ignore a term of the labor certification, nor impose additional requirements. *See, e.g., Madany* v. *Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983).

In this case, the labor certification states the minimum educational requirements of the offered position of Romanian translator/project coordinator as a U.S. bachelor's degree or a foreign equivalent degree in business administration, with a concentration in translation or interpretation. The labor certification also states the Petitioner's acceptance of a bachelor's degree in the alternate field of translation and interpretation.

On the labor certification, the Beneficiary attested to her receipt of a bachelor's degree in business administration with a concentration in translation and interpretation from the [redacted] Romania, in 2005. The Petitioner submitted a copy of a 2005 *diploma de absolvire* from the university, awarding the Beneficiary the degree of senior clerk in the specialty of local public administration. The diploma and a copy of a corresponding transcript indicate that the Beneficiary studied three years to obtain the degree.

The Petitioner also submitted an expert opinion, evaluating the Beneficiary's foreign educational credentials. The evaluation equates the Beneficiary's Romanian degree to the first three years of study towards a bachelor's degree in the United States. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977) (finding that a U.S. bachelor's degree generally reflects four years of studies). Combining the Beneficiary's degree with three years of her employment experience, the evaluation concludes that the Beneficiary possesses the equivalent of a U.S. bachelor's degree in business administration with a concentration in translation and interpretation.

As noted in the Director's request for evidence (RFE), the evaluation does not establish the Beneficiary's possession of a U.S. bachelor's degree or a foreign equivalent degree as required for

the offered position and the requested classification. Parts H.4 and H.9 of the labor certification state the offered position's requirement of a U.S. bachelor's degree or a foreign equivalent degree. In Part H.8, the Petitioner also indicated that "No" alternate combination of education and experience is acceptable. Thus, the Beneficiary's possession of a foreign equivalent of a U.S. bachelor's degree based on a combination of lesser educational credentials or a combination of education and experience does not satisfy the plain-language requirements of the labor certification.

Also, the Act and its legislative history indicate Congress's intent that a professional possess a single bachelor's degree, rather than an equivalency based on a combination of education and experience. In response to criticism that its proposed regulations would bar the substitution of experience for a professional's education, the former Immigration and Naturalization Service (INS) reviewed the Immigration Act of 1990. The INS concluded that "both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification . . ., an alien must have at least a bachelor's degree."[1]

In response to the RFE, the Petitioner submitted another evaluation of the Beneficiary's foreign education. Unlike the first opinion, this evaluation concludes that the Beneficiary's degree alone equates to at least a U.S. bachelor's degree in business administration with a specialization in translation and interpretation.[2] The evaluation notes that the Beneficiary's university transcript from Romania states her possession of 180 academic credits, more than the 120-credit amount needed for a U.S. bachelor's degree. Thus, the Petitioner asserted the Beneficiary's completion of a four-year bachelor's degree in three years. However, the evaluation touting the Beneficiary's completion of 180 credits in Romania does not explain how they equate to U.S. university credits. Romanian universities award credits under the [redacted] Under the [redacted] 60 credits equates to one academic year.[4] Thus, the Beneficiary's 180 credits indicate her possession of a three-year degree, less than a typical, four-year, bachelor's degree in the United States.

In addition, a note at the end of the Beneficiary's university transcript indicates her completion of a six-semester, three-year program. The note states: "The period of studies within The Communication and Foreign Languages Department, track: Administration, specialty: Local Public Administration (English + French/German) is of 6 semesters. The total number of credits

---

[1] Final Rule for Employment-Based Immigrant Visa Petitions, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991); *see also SnapNames.com, Inc. v. Chertoff*, No. CV 06-65-MO, 2006 WL 3491005, **10-11 (D. Or. Nov. 30, 2006) (holding that, in adjudicating petitions for professionals, USCIS properly requires a single baccalaureate degree).

[2] The evaluation also discusses community college credits that the Beneficiary received in the United States. On appeal, the Petitioner submits an amended evaluation, clarifying that the evaluator did not base his opinion on the Beneficiary's U.S. community college coursework.

[3] [redacted] (Dec. 2002), at http://www.[redacted] (last visited Apr. 3, 2017).

[4] [redacted] at https:/[redacted] (last visited Apr. 3, 2017).

compulsory for graduation is 180." If the Beneficiary completed a four-year program in three years as the Petitioner asserts, the record does not explain this note on her transcript.

USCIS may reject or afford less evidentiary weight to an expert opinion that conflicts with evidence or "is in any way questionable." *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). Here, the evaluations that the Petitioner submitted conflict with each other. One states that the Beneficiary's Romanian degree equates to three years of U.S. undergraduate studies, while the other describes the credential as the equivalent of at least a U.S. bachelor's degree.

Faced with this conflicting evidence, the Director consulted the Electronic Database for Global Education (EDGE), published by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).[5] Federal courts have found EDGE to be a reliable, peer-reviewed source of foreign educational equivalencies. *See, e.g., Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (holding that USCIS may discount educational evaluations that differ from reports in EDGE, which is "a respected source of information").

EDGE reports that Romanian institutions award a *diploma de absolvire* upon completion of a three-year college program and that this credential compares to three years of U.S. undergraduate studies. Based on the EDGE report, the Director concluded that the record did not establish the Beneficiary's possession of the required U.S. bachelor's degree or foreign equivalent degree.

On appeal, the Petitioner submits a letter from an assistant director of admissions at the [redacted] in the United States. The letter states:

> For [redacted] admissions purposes, we deem that [the Beneficiary]'s transcript from [redacted] is official and we deem that she has the equivalent of a Bachelor's Degree in Business Administration with a Concentration in Translation and Interpretation. When applying to the [redacted] [the Beneficiary] would be considered a Post-Baccalaureate student.

However, the letter does not state that the degree alone is considered equivalent to a bachelor's degree. Rather, the letter asserts that the Beneficiary's transcript is official and that she has the equivalent of a bachelor's degree. The letter does not specify what credentials, such as additional community college credit or experience, are being considered to make this determination. Therefore, given the inconsistent expert opinions submitted by the Petitioner, in conjunction with the information from EDGE, the preponderance of the evidence does not support the Beneficiary's possession of the minimum required education.

[5] AACRAO is a nonprofit association of more than 11,000 higher education admissions and registration professionals, representing about 2600 institutions worldwide. AACRAO, at http://www.aacrao.org/home/about (last visited Apr. 3, 2017).

For the foregoing reasons, the record does not establish the Beneficiary's possession of the minimum education required for the offered position and the requested classification. We will therefore affirm the Director's decision and dismiss the appeal.

C. The Petitioner's Ability to Pay the Proffered Wage

Although unaddressed by the Director, the record also does not establish the Petitioner's ability to pay the proffered wage.

A petitioner must demonstrate its continuing ability to pay a proffered wage from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. *Id.*

In this case, the labor certification states the proffered wage of the offered position of Romanian translator/project coordinator as $45,469 a year. The petition's priority date is November 16, 2015. This is the date the DOL received the labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

The Petitioner submitted a copy of its federal income tax return for 2014. However, contrary to 8 C.F.R. § 204.5(g)(2), the record lacks required evidence of the Petitioner's ability to pay from the petition's priority date of November 16, 2015, onward.

In any future filings in this matter, the Petitioner must submit copies of its annual reports, federal income tax returns, or audited financial statements for 2015 onward. The Petitioner may also submit additional evidence of its ability to pay, including evidence regarding the ability-to-pay factors stated in *Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

II. CONCLUSION

The record does not establish the Beneficiary's possession of the minimum education required for the offered position or the requested classification.

ORDER: The appeal is dismissed.

Cite as *Matter of U-T-T-, Inc.*, ID# 356806 (AAO Apr. 11, 2017)