U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-F-C-O-A-, INC.

DATE: APR. 11, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a warehouse and distributor of portable hydraulic lifting equipment, seeks to employ the Beneficiary as graphic designer. It requests classification of the Beneficiary 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 employment-based immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition. The Director found that the Beneficiary does not meet the minimum educational requirement for the job under the terms of the labor certification because he does not have a degree in the requisite field of study.

On appeal the Petitioner asserts that the Director neglected to consider an educational credential evaluation that was initially submitted with the petition and resubmitted in response to the Director's request for evidence (RFE). According to this evaluation, the Beneficiary has a foreign equivalent degree to a U.S. baccalaureate that meets the field of study requirement 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, 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 applies 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.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in pertinent part:

> If the petition is for a professional, the petition must be accompanied by evidence that the [beneficiary] holds a United States baccalaureate degree or a foreign equivalent degree . . . . Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.

A beneficiary must meet also all of the education, training, experience, and other requirements of the labor certification as of 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 has a bachelor's degree or higher in the requisite field of study to satisfy the minimum educational requirement of the labor certification. For the reasons discussed in this decision, we conclude that he does not.

In order to determine what a job opportunity requires, we must examine "the language of the labor certification job requirements." *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine the certified job offer exactly as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). Our interpretation of the job's requirements must involve reading and applying the plain language of the alien employment certification application form. *Id.* at 834.

Section H of the labor certification sets forth the minimum education, training, experience, and other requirements to qualify for the proffered position. In this case, section H states that the minimum level of education required for the job of graphic designer is a bachelor's degree in the field of graphic design (boxes 4 and 4-B) or a "foreign educational equivalent" (box 9). Section H also states (in box 7) that an alternate field of study is not acceptable.

Section J of the labor certification claims that the Beneficiary's highest level of education relevant to the job offered is a master's degree in the field of studio art that was completed in 2002 at the [redacted] in [redacted]. The initial evidence submitted with the petition included documentation of an earlier degree the Beneficiary was awarded in March 1994 by the [redacted] in Thailand following the completion of a four-year, eight-semester academic program. The degree was a bachelor of communication arts with a major in journalism. Documentation of the Beneficiary's subsequent degree from the [redacted] submitted in response to the Director's RFE, shows that he began his master's degree program in

[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 August 16, 2011.

1998 and was awarded a master of arts in studio art in December 2001. The Director found that neither of these degrees was in the required field of graphic arts and concluded that the Beneficiary did not meet the minimum educational requirement of the labor certification to qualify for the job offered.

On appeal the Petitioner contends that the Director overlooked the educational evaluation from [redacted] of [redacted] evaluation), which claims that the Beneficiary's bachelor of communication arts from [redacted] is equivalent to a bachelor of arts in graphic design from an accredited U.S. college or university. [redacted] asserts that the Beneficiary "completed an unusually high number of credits in the area of graphic software applications, including the Adobe suits," and states that he examined the Beneficiary's diploma and academic transcript from [redacted] as well as a letter from the School of Communication Arts, in evaluating the Beneficiary's educational credentials. [redacted] does not identify any specific courses in the Beneficiary's curriculum, however, which featured graphic software applications or Adobe suits. Neither of those terms appears in any course listed on the Beneficiary's academic transcript from [redacted] As for the letter from a faculty member of [redacted] School of Communication Arts, it simply states that the Beneficiary was registered for a course in newspaper and magazine production in 1993 (during his last semester of study) in which he learned to use various "graphic software" including Adobe Photoshop, Adobe Illustrator, and Pagemaker (forerunners of Adobe Indesign). The letter does not mention any other graphic design component to the Beneficiary's degree program at [redacted] Thus, the documentation cited by [redacted] as the basis for his credential evaluation identifies only one course in the Beneficiary's eight-semester degree program which featured a graphic design component. [redacted] does not otherwise identify any evidence or provide analysis to support his conclusion that the Beneficiary's degree is equivalent to a U.S. bachelor's degree in graphic design.

The Petitioner also states on appeal that the evaluation "specifically addresses the additional credit hours taken by the Beneficiary in obtaining his Degree in Communication Art that specifically overlap/accredited to be sufficient to someone who obtained a US bachelor's Degree of Arts in Graphic Design." As noted above, however, and contrary to the Petitioner's assertion, the [redacted] evaluation does not identify any additional credit hours taken by the Beneficiary that "overlap" with a U.S. bachelor's degree program in graphic design. Neither the [redacted] evaluation nor any other evidence from the Petitioner explains a correlation between the courses taken by the Beneficiary and courses that would be required to earn a bachelor's degree in graphic design from a U.S. college or university.

USCIS considers equivalency evaluations of foreign academic credentials as advisory opinions in the adjudication process. However, when an evaluation is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). For the reasons discussed above, the [redacted] evaluation is not sufficient to establish that the Beneficiary's bachelor of communication arts with a major in journalism from [redacted] is equivalent to a bachelor's degree in the field of graphic design from an accredited U.S. college or university.

Though the Petitioner did not mention the Beneficiary's other degree on appeal, we concur with the Director's finding that the evidence of record does not show that the master of arts in studio art from the [redacted] is the same as a degree in the field of graphic design. The Petitioner has not identified any specific courses in the Beneficiary's academic transcript which feature a graphic design component. Nor has the Petitioner submitted any educational evaluation which explains why this particular degree in the field of studio art also qualifies as a degree in the field of graphic design.

Based on the foregoing analysis, we conclude that neither of the Beneficiary's degrees is in the field of graphic design, as required to meet the minimum educational requirement of the labor certification.

III. CONCLUSION

The Petitioner has not established that the Beneficiary has the education required by the terms of the labor certification.

ORDER: The appeal is dismissed.

Cite as *Matter of S-F-C-O-A-, Inc.*, ID# 998700 (AAO Apr. 11, 2018)