U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-B- INC.

DATE: AUG. 6, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a construction company, seeks to employ the Beneficiary as an administrative services manager. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. 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, concluding that the record did not establish, as required, that the Beneficiary met the minimum educational requirements for the offered position.

On appeal, the Petitioner asserts that the Director erred in concluding that the Beneficiary has not attained a bachelor's degree or its foreign equivalent.

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

I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS

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).[1] *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the 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 domestic 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.

[1] The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is July 18, 2017. *See* 8 C.F.R. § 204.5(d).

II. ANALYSIS

In this case, the Petitioner requests classification of the Beneficiary as a professional. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in part:

> If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. 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.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) and section 203(b)(3)(A)(ii) of the Act use a singular description of the degree required for classification as a professional. In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. *See also Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008)(for professional classification, USCIS regulations require the beneficiary to possess a single four-year U.S. bachelor's degree or foreign equivalent degree).

Therefore, a petition for a professional must establish that the beneficiary possesses at least a U.S. bachelor's degree or a single foreign equivalent degree from a college or university. A beneficiary must also meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(l), (12); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

In this case, the labor certification states that the offered position has the following minimum requirements:

H.4. Education: Bachelor's degree in business.
H.5. Training: None required.
H.6. Experience in the job offered: 12 months required.
H.7. Alternate field of study: None accepted.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: None accepted.
H.14. Specific skills or other requirements: Bachelor's in Business (or foreign degree equivalent) plus 1 year Managerial exp. in Administrative Services required.

The labor certification states that the Beneficiary qualifies for the offered position based on her bachelor's degree in business administration from [redacted] completed in 2012.

On appeal, the Petitioner states that it supplied a foreign equivalency from a certified agency and that the Director supplied erroneous statutory support and case law to resolve the issue in this case. It states that a brief will follow, but we did not receive an additional brief.

The record contains an evaluation of the Beneficiary's work experience from [redacted]. The evaluation states that the Beneficiary's over 17 years of "professional work experience is equivalent to the U.S. degree of Bachelor of Business Administration awarded by a regionally accredited university in the United States." The evaluation equated three years of experience to one year of education, but that equivalence applies to nonimmigrant H-1B petitions, not to immigrant petitions. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*).[2] USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r 1988).

The labor certification states that the minimum education required for the offered position is a bachelor's degree in business or a foreign equivalent degree. The labor certification states that the Petitioner will not accept any alternate combination of education or experience.[3] In evaluating the Beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). In this case, the Petitioner relies on the Beneficiary's experience as being equivalent to a U.S. bachelor's degree, but the labor certification does not permit an alternate combination of education and experience as an alternative to a degree. The Petitioner has not established that the Beneficiary has a single U.S. bachelor's degree in business or foreign equivalent degree, as is required by the labor certification.

Further, the Petitioner cannot rely on experience alone to qualify the Beneficiary as a professional. Where the analysis of the beneficiary's credentials relies on work experience alone, the result is the "equivalent" of a bachelor's degree rather than a full U.S. baccalaureate or foreign equivalent degree required for classification as a professional. The evaluation submitted by the Petitioner does not establish that the Beneficiary possesses a single degree from a college or university that is at least a U.S. baccalaureate degree or a foreign equivalent degree, as is required for professional classification.

After reviewing all of the evidence in the record, we conclude that the Petitioner has not established that the Beneficiary has a U.S. baccalaureate degree or a single foreign equivalent degree from a college or university. Therefore, we agree with the Director's decision which found that the Beneficiary does not meet the educational requirements of the offered position. We also find that

[2] The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) defines for purposes of H-1B nonimmigrant visa classification the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience. The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

[3] The professional classification does not permit a combination of education, training, and experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(C); section 203(b)(3)(A)(ii) of the Act. Thus, if the Petitioner were to claim that the labor certification permits a combination of education, training, and experience, the petition would not qualify for the professional classification.

the Beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act.

III. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of H-B- Inc.*, ID# 5438408 (AAO Aug. 6, 2019)