U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-D-[redacted]

DATE: AUG. 8, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a mosque, seeks to employ the Beneficiary as an accountant. It requests his classification under the third-preference, immigrant category as a professional. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based, "EB-3" category allows a U.S. organization to sponsor a foreign national for lawful permanent resident status to work in a job requiring at least a bachelor's degree.

The Director of the Nebraska Service Center denied the petition. The Director concluded that, contrary to the requirements of the offered position and the requested classification, the Petitioner did not demonstrate the Beneficiary's possession of a U.S. baccalaureate or a foreign equivalent degree.

On appeal, the Petitioner argues that the position's requirement of a "Bachelor's or Foreign Equivalent" allows for a combination of training, education, or experience to equate to a bachelor's degree. The Petitioner also contends that the Beneficiary's membership in the Institute of Cost and Management Accountants of Pakistan (ICMAP) and his prior approval in U.S. H-1B nonimmigrant visa status demonstrate his educational qualifications for the position and the classification.

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

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as a professional generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first 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). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for an offered position, and that employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If DOL approves a position, an employer must next submit the labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS determines whether a beneficiary meets the requirements of a DOL-certified position and the requested visa classification. If USCIS grants a

petition, a foreign national may finally 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.

II. EDUCATIONAL REQUIREMENTS

A petition for a professional must demonstrate that an offered position requires, and that a beneficiary has, at least a U.S. baccalaureate or a foreign equivalent degree. 8 C.F.R. §§ 204.5(l)(3)(i), (ii)(C). Evidence of a bachelor's degree must include "an official college or university record showing the date the baccalaureate was awarded and the area of concentration of study." 8 C.F.R. § 204.5(l)(3)(ii)(C).

A petitioner also must demonstrate a beneficiary's possession of all DOL-certified, job requirements of an offered position by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977).[1] In evaluating a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine a position's minimum requirements. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

Here, rather than indicating a high school diploma or a university degree, part H.4. of the accompanying labor certification states the minimum educational level required for the offered position of accountant as "Other." Part H-4A. specifies the "Other" education requirements as a "Bachelor's or Foreign Equivalent." Part H-4B. requires accounting as the major field of study, and part H.9. indicates the Petitioner's acceptance of a foreign equivalent degree.

The Director interpreted the labor certification to state the position's minimum educational requirement as a U.S. baccalaureate or a foreign equivalent degree in accounting. Thus, the Director found that the job requires a single degree that either is or equates to a U.S. bachelor's degree. On appeal, however, the Petitioner argues that the term "Foreign Equivalent" in part H-4B. of the labor certification "means not just an 'equivalent' foreign degree, but also includes by implication the equivalent training, education and/or experience of someone who holds a U.S. Bachelor's Degree in Accounting."

By selecting "Other" in part H.4. of the labor certification, the Petitioner appeared to indicate that the offered position does not require a bachelor's degree. But, by specifying the job's educational requirements as "Bachelor's or Foreign Equivalent," the Petitioner did not explain how its "Other" requirements differ from a U.S. baccalaureate or foreign equivalent degree. Also, the Petitioner accepted a foreign equivalent degree in part H.9. and stated in part H.8. that it would not accept "an alternate combination of education and experience." The plain language of the labor certification therefore does not support its claimed acceptance of a bachelor's equivalent based on a combination of training, education, or experience.

[1] This petition's priority date is March 22, 2018, the date DOL accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

Also, counsel's assertion that the term "Foreign Equivalent" indicates the Petitioner's acceptance of a degree equivalency based on a combination of training, education, or experience is not proof of the requirement's intended meaning. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)) (holding that an attorney's assertions are not evidence). Counsel's statements must be substantiated with independent proof, which may include affidavits or declarations. In addition, the Petitioner did not assert its acceptance of a combination of training, education, or experience until it filed this appeal. In response to the Director's two, written requests for additional evidence (RFEs), the Petitioner argued that the Beneficiary's education alone equated to a U.S. bachelor's degree. Thus, a preponderance of evidence indicates that the offered position requires at least a U.S. baccalaureate or a foreign equivalent degree. Even if the record established the Petitioner's acceptance of a degree equivalency based on a combination of training, education, or experience, the petition would not qualify for the requested classification because the offered position would require less than a bachelor's degree. *See* 8 C.F.R. § 204.5(l)(3)(i) (requiring the job-offer portion of an accompanying labor certification to "demonstrate that the job requires the minimum of a baccalaureate degree"). The Petitioner's argument is therefore ineffective.

To support the Beneficiary's educational qualifications, the Petitioner submitted documentation that, by the petition's priority date, the Beneficiary obtained a bachelor of commerce degree from a Pakistani university and became a member of ICMAP. The Petitioner also provided two, independent evaluations of the Beneficiary's foreign credentials, which concluded that he has the equivalent of at least a U.S. bachelor of science degree in accounting.[2] Both evaluations indicate that the Beneficiary's two-year, bachelor of commerce degree equates to two years of U.S. university studies. To demonstrate the Beneficiary's possession of the equivalent of a U.S. bachelor's degree, one evaluation combines his university degree with his employment experience; the other combines his degree with his ICMAP membership. Both evaluations rely on combinations of education or experience. The record therefore does not establish the Beneficiary's possession of a U.S. baccalaureate or a foreign equivalent degree as the offered position and requested classification require.

The record also does not establish the Beneficiary's claimed possession of the two-year, bachelor of commerce degree. As previously indicated, evidence of a bachelor's degree must include "an official college or university record showing the date the baccalaureate was awarded and the area of concentration of study." 8 C.F.R. § 204.5(l)(3)(ii)(C). The Petitioner submitted copies of the Beneficiary's university marks certificates and results cards. Contrary to the regulation, however, these documents do not show the date of the baccalaureate's award. Indeed, each results card states: "An entry appearing in it does not in itself confer any right or privilege independently to the grant of a proper Certification/Degree which will be issued under the Regulations in due course."

The Petitioner argues that the Beneficiary's ICMAP membership constitutes a foreign degree equivalent to at least a U.S. baccalaureate. But the record does not establish ICMAP as a college or university authorized to issue degrees. As previously indicated, evidence of a bachelor's degree must include "an official college or university record." 8 C.F.R. § 204.5(l)(3)(ii)(C). The Petitioner submitted copies

[2] The Petitioner initially submitted an evaluation and educational credentials regarding another foreign national. In an RFE response, however, prior counsel acknowledged that those materials were erroneous.

of letters from ICMAP officials stating that the Pakistani government equates institute membership to a Pakistani master's degree and that the institute's founding statute authorizes ICMAP to "confer degrees." The copy of the statute that the Petitioner submitted states that the powers of ICMAP's council include "the registration and training of students" and "the examination of candidates for membership of the Institute." But the statute does not identify ICMAP as a college or university, or otherwise authorize it to issue academic degrees. Nor does the Higher Education Commission (HEC) of Pakistan list ICMAP as a recognized university or degree-awarding institution. *See* HEC, "Recognised Universities," https://www.hec.gov.pk/english/universities/pages/recognised.aspx (last visited July 23, 2019). In addition, the Petitioner submitted copies of the Beneficiary's "certificates" from ICMAP. The record does not indicate that he received a "degree" from the institute. Thus, the record does not support the Petitioner's argument that the Beneficiary's ICMAP membership constitutes a foreign degree equivalent to a U.S. baccalaureate.

The Petitioner also contends that the Beneficiary's prior approval in H-1B nonimmigrant visa status "provides *prima facie* evidence of his educational qualification for the position offered." Unlike regulations for immigrant professionals, however, H-1B rules recognize combinations of training, education, or experience as equivalents to U.S. bachelor's degrees. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) (equating three years of training or experience to one year of U.S. college or university). In contrast, to immigrate as a professional, a beneficiary must have at least a bachelor's degree, without combining training, education, or experience. *See* Final Rule for Employment-Based Immigrant Petitions, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (stating 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*") (emphasis added). The Beneficiary's H-1B approval therefore does not demonstrate his educational qualifications for the offered position or requested classification.

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary's possession of the minimum education required for the offered position or the requested classification. We will therefore affirm the Director's decision.

III. OTHER REQUIREMENTS

Although unaddressed by the Director, the record also does not establish the Beneficiary's possession of "other requirements" of the offered position. Part H.14 of the labor certification, "Specific skills and other requirements," states: "Must have knowledge of accounting needs for a not-for-profit religious institution. Must have knowledge of accounting for a Mosque."

In response to the Director's first RFE, the Petitioner submitted documentation indicating that the Beneficiary gained knowledge of accounting needs of a non-profit religious institution and mosque by contracting the services of his consulting firm to the Petitioner. In a letter, the Petitioner's president stated that the Beneficiary "is currently providing Accounting services" to the mosque under a 2014 contract.

DOL regulations, however, generally bar labor certification employers from requiring U.S. workers to have training or experience beyond what a foreign national had at the time of hire, "including as a

contract employee." 20 C.F.R. § 656.17(3). An employer cannot rely on a foreign national's training or experience with it unless they gained the qualifications working in a position substantially different than the offered one, or the employer demonstrates the impracticality of training a U.S. worker for the position. 20 C.F.R. §§ 656.17(i)(3)(i), (ii).

Here, the record indicates that, as of the Petitioner's hiring of the Beneficiary as a contractor in 2014, he lacked the requisite knowledge of accounting needs of a non-profit religious institution or mosque. Also, the Petitioner has not demonstrated that the Beneficiary gained the knowledge working in a position substantially different than the offered one, or the impracticality of training a U.S. worker for the job. Thus, in any future filings in this matter, the Petitioner must demonstrate the Beneficiary's qualifications for one of the two exceptions under DOL regulations, or his acquisition of the knowledge with another trainer, educator, or employer.

IV. CONCLUSION

The record on appeal does not establish the Beneficiary's possession of the minimum education required for the offered position or the requested classification. We will therefore affirm the petition's denial. Contrary to section 291 of the Act, 8 U.S.C. § 1361, the Petitioner did not meet its burden of establishing eligibility for the requested benefit.

ORDER: The appeal is dismissed.

Cite as *Matter of M-D-*[redacted], ID# 5374923 (AAO Aug. 8, 2019)