U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-R-

DATE: AUG. 14, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an entertainment and production management company, seeks to employ the Beneficiary as a theatrical director. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced 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 requirements for the offered job, and that the position does not require a professional with an advanced degree.

On appeal, the Petitioner submits additional evidence and asserts that the Director overlooked an evaluation which stated that the Beneficiary's work experience is equivalent to a U.S. Bachelor of Fine Arts in theater. Further, the Petitioner asserts that the Beneficiary's four years of formal education in the field of theater qualify him for the offered position, and that the offered position requires a professional with an advanced degree.

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 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 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.

The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined as:

> [A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.[1]

A "profession" is defined as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." 8 C.F.R. § 204.5(k)(2). The occupations listed at section 101(a)(32) of the Act are "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

II. ANALYSIS

A. Beneficiary's Qualifications

Section H of the labor certification states that the offered position has the following minimum requirements:

> H.4. Education: Master's degree in performing arts or related.
> H.5. Training: None required.
> H.6. Experience in the job offered: None required.
> H.7. Alternate field of study: None accepted.

[1] The Director's decision inaccurately quoted this regulation.

H.8. Alternate combination of education and experience: Bachelor's degree plus five years of experience.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: 60 months in performing arts related positions.
H.14. Specific skills or other requirements: None.

Section J of the labor certification states that the Beneficiary possesses a bachelor's degree in musical theater from completed in 1997. The record contains a copy of the Beneficiary's diploma from issued in July 1997, indicating that the Beneficiary completed a one-year postgraduate course of study in musical theater. The record also contains a copy of the Beneficiary's diploma from issued in July 1996, indicating that the Beneficiary completed an undergraduate degree course in classical acting.[2] The record does not contain transcripts from either institution.

The record also contains an evaluation of the Beneficiary's experience prepared by for The evaluation states that the Beneficiary's "progressively responsible professional work experience is equivalent to a U.S. degree of Bachelor of Fine Arts in Theatre awarded by a regionally accredited college or 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*).[3] 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 International*, 19 I&N Dec. 791 (Comm'r 1988). The record does not contain an evaluation of the Beneficiary's education.

When a beneficiary relies on a bachelor's degree and five years of progressive experience for qualification as an advanced degree professional, the degree must be a single U.S. bachelor's (or foreign equivalent) degree. 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 at least a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree." In order to qualify as an advanced degree professional under section 203(b)(2) of the Act, the Beneficiary must have a single degree

[2] The record does not contain any evidence showing that either or is an accredited university or college in the United Kingdom.

[3] 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.

that is the "foreign equivalent degree" of a United States baccalaureate degree. *See* 8 C.F.R. § 204.5(k)(2).

In this case, the Petitioner relies on the Beneficiary's experience as being equivalent to a U.S. bachelor's degree. However, the Petitioner cannot rely on experience alone to qualify the Beneficiary as an advanced degree professional.

The Petitioner also asserts that the Beneficiary's four years of formal education in the field of theater qualify him for the proffered position. However, the record contains no evidence demonstrating that the Beneficiary's diploma from [redacted] or his diploma from [redacted] is equivalent to a U.S. bachelor's degree.

Therefore, the evidence in the record is not sufficient to establish that the Beneficiary possesses a degree that is, by itself, the foreign equivalent of a U.S. bachelor's degree. Instead, the Beneficiary possesses educational credentials that the Petitioner claims are, when combined together, equivalent to a U.S. bachelor's degree. However, for the reasons set forth above, a combination of educational credentials each individually less than the equivalent of a U.S. bachelor's degree is not a "foreign equivalent degree" within the meaning of 8 C.F.R. § 204.5(k)(2).

After reviewing all of the evidence in the record, it is concluded that the Petitioner has not established that the Beneficiary possessed at least a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty. Therefore, the Beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

The Petitioner must also establish that the Beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

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 labor certification states that the minimum education required for the offered position is a master's degree in performing arts or related, or a bachelor's degree plus five years of experience. For the reasons explained above, the Petitioner has not established that the Beneficiary possesses the foreign equivalent of a U.S. master's or bachelor's degree. Thus, the Petitioner has also not established that the Beneficiary met the educational requirements of the offered position by the priority date.

B. Professional Occupation

The Director's decision also concludes that the offered position does not require a professional with an advanced degree. Since the offered position is not one of the occupations listed at section 101(a)(32) of the Act, the Petitioner must establish that it is in an occupation for which a baccalaureate degree is a requirement for entry. 8 C.F.R. § 204.5(k)(2).

According to Section F.2 of the labor certification, the offered position was assigned the O*NET occupational code of 27-3031. O*NET is the occupational classification system used by the DOL. According to O*NET, 92% of people in this occupation hold a bachelor's degree. O*NET also states that the assigned occupational classification falls within Job Zone Four. *See O*Net Online*, https://www.onetonline.org/link/summary/27-3031.00 (last visited August 9, 2017). A Job Zone is a group of occupations that are similar in how much education, related experience and/or training people need to do the work. *See O*Net Online*, http://www.onetonline.org/help/online/zones (last visited August 9, 2017). According to the DOL, two to four years of work-related skill, knowledge, or experience are needed for Job Zone 4 occupations. The DOL assigns a standard vocational preparation (SVP) of 7 to Job Zone 4 occupations, which means "[m]ost of these occupations require a four-year bachelor's degree, but some do not." *See O*Net Online*, https://www.onetonline.org/link/summary/27-3031.00 (last visited August 9, 2017).

The corresponding entry in the Occupational Outlook Handbook (OOH) for the assigned occupational code of 27-3031 is public relations specialist.[4] The typical entry-level education for this occupation is a bachelor's degree.[5] Thus, according to the DOL's occupational data, a baccalaureate degree is required for entry into the occupation of the offered position. Therefore, the offered position is a professional occupation as defined at 8 C.F.R. § 204.5(k)(2). We will withdraw that portion of the Director's decision.

III. CONCLUSION

In summary, the Petitioner has not established that the Beneficiary possessed an advanced degree as required by the terms of the labor certification and the requested preference classification. Therefore, the Beneficiary does not qualify for classification as a member of the professions holding an advanced degree under section 203(b)(2) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of A-R-*, ID# 433093 (AAO Aug. 14, 2017)

[4] The OOH, located at http://www.bls.gov/OOH, is a nationally recognized source of career information published by the DOL's Bureau of Labor Statistics.

[5] *See Occupational Outlook Handbook*, https://www.bls.gov/OOH/media-and-communication/public-relations-specialists.htm (last visited August 9, 2017).