U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-E-, INC.

DATE: AUG. 18, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an electrical contracting company, seeks to employ the Beneficiary as a business operations specialist. 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 Nebraska 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 and asserts that the Beneficiary has the required educational qualifications.

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

I. LAW

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.

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).

II. ANALYSIS

At issue is whether the Beneficiary meets the requirements of the offered position certified by the DOL and the education requirements of the requested classification

In this case, the labor certification states the minimum educational requirements of the offered position of business operations specialist are a bachelor's degree in accounting or economics. The labor certification also states the Petitioner's alternate acceptance of a bachelor's degree with three years of experience that "must be related to accounting and financial management, economic analysis and production management."

On the labor certification, the Beneficiary attested to her receipt of a bachelor's degree in economics from Romania, in 2000. The Petitioner submitted a copy of a 2000 *diploma de absolvire* from the university, awarding the Beneficiary the title of economist based on her major area of study in economics. The diploma and a copy of a corresponding transcript indicate that the Beneficiary completed six semesters of study (three years), in order to obtain the degree; however, a U.S. bachelor's degree generally reflects the completion of four years of studies. *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977).

The Petitioner also submitted an evaluation from According to the evaluator, he had reviewed the Beneficiary's foreign educational credentials and concluded that she had attained the equivalent of a Bachelor of Arts degree in Economics from an accredited institution of higher education in the United States. The evaluator stated that the Beneficiary completed the generalized and specialized coursework equivalent to the requirements for attainment of a bachelor of arts degree in economics from an accredited institution of higher education in the United States. However, the evaluator did not discuss the specific coursework requirements for a bachelor's degree in economics at any particular U.S. college or university, nor did he provide a course-by-course comparison of the Beneficiary's studies to show how her completed coursework is equivalent to that required for a U.S. bachelor's degree in economics. Accordingly, the evaluation lacks sufficient details to demonstrate that the Beneficiary's foreign three-year degree in economics is the equivalent of a U.S. bachelor's degree.

In denying the petition, the Director consulted the Electronic Database for Global Education (EDGE), published by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).[1] 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

[1] 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 June 29, 2017).

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 proffers copies of previously submitted documents from the [redacted] According to [redacted] the [redacted] is an agreement between various European signatory countries to engage in an ongoing process to reform and harmonize their higher educational systems, but is not a completed event. The documents from [redacted] generally conclude that [redacted] considers the three-year degree awarded following the [redacted] to be equivalent to a U.S. bachelor's degree. However, the general explanations from [redacted] do not reflect that the organization reviewed the Beneficiary's transcripts and credentials and found her specific degree to be equivalent to a four-year, U.S. bachelor's degree or that her degree is a [redacted]-compliant degree.

The Petitioner also includes several Forms I-797, Notice of Action, showing that USCIS approved two prior H-1B nonimmigrant worker petitions filed by the Petitioner on behalf of the Beneficiary for what it claims is a position with the same degree requirements. The Petitioner contends that because USCIS considered the same academic evaluations before approving the other H-1B petitions, the Director erred as a matter of law in failing to accept the Beneficiary's education as equivalent to a U.S. degree within the context of this petition. The Petitioner contends that it reasonably relied on the prior H-1B approvals to its detriment, and that the prior nonimmigrant petitions approvals are sufficient to support a finding that the Beneficiary possesses a qualifying degree for purposes of this immigrant petition.

The H-1B nonimmigrant worker petitions that the Petitioner references are not part of this record and were for an unrelated, temporary visa classification with separate statutory and regulatory evidentiary requirements. Although the approval notices show that USCIS approved one such petition in 2009 and an extension petition in 2012, the approval of those H-1B petitions is not evidence that the agency also determined that the Beneficiary's degree is a single-source foreign equivalent to a U.S. bachelor's degree that is required for the proffered position. The H-1B classification permits the alternate equation of three years of relevant experience for one year of education. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*). Consequently, the agency may approve an H-1B petition based on a review of a beneficiary's relevant experience in a certain occupation in addition to their education. But that equivalence applies to the adjudication of H-1B nonimmigrant worker petitions and not to immigrant petitions such as this. In this case, the Petitioner indicated on the labor certification that the Beneficiary was required to have a U.S. bachelor's or foreign equivalent degree. Classification as a professional likewise requires a U.S. bachelor's or foreign equivalent

degree. Neither the terms of the labor certification nor the requirements of the professional classification can be met with a combination of a lesser degree and experience.[2] Therefore, the prior nonimmigrant approvals do not establish that the Beneficiary's three-year foreign degree is equivalent to a U.S. bachelor's degree for purposes of this petition.

The Petitioner also contends that notions of fundamental fairness and due process apply in this case because the Petitioner should have been given notice that the Beneficiary's degree evaluation would not be sufficient to establish that she has the equivalent of a U.S. bachelor's degree, "at the very least in 2012" during adjudication of the prior H-1B petition. As discussed, the prior H-1B petitions are not part of this record of proceeding and were adjudicated under different statutory and regulatory provisions. Moreover, the Director gave notice to the Petitioner that the Beneficiary's foreign degree was not a qualifying U.S. bachelor's or foreign equivalent degree for purposes of this petition when the Director issued a request for evidence (RFE). The Petitioner's response to the RFE and its evidence on appeal do not establish that the Beneficiary's degree is equivalent to a U.S. bachelor's degree.

Finally, the Petitioner requests that the agency change the requested classification of the Beneficiary to a skilled worker under section 203(b)(3)(A)(i) of the Act, a classification for which no degree is required. However, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The Petitioner's request to change the requested classification cannot be approved.

III. 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 D-E-, Inc.*, ID# 595227 (AAO Aug. 18, 2017)

[2] In professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a bachelor's degree, USCIS properly concludes that a single foreign degree is required. *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006).