U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-S-[redacted]

DATE: AUG. 19, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a[redacted], seeks to employ the Beneficiary as a registered nurse. It requests her classification as a skilled worker under the third-preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This category allows a U.S. business to sponsor a foreign national with at least two years of training or experience for lawful permanent resident status.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary's education meets the minimum requirements of the labor certification.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary's education meets the minimum requirements of the labor certification.

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

I. EMPLOYMENT-BASED PETITIONS FOR SCHEDULE A OCCUPATIONS

A Schedule A occupation is an occupation codified at 20 C.F.R. § 656.5(a) for which the U.S. Department of Labor (DOL) has determined that there are not sufficient U.S. workers who are able, willing, qualified and available and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of foreign nationals in such occupations. The current list of Schedule A occupations includes professional nurses and physical therapists. *Id.*

Petitions for Schedule A occupations do not require a petitioner to test the labor market and obtain a certified labor certification from the DOL prior to filing the petition with U.S. Citizenship and Immigration Services (USCIS). Instead, the petition is filed directly with USCIS with a duplicate uncertified labor certification. *See* 8 C.F.R. § 204.5(a)(2); *see also* 20 C.F.R. § 656.15.[1] 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 the petition is March 2, 2018, the date the completed, signed petition was properly filed with USCIS. *See* 8 C.F.R. § 204.5(d).

II. THE BENEFICIARY'S QUALIFICATIONS

For Schedule A professional nurse petitions, a petitioner must establish that the beneficiary has a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS); a permanent, full and unrestricted license to practice professional nursing in the state of intended employment; or passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN). *See* 20 C.F.R. § 656.5(a)(2). A petitioner must establish that this eligibility requirement was satisfied at the priority date. 8 C.F.R. § 103.2(b)(1).

A beneficiary must also meet all of the requirements of the offered position set forth on the labor certification by the priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977). The Director concluded that the record did not establish that the Beneficiary's education meets the minimum requirements of the labor certification.

The labor certification states the minimum requirements of the offered position of registered nurse as a U.S. associate's degree or a foreign equivalent degree in nursing. Part H.14. requires a registered nurse license in any U.S. state[2] or in the alternative, must have either passed NCLEX-RN in any state or obtained a CGFNS certificate. The Petitioner indicated on the labor certification that it will not accept an alternate combination of education and experience.

The labor certification states that the Beneficiary possesses an associate's degree in nursing from [redacted] Education Centre in [redacted], Jamaica, completed in 2004. With the petition, the Petitioner submitted the Beneficiary's Certificate of Graduation from the registered general nursing program at the [redacted] Education Centre issued in December 2004. It also submitted her transcripts from [redacted] Community College evidencing three years of study in the registered general nursing-certificate program, resulting in the awarding of a certificate.

The Director's request for evidence (RFE) advised the Petitioner that USCIS had consulted the Electronic Database for Global Education (EDGE), an online database created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). 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 Cir. 2014) (holding that USCIS may discount submitted opinion letters and educational evaluations submitted if they differ from reports in EDGE, which is "a respected source of information"). According to EDGE, the Beneficiary's education is comparable to one to three years of university study in the United States. AACRAO EDGE, http://edge.aacrao.org/country/credential/certificates-2?cid=single (last visited Aug. 1, 2019). EDGE does not indicate that the Beneficiary's certificate is equivalent to a U.S. awarded associate's degree. Thus, the Director indicated that the Beneficiary's certificate is not the academic equivalent of a U.S. associate's degree in nursing.

In response to the RFE, the Petitioner submitted a credentials evaluation from Valdential Corp. dated June 25, 2018, regarding the Beneficiary's foreign educational credentials. It equates the

[2] The record shows that the Beneficiary has the required registered nurse license in the state of intended employment.

Beneficiary's three years of education at [redacted] Community College to an associate's degree in nursing from a regionally accredited institution in the United States.

The Director stated in his decision that "the evaluation fails to give an actual course by course evaluation by comparing the beneficiary's education courses to those required for a U.S. associate's degree in Nursing." He further stated that neither [redacted] Education Centre nor [redacted] Community College are registered as accredited institutions or programs with the University Council of Jamaica (UCJ).[3]

On appeal, the Petitioner submits a more detailed evaluation from Valdential Corp. dated August 9, 2018, regarding the Beneficiary's foreign educational credentials. It states that the Beneficiary:

> completed both the generalized studies and specialized studies which lead to an associate's degree from the University. The general studies include (among others) the entry-level courses in anatomy, physiology, epidemiology, and sociology, which are requisite components of an associate's degree program from an institution of higher education in the United States. Based on the subject matter and credit hours of these courses, most such courses would qualify as equivalent to courses in US institutions.

The evaluation further states that following completion of the required academic classes and examinations, the Beneficiary "was awarded a three-year Associate's Degree in Nursing by [redacted] Community College" in 2004. It states that the "nature of the courses and the credit hours involved indicate that she attained the equivalent of a three-year Associate's Degree in Nursing from an accredited US college or university."

USCIS may treat a credentials evaluation as an advisory opinion. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). If an evaluation is inconsistent with other evidence or "is in any way questionable," however, USCIS may reject it or give it lesser evidentiary weight. *Id.* Here, the evaluation states that the Beneficiary "was awarded a three-year Associate's Degree in Nursing." However, she did not receive an associate's degree in nursing. Instead, she received a certificate following three years of study in the registered general nursing certificate program. [redacted] Community College offers several associate's degree programs, but the Petitioner has not established that the Beneficiary's program was one of them. [redacted] Community College, Programmes of Study, https://ecc.edu.jm/prospective-students/programmes-of-study (last visited Aug. 1, 2019). Further, while the evaluation states that "most" of her courses would qualify as equivalent to courses in U.S. institutions, the evaluation does not specify which of her courses would qualify or for which type(s) of associate's program(s) they would qualify for.

[3] According to its website, the UCJ "was established by an Act of Parliament in 1987 as the national quality assurance body for tertiary education, to ensure quality through the adoption and improvement of educational standards. The UCJ is a statutory body currently under the portfolio of the Minister of Education, Youth and Information." UCJ, History & Dev., https://www.ucj.org.jm/about-us/history-development/ (last visited Aug. 1, 2019). The UCJ primarily registers institutions and accredits programs. *Id.*

On appeal, the Petitioner also submits a letter from [redacted] Community College which states that the Beneficiary's registered general nursing program "is approved by the Ministry of Education, Ministry of Health and Nursing Council of Jamaica." It further states that when the Beneficiary pursued the program, "it was fully sponsored by the Ministry of Health." However, according to its website, [redacted] Community College does not currently offer the Beneficiary's registered general nursing program,[4] so it is not clear how the program has any current "approvals" or how any such approvals relate to accreditation. Further, the record does not indicate how sponsorship from the Minister of Health relates to accreditation.

As noted by the Director, the Petitioner has not established that the Beneficiary's program was accredited with the UCJ, or that the college was an accredited institution. The UCJ website lists several current and formerly accredited programs at [redacted] Community College, and the Beneficiary's nursing certificate program is not listed. UCJ, Accredited Programmes at Excelsior Cmty. Coll., https://www.ucj.org.jm/institution[redacted]-community-college/ (last visited Aug. 1, 2019). It also indicates that [redacted] Community College has applied for institutional accreditation and is currently in step 3 of 8 (candidacy) in the accreditation process. UCJ, Accredited Insts., https://www.ucj.org.jm/accreditation/accredited-institutions/ (last visited Aug. 1, 2019). It does not indicate, however, that [redacted] Community College was accredited in 2004 when the Beneficiary received her nursing certificate.

On appeal, the Petitioner asserts that the Director failed to consider that the Beneficiary holds an active registered nurse license in Texas. It states that to be eligible to take the licensing examination in Texas, an applicant must "submit an original Credential Evaluation Service (CES) Full Education course-by-course sent directly from an approved organization such as CGFNS, ERES, or IERF." It states than an applicant is not eligible to take the licensure examination without the CES. The Petitioner further states that the Beneficiary submitted a CES conducted by CGFNS, but she lost the copy.[5] Despite the missing CES, it states that the fact that the Texas Board of Nursing deemed her eligible to take the licensure examination shows that her education is equivalent to education in the United States.

The record here contains no evidence indicating that an associate's degree is required for licensing in Texas.[6] Further, even if the Beneficiary's education is sufficient for licensing in the State of Texas, the issue here is whether the Beneficiary meets the educational requirements listed on the labor certification. Therefore, the fact that the Beneficiary is licensed in Texas is not sufficient to establish that the Beneficiary's possesses the equivalent of a U.S. associate's degree in nursing as required by the labor certification.

The Petitioner also asserts that the Beneficiary is currently applying for her Visa Screen certificate. It states that her application indicates that she "MEETS ALL PROGRAM REQUIREMENTS, which means that "an International Credentials Evaluator determined that the [transcript validation form from

[4] [redacted] Cmty. Coll., Programmes of Study, https:/[redacted]edu.jm/prospective-students/programmes-of-study (last visited Aug. 1, 2019).

[5] A petitioner's unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

[6] We note that the offered job is located in New Mexico, not Texas.

[redacted] Community College] met all program requirement for the service." Section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) includes a ground of inadmissibility for any immigrant or nonimmigrant who seeks to enter the United States to perform labor as a healthcare worker. Section 343 requires certification that verifies the healthcare worker's education, training, licensing, experience, and English competency. Once the screening is successful, the certifying organization issues a Visa Screen certificate. The certificate is evidence that the foreign national has met the requirements of section 343 of IIRIRA, but it does not indicate that they have met the requirements of the offered position set forth on the labor certification by the priority date. Therefore, the fact that the Beneficiary meets the requirements for her Visa Screen certificate is not sufficient to establish that she possesses the equivalent of a U.S. associate's degree in nursing as required by the labor certification.

The Petitioner has not established that the Beneficiary's Certificate of Graduation from the registered general nursing program at the [redacted] Community College in Jamaica is equivalent to a U.S. associate's degree in nursing. Therefore, the Petitioner has not established that the Beneficiary meets the requirements stated on the labor certification.

III. THE PETITIONER'S ABILITY TO PAY THE PROFFERED WAGE

Although not addressed by the Director in his decision, the Petitioner has not demonstrated its continuing ability to pay the proffered wage to the Beneficiary of this petition and to the beneficiaries of multiple other petitions that it has filed.

A petitioner must demonstrate its continuing ability to pay a proffered wage from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal tax returns, or audited financial statements. *Id.* The proffered wage in this case is $56,971 per year.

In determining a petitioner's ability to pay, we first examine whether it paid a beneficiary the full proffered wage each year from a petition's priority date. Here, according to the Beneficiary's pay statement printed on June 14, 2018, the Petitioner had paid the Beneficiary $11,941.29 in gross wages that year, which is less than the proffered wage.

If a petitioner did not pay a beneficiary the full proffered wage, we next examine whether it had sufficient annual amounts of net income or net current assets to pay the difference between the proffered wage and the wages paid, if any. If a petitioner's net income or net current assets are insufficient, we may also consider other evidence of its ability to pay the proffered wage.[7] Here, because the record does not contain regulatory-prescribed evidence of the Petitioner's ability to pay the proffered wage in 2018, we cannot determine whether it had sufficient annual amounts of net income or net current assets to pay the difference between the proffered wage and the wages paid.

[7] Federal courts have upheld our method of determining a petitioner's ability to pay a proffered wage. *See, e.g., River St. Donuts, LLC v. Napolitano*, 558 F.3d 111, 118 (1st Cir. 2009); *Tongatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984); *Estrada-Hernandez v. Holder*, -- F. Supp. 3d --, 2015 WL 3634497, *5 (S.D. Cal. 2015); *Rizvi v. Dep't of Homeland Sec.*, 37 F. Supp. 3d 870, 883-84 (S.D. Tex. 2014), *aff'd*, 627 F. App'x 292, 294-295 (5th Cir. 2015).

Further, USCIS records show that the Petitioner has filed multiple Form I-140 petitions for other beneficiaries. Where a petitioner has filed petitions for multiple beneficiaries, it must demonstrate that its job offer to each beneficiary is realistic, and that it has the ability to pay the proffered wage to each beneficiary. *See* 8 C.F.R. § 204.5(g)(2); *see also Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (upholding our denial of a petition where a petitioner did not demonstrate its ability to pay multiple beneficiaries). Thus, the Petitioner must establish its ability to pay this Beneficiary as well as the beneficiaries of the other Form I-140 petitions that were pending or approved as of, or filed after, the priority date of the current petition.[8] In response to the Director's RFE, the Petitioner submitted evidence related to dozens of other Form I-140 petitions that were pending or filed after March 2, 2018.

For each year at issue, the determination of the Petitioner's ability to pay the wages of beneficiaries of Forms I-140 that were pending or approved as of, or filed after, the priority date of the current petition is made as follows: (a) calculate any shortfall between the proffered wages and any actual wages paid to the primary Beneficiary and the Petitioner's other beneficiaries, (b) add these amounts together to calculate the total wage deficiency, and (c) demonstrate that its net income or net current assets exceed the total wage deficiency.[9] Because the record does not contain regulatory-prescribed evidence of the Petitioner's ability to pay the proffered wage in 2018, we cannot determine whether it had sufficient net income or net current assets to pay the total wage deficiency that year.

The record contains a letter from the Petitioner's President and Chief Financial Officer (CFO) as proof of its ability to pay. The letter asserts the Petitioner's ability to pay and provides additional financial information about the company. While the regulation at 8 C.F.R. § 204.5(g)(2) allows a statement from a financial officer of a petitioner with at least 100 employees to establish its ability to pay, the regulation does not require us to accept the letter. *See* 8 C.F.R. § 204.5(g)(2) (stating that a director "may accept a statement from a financial officer" to establish a petitioner's ability to pay). Here, although the Petitioner asserts that it employs more than 100 workers, the Petitioner must demonstrate its ability to pay combined proffered wages of multiple petitions, and we require more than the letter as proof of the company's ability to pay in 2018.

The record also contains the Petitioner's bank statements for periods between January 31, 2017, and March 30, 2018, to establish its ability to pay the proffered wage. However, bank statements are not among the three types of evidence, listed in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material "in appropriate cases," the Petitioner has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable. Further, bank statements show the amount in an account on a given date, and cannot

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[8] We do not consider the other beneficiaries for any year that the Petitioner has paid the Beneficiary a salary equal to or greater than the proffered wage. Further, the Petitioner's ability to pay the proffered wage of one of the other I-140 beneficiaries is not considered:

- After the other beneficiary obtains lawful permanent residence;
- If an I-140 petition filed on behalf of the other beneficiary has been withdrawn, revoked, or denied without a pending appeal or motion; or
- Before the priority date of the I-140 petition filed on behalf of the other beneficiary.

[9] It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012).

show the sustainable ability to pay a proffered wage.

Finally, USCIS will analyze the totality of the Petitioner's circumstances in reviewing its ability to pay multiple beneficiaries. We may consider evidence of a petitioner's ability to pay beyond its net income and net current assets, including such factors as: the number of years it has conducted business; the growth of its business; its number of employees; the occurrence of any uncharacteristic business expenditures or losses; its reputation in its industry; whether a beneficiary will replace a current employee or outsourced service; or other evidence of its ability to pay a proffered wage. *See Matter of Sonegawa*, 12 I&N Dec. 612, 614-615 (Reg'l Comm'r 1967).

The Petitioner's tax returns indicate that it was incorporated in 1996 and it asserts that it had 977 employees as of December 31, 2017. The CFO's letter details the Petitioner's growth between 2014 and 2016; however, the record does not show its growth since its incorporation, and the Petitioner has not provided credible evidence of its reputation in its industry. The record also does not contain regulatory-prescribed evidence of the Petitioner's ability to pay the proffered wage in 2018, the priority date year. Based on the totality of the Petitioner's circumstances, it has not established its ability to pay from 2018 onward.

In sum, the record does not establish the Petitioner's continuing ability to pay the proffered wage to the Beneficiary of this petition and the proffered wages to the beneficiaries of the multiple other petitions that it has filed. The petition cannot be approved for this additional reason.

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. 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 W-S-* [redacted], ID# 02949714 (AAO Aug. 19, 2019)