U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-P-E-C-2

DATE: AUG. 25, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a preschool daycare and learning facility, seeks to employ the Beneficiary as a "day care group teacher (preschool teacher)." It requests classification of the Beneficiary as a professional under the third preference immigrant classification. *See* 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 Texas Service Center initially approved the petition, but subsequently revoked the approval with a finding of fraud or willful misrepresentation of a material fact with regard to several evidentiary items, chief among them the documentation pertaining to the Beneficiary's educational credentials. The Director also invalidated the associated labor certification based on a finding of fraud or misrepresentation of a material fact in the labor certification process.[1]

On appeal the Petitioner submits a brief and supporting documentation. The Petitioner asserts that no fraud or willful misrepresentation of material fact has been committed by the Petitioner or the Beneficiary, and that the evidence of record refutes the Director's bases for revoking the prior approval of the petition.

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

The petition was accompanied by a certified ETA Form 9089, Application for Permanent Employment Certification (labor certification), with a priority date of August 9, 2007. Section H of the labor certification stated that the minimum educational requirement for the offered position of preschool teacher was a bachelor's degree in early childhood education, or elementary education, or secondary education, and that a foreign educational equivalent would be acceptable. Section J of the labor certification stated that the Beneficiary's highest level of education with respect to the job

[1] Any approval by U.S. Citizenship and Immigration Services (USCIS) of an employment-based immigrant petition may be revoked by USCIS for "good and sufficient cause" after notice to the petitioner. Section 205 of the Act, 8 U.S.C. § 1155; see also 8 C.F.R. § 205.2. Likewise, USCIS may invalidate a labor certification "upon a determination . . . of fraud or willful misrepresentation of a material fact involving the labor certification application." 20 C.F.R. §656.30(d).

opportunity at issue was a bachelor of science in elementary education in 1997 from [redacted] in [redacted] Philippines.

As evidence of the Beneficiary's education the following materials were submitted with the petition:

- Copies of the Beneficiary's degree and transcript from [redacted] showing that she received a bachelor of science in elementary education on April 3, 1997, after completing a four-year, eight-semester academic program in the years 1993-1997; and
- A "foreign degrees evaluation report" from [redacted] in [redacted] which stated that the Beneficiary's degree from [redacted] was equivalent to a bachelor of science in elementary education from an accredited college or university in the United States.

The petition was approved in April 2009. In October 2016, however, the Director issued a notice of intent to revoke (NOIR) the approval on multiple grounds. The Petitioner responded to the NOIR with additional evidence. The Director found that this evidence did not overcome the grounds for revocation, and issued his decision on March 17, 2017. The Director's notice of revocation and finding of fraud or material misrepresentation was based on the following:

1. [redacted] where the Beneficiary earned her bachelor's degree, did not appear to be an accredited educational institution;
2. The [redacted] evaluation of the Beneficiary's Philippine degree was invalid because it did not contain information about the evaluator's credentials. In addition, its probative value was limited because [redacted] is not a member of the U.S. Department of Education (DOE) recognized National Academy of Credential Evaluation Services (NACES) and operates out of an apartment complex; and
3. The proffered position of preschool teacher does not appear to be a *bona fide* job offer.

Contrary to the Director's suggestion, [redacted] is not, and was not at the time the Beneficiary studied there, an unaccredited institution. The Petitioner has submitted documentation showing that [redacted] and its bachelor's degree program in elementary education, have been recognized by the Republic of the Philippines' Commission on Higher Education (CHED) since 1993. This evidence is confirmed by the website, accessible via the Electronic Database for Global Education, listing 259 pages of educational institutions and their degree programs that are recognized by CHED, including [redacted] and its bachelor of elementary education program. *See http://web.archive.org/web/20070802124415/http://www.pierbooks.org/1999dir.pdf* (last visited July 21, 2017).

On appeal the Petitioner submits the [redacted] evaluator's credentials (not included with the [redacted] evaluation originally submitted with the petition), but concedes that [redacted] is not a member of NACES and not a reliable educational credentials evaluator. However, the Petitioner submitted three subsequent evaluations from other credential evaluation services – two in response to the NOIR and one on appeal – which do not have the infirmities of the [redacted] evaluation. These evaluations all assert that the Beneficiary's degree from [redacted] is equivalent to a U.S.

bachelor's degree in education. The Director incorrectly concluded that later prepared evaluations were unacceptable because they postdated the filing of the labor certification and attempted to make material changes to the petition. Evaluations of educational credentials do not need to be prepared before the labor certification is filed and they do not make material changes to a petition.

Finally, the Director did not articulate a rationale for finding that the preschool teacher position did not appear to be a *bona fide* job offer.

For the reasons discussed above, we find that the evidence in the record on appeal is sufficient to overcome the Director's revocation of the approval of the petition and invalidation of the labor certification.[2] Accordingly, we will withdraw the Director's decision, reinstate the labor certification, and restore the approval of the petition.

ORDER: The appeal is sustained.

FURTHER ORDER: The ETA Form 9089, case number [redacted] is reinstated.

Cite as *Matter of A-P-E-C-2*, ID# 602794 (AAO Aug. 25, 2017)

[2] The Director also discussed the fact that the petition was signed by the Petitioner's executive director and by the preparer, an individual who was not an attorney or an accredited representative. Since the Form I-140 received by USCIS was signed by the Petitioner's executive director, it was properly filed. *See* 8 C.F.R. § 103.2(a)(2). However, the preparer is not recognized as a representative in this proceeding.