U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-C-, INC.

DATE: DEC. 12, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an information technology consulting and staffing company, seeks to employ the Beneficiary as a computer systems analyst. 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 Nebraska Service Center denied the petition, concluding that the labor certification does not support the requested professional classification.

On appeal, the Petitioner submits a brief and asserts that the Beneficiary meets the minimum requirements for the proffered position and the requested classification.

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

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer must obtain 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. Section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer may file 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.

II. ANALYSIS

A. Labor Certification Does Not Support Requested Classification

For professional classification, the Petitioner must establish that the job offer portion of the labor certification requires, at a minimum, a single bachelor's degree or a foreign equivalent degree. 8 C.F.R. § 204.5(l)(3)(i). In this case, the labor certification states that the offered position of computer systems analyst has the following minimum requirements:

H.4.	H.4. Education: Bachelor's degree in "CompSci, Comp Engg, InfoSys, Any Engg, Sci, Math or Rltd Field"
. . .	
H.6.	Is experience in the job offered: no
. . .	
H.8.	Is there an alternate combination of education and experience that is acceptable? No.
. . .	
H.9.	Is a foreign educational equivalent acceptable? Yes.
H.10.	Is experience in an alternate occupation acceptable? No.
. . .	
H.14.	Specific skills or other requirements: "Minimum requirement: Bachelor or foreign equivalent in Computer Science/Applications/Engineering, Computer/Management Information Systems, any Engineering, Mathematics, or related field. Any suitable combination of education, training, or experience is acceptable i.e., three years of experience for each missing year of university/college education in lieu of a Bachelor Degree or foreign equivalent. . . ."

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 Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by "examin[ing] the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS' interpretation of the job's requirements, as stated on the labor certification, must involve "reading and applying *the plain language* of the [labor certification]" even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

The terms of the labor certification allow an applicant to qualify for the job with less than a U.S. bachelor's degree or a foreign equivalent degree. Specifically, Part H.14 permits an applicant to qualify for the proffered job with any combination of education, training, and experience in lieu of a

bachelor's degree, providing the example of substituting three years of experience for each year of college education that an applicant is lacking. Because the labor certification does not require at least a single U.S. bachelor's degree or a foreign equivalent degree, the petition cannot be approved under the professional classification. *See* 8 C.F.R. § 204.5(l)(3)(i) (the labor certification underlying a petition for a professional must require at least a U.S. bachelor's degree or a foreign equivalent degree).

On appeal, the Petitioner submits an educational evaluation stating that the Beneficiary possesses a bachelor's degree that is the foreign equivalent to a U.S. bachelor's degree and claims that the petition should be approved based on the Beneficiary's degree and experience. However, the issue here is not the Beneficiary's personal qualifications. Instead, the Petitioner has not established that the proffered position, as described on the labor certification, has the minimum educational requirement of a U.S. bachelor's degree or foreign equivalent degree. The Petitioner's evidence, including the evaluation submitted on appeal regarding the Beneficiary's educational qualifications, does not address the minimum educational requirements for the position, as described on the labor certification.

Accordingly, the evidence submitted does not establish that the offered position requires, at a minimum, a single U.S. bachelor's degree or a foreign equivalent degree. As such, the labor certification does not support the requested professional classification and, therefore, the petition cannot be approved.

B. Beneficiary's Education

As an additional matter, the record does not demonstrate that the Beneficiary possesses the minimum educational requirements of the classification, i.e., a single U.S. bachelor's degree or a foreign equivalent degree.

On the labor certification, the Beneficiary attested to his receipt of a bachelor of science degree from the [redacted] in India in 1991. The Petitioner submitted a copy of a 1991 certification from the university, acknowledging the Beneficiary has a bachelor's of science after completion of a three-year program based on his major in mathematics. The certificate and a copy of corresponding certificates of marks indicate that the Beneficiary completed three years of study in order to obtain his foreign 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).

On appeal, the Petitioner submits a credential evaluation which concludes that the Beneficiary's three-year degree is equivalent to three years of university study in the United States. In order to evaluate the Beneficiary's education, we have consulted the Electronic Database for Global Education (EDGE), published by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).[1] EDGE reports that Indian institutions award a bachelor of science upon

[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 Dec. 1,

completion of two or three years of post-secondary study and that this credential compares to three years of university study in the United States. Based on the Petitioner's evaluation and the EDGE report, the record does not establish that the Beneficiary's three-year degree is the required single U.S. bachelor's degree or foreign equivalent degree.

On appeal, the Petitioner does not assert that the Beneficiary has a single U.S. or foreign degree equivalent. Rather, the Petitioner contends that the Beneficiary has the equivalent of a bachelor of science in management information systems and more than five years of work experience based on a combination of his three-year degree and 22 years of experience. However, the professional classification requires a single U.S. degree or foreign degree equivalent and does not permit a beneficiary to qualify on the basis of a combination of education and experience. 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 a combination of education and work experience or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."[2]

The Petitioner also provided a certificate from the [redacted] India, and an accompanying transcript showing that the Beneficiary was conferred a diploma in Business Management. The credential evaluation submitted by the Petitioner does not address this credential or make any claims as to its equivalency. Upon review of the transcript, it appears that this diploma represents part of a master of business administration program. The transcript states "[t]he student is declared to have successfully completed Stage 1 of MBA Program. The student is yet to complete Stage II and Stage III to be eligible for MBA Degree." Absent additional information on the length of the Beneficiary's studies or the total length of time required for the master's degree, we cannot determine this diploma's equivalency. Therefore, based on this information, the Petitioner has not established that this diploma is a single degree equivalent to a U.S. bachelor's degree, as required for the classification. Moreover, in as much as the Petitioner may seek to combine this diploma with the Beneficiary's three-year bachelor's degree to meet the requirements, as was explained above, the professional classification does not allow for a combination of lesser degrees.

Classification as a professional requires a single U.S. bachelor's or foreign equivalent degree. The requirements of the professional classification cannot be met with a combination of a lesser degrees,

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2017). 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 educational evaluations that differ from reports in EDGE, which is "a respected source of information").

[2] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining 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.

experience, and training. As the Petitioner has not established that the Beneficiary has a single U.S. bachelor's degree or foreign equivalent degree, he is not eligible for classification as a professional

III. CONCLUSION

The Petitioner has not established that the position qualifies for professional classification, and that the Beneficiary possesses the minimum educational requirements for this classification. For these reasons, the petition may not be approved.

ORDER: The appeal is dismissed.

Cite as *Matter of H-C-, Inc.* ID# 887275 (AAO Dec. 12, 2017)