U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 07187506

DATE: DEC. 13, 2019

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for a Professional

The Petitioner, a jewelry business, seeks to employ the Beneficiary as a LATAM marketing specialist. It requests professional classification for the Beneficiary under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based "EB-3" 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 on the grounds that the Petitioner did not establish that the Beneficiary had the requisite educational credential to qualify for classification as a professional or to qualify for the job offered under the terms of the labor certification.

On appeal the Petitioner asserts that the Director did not apply the proper standard of proof and did not properly consider the evidence submitted. The Petitioner claims that the documentation of record establishes that the Beneficiary earned a four-year bachelor's degree in Brazil which qualifies him for professional classification and for the proffered position under the terms of the labor certification.

In visa petition proceedings it is the Petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. 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, the 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.

II. ANALYSIS

The regulation at 8 C.F.R. § 204.5(l)(2) defines "professional" as "a qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree." A petition seeking professional classification, therefore, must be accompanied by a labor certification that requires the minimum of a baccalaureate degree to qualify for the job offered. 8 C.F.R. § 204.5(l)(3)(i). Consistent with this regulation the labor certification in this case specifies that a bachelor's degree in marketing or a foreign educational equivalent is required to qualify for the proffered position.

For the reasons discussed hereinafter, the record does not establish that the Beneficiary has a foreign degree that is equivalent to a U.S. baccalaureate degree. Therefore, he does not qualify for classification as a professional and does not meet the minimum educational requirement of the labor certification to qualify for the job offered.

A. Beneficiary is Not Eligible for Professional Classification

A petition requesting professional classification "must be accompanied by evidence that the beneficiary holds a United States baccalaureate degree or a foreign equivalent degree." 8 C.F.R. § 204.5(l)(3)(ii)(C). The regulation specifies that

> Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.

Id. In this case no official college or university record has been submitted for the Beneficiary.

The petition was accompanied by a copy of the Beneficiary's *Bacharel em. Marketing* (Bachelor of Marketing) from the [redacted], an institution of higher education in [redacted], Brazil, dated December 18, 1987. In a request for evidence (RFE) the Director advised the Petitioner that in Brazil there are two types of *Titulo de Bacharel/Grau de Bacharel*, including a three year credential which is comparable to three years of university study in the United States and a four- or five-year credential which is comparable to a U.S. bachelor's degree.[1] A bachelor's degree in the United States generally comprises four years of academic coursework. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). To clarify which type of credential the Beneficiary has, the Director requested the submission of "a complete copy of the [B]eneficiary's official academic record (typically the credential, the transcripts, or other official document from the educational institution) showing the dates of attendance, area of concentration of study, and the date the [B]eneficiary received the educational credential."

In response to the RFE the Petitioner submitted two evaluations of the Beneficiary's degree from academic credentials evaluation services which assert that the Beneficiary completed a four-year program, an untranslated copy of the [redacted]'s marketing curriculum purportedly

[1] This information was gleaned from the American Association of Collegiate Registrars and Admissions Officers (AACRAO)'s Electronic Database for Global Education (EDGE).

depicting four years of coursework, and two letters from a professor and an alumnus of the institution who assert that the Beneficiary earned a four-year degree. However, the Petitioner did not submit the item(s) specifically requested in the RFE to complete the Beneficiary's official academic record. In particular, no transcripts or other official document(s) from the [redacted] were submitted to show the Beneficiary's coursework and grades, his dates of attendance, and how many academic years his program of study comprised. This evidentiary deficiency has not been remedied on appeal. The Petitioner has submitted one additional evaluation of the Beneficiary's education, but no transcripts or other official document from the [redacted] to complete the Beneficiary's official academic record. Thus, the Petitioner has not complied with the substantive requirements of 8 C.F.R. § 204.5(l)(3)(ii)(C) and has not shown that the Beneficiary's credential from the [redacted] was a four-year degree equivalent to a U.S. baccalaureate degree.

Accordingly, the Petitioner has not established that the Beneficiary has the requisite educational degree to qualify for classification as a professional.

B. Beneficiary Does Not Meet the Educational Requirement of the Labor Certification

A beneficiary must meet all of the education, training, experience, and other requirements of the labor certification as of the petition's priority date.[2] *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977). The priority date in this case is May 24, 2018. As previously indicated, the labor certification requires a bachelor's degree in marketing or a foreign educational equivalent. The Petitioner has not established that the Beneficiary has such a degree since a complete copy of his official academic record, including documentary evidence from the [redacted] confirming how many years of academic coursework the Beneficiary's *Bacharel em. Marketing* comprised, has not been submitted.

III. CONCLUSION

The record does not establish that the Beneficiary has a U.S. bachelor's degree or a foreign equivalent degree. Therefore, the Petitioner has not established the Beneficiary's eligibility for classification as a professional and has not established that the Beneficiary meets the minimum educational requirement of the labor certification to qualify for the job offered. The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision.

ORDER: The appeal is dismissed.

[2] The priority date of a petition is the date the underlying labor certification is filed with the DOL. *See* 8 C.F.R. § 204.5(d).