U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-C-O-M-, LLC

DATE: FEB. 16, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a manufacturer of plastic food service products, seeks to employ the Beneficiary as an ERP Lead. 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, Nebraska Service Center, denied the petition. The Director found that the Beneficiary did not meet the minimum educational requirement of the ETA Form 9089, Application for Permanent Employment Certification (labor certification), to qualify for the job offered and did not qualify for immigrant classification as a professional.

The matter is now before us on appeal. The Petitioner submits a brief and supporting documentation, asserting that the Beneficiary meets the minimum educational requirement of the labor certification and qualifies for classification as a professional.

Upon *de novo* review, we will withdraw the decision and remand the case to the Director for further consideration and the issuance of a new decision.

I. LAW

Section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii), provides immigrant classification to professionals. *See also* 8 C.F.R. § 204.5(l)(2). Section 101(a)(32) of the Act defines the term "profession" to include, but is not limited to, "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." If the offered position is not statutorily defined as a profession, "the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation." 8 C.F.R. § 204.5(l)(3)(ii)(C).

The regulation at 8 C.F.R. § 204.5(l)(3)(C) sets forth the evidentiary requirements to establish that a beneficiary qualifies for classification as a professional. It states that "the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree" and that "[e]vidence 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.*

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date, which is the date the underlying labor certification application was accepted for processing by the Department of Labor (DOL). *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Acting Reg'l Comm'r 1977).

II. ANALYSIS

The Petitioner filed the Form I-140, Immigrant Petitioner for Alien Worker, requesting classification of the Beneficiary as a professional. As required by statute, the petition was accompanied by a labor certification which was filed with DOL on August 13, 2015, establishing the priority date for this case. For the offered position – ERP Lead – the Petitioner specified in section H of the labor certification the following education, training, and experience requirements:

4.	Education: Minimum level required:	Bachelor's degree
4-B.	Major Field of Study:	Computer Science
5.	Is training required in the job opportunity?	No
6.	Is experience in the job offered required?	Yes
6-A.	How long?	9 months
7.	Is there an alternate field of study that is acceptable?	Yes
7-A.	What field(s)?	Management Information Systems (MIS) or Electrical Engineering
8.	Is an alternate combination of education and experience acceptable?	No
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	No

14. Special skills or other requirements:
    - 12 years of SAP SD/LE & MN Module experience
    - 2 years of SAP CRM experience
    - 7 years of experience as a Global Team Lead with geographies like AMR, EMEA and APAC
    - 8 months of Vistex DMP experience
    - Exposure to SAP FSCM
    - Experience with at least 6 full lifecycle SAP implementation projects

Thus, the labor certification specifies that a bachelor's degree in computer science, MIS, or electrical engineering, or a foreign educational equivalent, and 9 months of experience as an ERP Lead, and the specific IT-related skills and requirements listed in box H.14 are required for the job.

As evidence of the Beneficiary's educational credentials, the Petitioner submitted the following documentation with the Form I-140 petition and in response to the Director's notice of intent to deny (NOID):

- Copies of a diploma and transcripts from [redacted] in [redacted] India, showing that the Beneficiary was awarded a "Bachelor of Arts (Three Year Degree Course)" on September 30, 2000;
- A copy of a "Post-graduate Diploma in Computer Applications" from [redacted] in [redacted] India, dated March 28, 2002;
- An Academic Equivalency Evaluation from [redacted] dated March 2, 2016, asserting that the Beneficiary's post-graduate diploma (PGD) in computer applications following his 3-year bachelor of arts was equivalent to a U.S. bachelor of science degree in computer and information sciences;
- An entry from the Electronic Database for Global Education (EDGE), produced by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), which states that a PGD in India that follows a 3-year bachelor's degree represents a level of education that is comparable to a bachelor's degree in the United States;
- Website extracts showing that [redacted] is recognized and/or accredited in India by the [redacted] the [redacted] and the [redacted]

The Director denied the petition on the grounds that the Beneficiary did not have the requisite educational credential to qualify for the job offered under the terms of the labor certification and to qualify for classification as a professional. The Director noted that a U.S. baccalaureate degree is generally found to require 4 years of college or university education, citing *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm'r 1977), and determined that the Beneficiary's 3-year bachelor of arts degree and subsequent PGD from [redacted] did not meet the labor certification requirement of a U.S. baccalaureate degree or a foreign equivalent degree. The Director found that the labor certification specified the minimum educational requirement to be a bachelor's degree in computer science, MIS, or electrical engineering, and does not allow for a combination of lesser degrees and/or other credentials to substitute for an actual U.S. baccalaureate or foreign equivalent degree, even if they may amount, collectively, to the educational equivalent of a bachelor's degree. The Director also found that as the Beneficiary did not possess at least a bachelor's degree, the Beneficiary did not qualify for classification as a professional. *See* 8 C.F.R. § 204.5(l)(2) (defines professional for purposes of employment-based immigrant classification as the holder of a U.S. baccalaureate degree or a foreign equivalent degree).

On appeal, the Petitioner asserts that the Beneficiary has the degree required for the offered position and for classification as a professional. We agree, in part. We have consulted EDGE, which we consider to be a reliable, peer-reviewed source of information about foreign degree equivalencies.[1]

[1] According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in more than 40 countries." *About AACRAO*,

EDGE reports that PGDs that require a 3-year bachelor's degree for entry into the program, and are issued by an accredited college or university, are the equivalent of a U.S. bachelor's degree. In this case, the record establishes that the Beneficiary's PGD was issued by a university accredited by the [redacted] in India and that the PGD program required a 3-year bachelor's degree for admission. After reviewing the documentation, we determine that the Beneficiary's PGD in computer applications from [redacted] following his 3-year bachelor of arts degree from [redacted] is a foreign equivalent degree to a U.S. baccalaureate degree. Accordingly, we will withdraw the Director's finding that the Beneficiary does not have the requisite educational degree to qualify for classification as a professional.

The question remains, however, as to whether the Beneficiary's PGD in computer applications meets the field of study requirement of the labor certification, which specifies that the degree must be in computer science, MIS, or electrical engineering in order for the Beneficiary to qualify for the job offered. Therefore, we will remand this case to the Director for a determination of whether the Beneficiary's education is in a field of study that qualifies him for the job offered under the terms of the labor certification.

As previously mentioned, in addition to the educational requirements the Beneficiary must meet all of the other requirements set forth in the labor certification as of the petition's priority date. *See Wing's Tea House*, 16 I&N at 158; *and Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Therefore, the Director shall also determine whether the Beneficiary meets the experience requirements of the labor certification, including the special skills and other requirements listed in Part H.14.

Furthermore, the record does not establish the Petitioner's ability to pay the proffered wage from the priority date onward. The Petitioner must establish its continuing ability to pay the proffered wage of the job offered from the priority date of the petition, August 13, 2015, until the Beneficiary obtains lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2). At the time the Form I-140 was filed, the Petitioner's financial records for 2015 were not yet available. Although the Petitioner did submit a Form W-2 showing that the Beneficiary was paid in excess of the proffered wage in 2015, the record lacks any of the three types of required evidence, as prescribed in the above regulation, of the Petitioner's ability to pay the proffered wage in the year of the priority date or any subsequent year. On remand, the Director shall request additional evidence regarding this issue.

III. CONCLUSION

The record establishes that the Beneficiary has the bachelor's degree required for classification as a professional. However, the record does not demonstrate that the Beneficiary has the minimum

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http://www.aacrao.org/home/about (last visited Feb. 13, 2017). According to its registration page, EDGE is "a web-based resource for the evaluation of foreign educational credentials." *AACRAO EDGE*, http://edge.aacrao.org/info.php (last visited Feb. 13, 2017).

education or special skills required by the terms of the labor certification or that the Petitioner has the ability to pay the proffered wage from the priority date onward.

ORDER: The decision of the Director, Nebraska Service Center, is withdrawn. The matter is remanded to the Director, Nebraska Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of D-C-O-M-, LLC*, ID# 100242 (AAO Feb. 16, 2017)