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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF [redacted] DATE: FEB. 22, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a bank, seeks to employ the Beneficiary as a business analysis consultant II, asset servicing/client service delivery. 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, concluding that the Beneficiary does not hold a U.S. bachelor's degree or foreign degree equivalent, as required by the professional classification. The Director also determined that the Beneficiary did not meet the minimum requirements for the proffered position as of the priority date.

The matter is now before us on appeal. On appeal, the Petitioner submits a new credentials evaluation for the Beneficiary and asserts that he meets the minimum requirements for the proffered position. Upon *de novo* review, we will dismiss the appeal.

I. LAW

A. Employment-Based Immigration

Employment-based immigration is generally 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). As required by statute, an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the DOL, accompanies the petition. By approving the labor certification, the DOL certified that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position. Section 212(a)(5)(A)(i)(I) of the Act. The DOL also certified that the employment of 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)(II) of the Act.

Next, U.S. Citizenship and Immigration Services (USCIS) must approve an immigrant visa petition. *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, the foreign national must 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.

In these visa petition proceedings, USCIS determines whether a foreign national meets the job requirements specified on a labor certification and the requirements of the requested immigrant classification. *See* section 204(b) of the Act (stating that USCIS must approve a petition if the facts stated in it are true and the foreign national is eligible for the requested preference classification); *see also, e.g., Tongatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983) (both holding that USCIS has authority to make preference classification decisions).

B. Professional Classification

In this case, the Petitioner requests classification of the Beneficiary as a professional. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in part:

> If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. 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.

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).

In addition, the job offer portion of the labor certification underlying a petition for a professional "must demonstrate that the job requires the minimum of a baccalaureate degree." 8 C.F.R. § 204.5(l)(3)(i). A U.S. baccalaureate degree is generally found to require 4 years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977).

Therefore, a petition for a professional must establish that the occupation of the offered position is listed as a profession at section 101(a)(32) of the Act or requires a bachelor's degree as a minimum for entry; the beneficiary possesses at least a U.S. bachelor's degree or a foreign equivalent degree from a college or university; and the job offer portion of the labor certification requires at least a bachelor's degree or a foreign equivalent degree.

II. ANALYSIS

Although not considered by the Director, we will first discuss whether the labor certification supports the requested professional classification. We will next consider the Director's grounds for denial and determine whether the Beneficiary has the education required for professional classification and whether the Beneficiary meet the terms of the labor certification.

A. Labor Certification Does Not Support Requested Classification

As noted, a petition for a professional must establish that the job offer portion of the labor certification requires at least a bachelor's degree or a foreign equivalent degree. In this case, the labor certification states that the offered position has the following minimum requirements:

H.4. Education: Bachelor's degree in mathematics, financial mathematics, finance, business administration, international business, or related.
H.5. Training: None required.
H.6. Experience in the job offered: 48 months required.
H.7. Alternate field of study: None accepted.
H.8. Alternate combination of education and experience: Employer will accept three (3) years of university level studies and two (2) years of financial services experience as meeting the degree requirements.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: 48 months as a business analysis consultant I, business analyst I, support ops/analyst I, asset servicing/client service delivery, asset servicing/corporate actions, market expert controller, or related.
H.14. Specific skills or other requirements: Four (4) years of progressively responsible experience analyzing, and defining business requirements, functional specifications and operational architecture for a functional work stream within a strategic, global program behalf of a global financial services institution. Prior experience must include: documenting the scope of projects; documenting requirements utilizing systems including SMBD, PSS, GSP and MyGTM; gathering signoffs form the stakeholders and reviewing technology design documents; script testing cases related to code change and regression test cases; driving testing, identifying and addressing defects; implementing operational readiness tools; writing user guides; validating installations; and ensuring code stability in Production after installation and training business on the new functionality being delivered. Any suitable combination of education and experience is acceptable.

The terms of the labor certification allow an applicant to qualify for the job with less than a 4-year U.S. bachelor's degree or a foreign equivalent degree. Specifically, Part H.8. permits an applicant to qualify for the proffered job with 3 years of university level studies and 2 years of financial services

experience in lieu of a bachelor's degree. Because the labor certification does not require at least a 4-year 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 asserts that the Director should have adjudicated this petition under the skilled worker category,[1] or issued a request for evidence allowing the Petitioner the chance to change the preference category.[2] Here, the Form I-140 was filed on June 29, 2016. At Part 2. of the Form I-140, the Petitioner selected 1.d. indicating that it was filing the petition for a member of the professions holding an advanced degree or an alien of exceptional ability.[3] On July 11, 2016, the Director sent the Petitioner a request for evidence (RFE) noting, in part, that the classification selection may have been in error based on the terms of the labor certification and asking the Petitioner to clarify if its intent was to continue to classify the Beneficiary as a member of the professions holding an advanced degree or an alien of exceptional ability. In its response to the RFE, the Petitioner indicated that Part 2.1.d. was erroneously selected, and requested that the Director change the requested classification to Part 2.1.e., the professional classification. The Petitioner submitted a new Form I-140 reflecting that request. The Director granted the request and his decision reflects that the petition was considered under the professional classification.

In this case, the labor certification indicates that an applicant can qualify for the proffered position with less than a bachelor's degree. However, in response to the Director's RFE inquiring about a change of classification, the Petitioner requested an amendment from the advanced degree classification to the professional classification on the Form I-140. The Petitioner could have requested an amendment to the skilled worker category at that time, but it did not. Therefore, its assertion that the Director should have adjudicated the petition under the skilled worker category, or issued an RFE allowing a change of classification, is without merit.[4] There is no provision in statute or regulation that compels USCIS to readjudicate a petition under a different visa classification in

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[1] Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least 2 years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

[2] The Petitioner filed another Form I-140, Immigrant Petition for Alien Worker, on behalf of the Beneficiary in the skilled worker classification on July 21, 2016, utilizing the labor certification from this case. The petition was approved on August 17, 2016.

[3] Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides for the granting of immigrant preference classification to professionals with advanced degrees.

[4] The Petitioner also asserts on appeal that the "bifurcation" of the professional and skilled worker classifications on the Form I-140 is a "relatively new construct" and that, as a result, USCIS should have reviewed the Beneficiary's qualifications under both of the classifications prior to issuing a denial. We disagree. The January 6, 2010, version of the Form I-140 required petitioners to make a distinction in the classification categories of professional or skilled worker. Older versions of the Form I-140 had only one box for both classifications. Thus, bifurcation had been in place for over 6 years prior to the Petitioner's filing of the Form I-140. Further, the Petitioner in this case was given the opportunity to change the classification prior to adjudication of the petition. It could have selected the skilled worker classification at that time, but instead, it chose the professional classification. The Petitioner provides no support for its assertion that USCIS should have considered this petition under the skilled worker classification.

response to a petitioner's request to change it, once the decision has been rendered. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988).

The evidence submitted does not establish that the offered position requires at least a U.S. bachelor's degree or a foreign equivalent degree. As such, the labor certification does not support the petition requesting classification as a professional.

B. Beneficiary Does Not Have the Degree Required for Classification as a Professional

In order to be classified as a professional, the Beneficiary must possess at least a U.S. bachelor's degree or a foreign equivalent degree from a college or university.[5] In this case, the labor certification states that the Beneficiary possesses 3 years of university level study in international business from the in Belgium, completed in 2007. The record contains a copy of the Beneficiary's degree and degree supplement from the in Belgium, issued on September 7, 2007.

The Petitioner relies on the Beneficiary's 3-year bachelor's degree as being equivalent to a U.S. bachelor's degree. A 3-year bachelor's degree will generally not be considered to be a "foreign equivalent degree" to a U.S. baccalaureate. *See Matter of Shah*, 17 I&N Dec. at 244.[6]

The record contains two evaluations of the Beneficiary's educational credentials prepared by for

- One dated July 24, 2014, which concludes that the Beneficiary's bachelor's degree in foreign trade is equivalent to 3 years of academic study toward a U.S.-issued bachelor of arts degree in international business. The evaluation references the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO),[7] the Central Intelligence Agency (CIA) World Factbook, and the International Association of Universities' International Handbook of Universities,

[5] 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 a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. *See also Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008)(for professional classification, USCIS regulations require the beneficiary to possess a single 4-year U.S. bachelor's degree or foreign equivalent degree).

[6] On appeal, the Petitioner states that in certifying the labor certification, the DOL "deferred to [the Petitioner] in its drafting of the labor certification" which was filed "with the beneficiary's specific credentials in mind." However, DOL's certification of the labor certification does not supercede USCIS' review and evaluation of the criteria the Petitioner must prove in order to establish that the petition is approvable.

[7] 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*, http://www.aacrao.org/home/about (last visited Feb. 7, 2017). According to the registration page for EDGE, EDGE is "a web-based resource for the evaluation of foreign educational credentials." *AACRAO EDGE*, http://edge.aacrao.org/info.php (last visited Feb. 7, 2017).

and states that the evaluation's findings are confirmed by EDGE. A copy of the pertinent EDGE excerpt was attached to the evaluation and states that a Belgian bachelor's degree represents "attainment of a level of education comparable to 3 years of university study in the United States. Credit may be awarded on a course-by-course basis." evaluation further states that his conclusion is "based on the reputation of the the number of years of coursework, the nature of the coursework, the grades attained in the courses, and the hours of academic coursework;" and

- One dated August 12, 2016, which concludes that the Beneficiary's bachelor's degree in foreign trade is equivalent to a U.S.-issued bachelor of arts degree in international business. Similar to the 2014 evaluation, this evaluation also states that the conclusion is "based on the reputation of the the number of years of coursework, the nature of the coursework, the grades attained in the courses, and the hours of academic coursework." The evaluation references EDGE, the CIA World Factbook, and the International Association of Universities' International Handbook of Universities, but, unlike the July 24, 2014, evaluation, it does not state that the evaluation's findings are confirmed by EDGE.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r 1988). *See also Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony); *Viraj, LLC v. U.S. Att'y Gen.*, 2014 WL 4178338 *4 (11th Cir. 2014) (we are entitled to give letters from professors and academic credentials evaluations less weight when they differ from the information provided in EDGE).

The Petitioner has submitted conflicting educational evaluations written by the same individual. The 2016 evaluation provides no detail or explanation as to why its conclusion differs from the 2014 evaluation. The 2016 evaluation's conclusion is contrary to the EDGE findings referenced in the 2014 evaluation, but the Petitioner has provided no evidence indicating that the EDGE findings have changed since 2014. Because the 2014 evaluation is supported by the EDGE findings, it is deemed more reliable and credible in these proceedings.[8]

According to EDGE, a Belgian bachelor's degree is awarded upon completion of 3 years of study at a university (180 European Credit Transfer and Accumulation System (ECTS) credits), and represents "attainment of a level of education comparable to 3 years of university study in the United States. Credit may be awarded on a course-by-course basis." *AACRAO EDGE*, http://edge.aacrao.org/country/credential/bachelors?cid=single (last visited Feb. 7, 2017).[9] The

[8] The Petitioner relied on the 2014 evaluation in its subsequent Form I-140 skilled worker petition on behalf of the Beneficiary, which was approved on August 17, 2016.

[9] The Director informed the petitioner of EDGE's conclusions in his RFE and decision.

Beneficiary's degree supplement confirms that he obtained 180 ECTS after 3 years of study. Therefore, based on the conclusions of EDGE and the 2014 evaluation submitted by the Petitioner, the evidence in the record is not sufficient to establish that the Beneficiary possesses the foreign equivalent of a U.S. bachelor's degree.

On appeal, counsel correctly asserts that an equivalency evaluation incorporating an EDGE database analysis is not required by the regulation. However, both of the evaluations submitted by the Petitioner in this case cited EDGE and therefore, it is unclear why the Petitioner asserts on appeal that an EDGE analysis is not applicable.

After reviewing all of the evidence in the record, it is concluded that the Petitioner has not established that the Beneficiary has a U.S. baccalaureate degree or a foreign equivalent degree from a college or university. The Petitioner has not overcome the conclusions of EDGE with credible and reliable information. Therefore, the Beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act.

C. Beneficiary Meets the Term of the Labor Certification

In his decision, the Director determined that the Beneficiary did not meet the minimum requirements for the proffered position as of the priority date. We disagree. As discussed above, the labor certification states that the Petitioner would accept 3 years of university level studies and 2 years of financial services experience in lieu of a bachelor's degree. Here, the record establishes that the Beneficiary has 3 years of university education and 2 years of financial services experience; and as such, the Beneficiary meets the terms of the labor certification.

III. CONCLUSION

In summary, although the Petitioner has established that the Beneficiary met the education and experience requirements of the labor certification, the petition cannot be approved in the professional classification because the labor certification does not require at least a bachelor's degree or a foreign equivalent degree, and the Beneficiary does not possesses a U.S. bachelor's degree or a foreign equivalent degree from a college or university.

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. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of* , ID# 268546 (AAO Feb. 22, 2017)