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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF [redacted] DATE: FEB. 27, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a provider of business technology services, seeks to employ the Beneficiary as a senior sourcing lead – processing management and information technology. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This category allows a U.S. business to sponsor a foreign national with at least 2 years of training or experience for lawful permanent resident status.

The Director, Nebraska Service Center, denied the petition. The Director concluded that the record did not establish the Beneficiary's possession of the educational requirements of the offered position.

The matter is now before us on appeal. The Petitioner asserts that the Beneficiary meets the educational requirements of the offered position because the Petitioner drafted the requirements with the Beneficiary in mind.

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

I. LAW AND ANALYSIS

A. Employment-Based Immigration Process

Employment-based immigration is generally a three-step process. First, an employer must obtain an approved ETA Form 9089, Application for Permanent Employment Certification (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). Next, U.S. Immigration and Citizenship Services (USCIS) must approve an immigrant visa petition. *See* section 204 of the Act. Finally, a 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.

By approving the accompanying labor certification in this case, the DOL certified that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position of senior sourcing lead. *See* 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. *See* section 212(a)(5)(A)(i)(II).

In visa petition proceedings, USCIS must determine whether the Beneficiary meets the requirements of the offered position certified by the DOL. *See, e.g., Tongatapu Woodcraft Haw., Ltd. v Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984) (holding that the immigration service "makes its own determination of the alien's entitlement to [the requested] preference status").

B. The Beneficiary's Possession of the Educational Requirements

In order to be eligible for the requested classification, a petitioner must establish a beneficiary's possession of all the education, training, and experience specified on an accompanying labor certification by a petition's priority date. 8 C.F.R. § 103.2(b)(l), (12); *see also Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Here, the priority date is August 19, 2014. This is the date that the DOL accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date). The accompanying labor certification states the minimum educational requirements of the offered position of senior sourcing lead as a U.S. master's degree or a foreign equivalent degree in business administration or management. The labor certification also states that the offered position requires at least 36 months of experience in application or software development, infrastructure management, or spend management solutions or services.[1]

In evaluating a beneficiary's qualifications, we must examine the job offer portion of an accompanying labor certification to determine the minimum requirements of an offered position. We may neither ignore a term of the labor certification, nor impose additional requirements. *See K.R.K. Irvine, Inc.* v. *Landon,* 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany* v. *Smith,* 696 F.2d 1008, 1012-13 (D.C. Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc.* v. *Coomey,* 661 F.2d 1, 3 (1st Cir. 1981).

The Beneficiary attested on the accompanying labor certification to his completion of a master's degree in management from the in India in 2003. The record contains a copy of a post-graduate diploma in business management from the institute. The diploma and accompanying marks sheets indicate the Beneficiary's receipt of the diploma after 2 years of study at the institute and passage of a May 2003 examination. The record also contains a copy of a bachelor of science diploma from the in India. The diploma and the accompanying marks sheets indicate the Beneficiary's completion of the degree after 3 years of study at the university and passage of an examination in 2000.

[1] Part H.14 of the labor certification states additional requirements of the offered position that are not at issue.

The Petitioner submitted an expert evaluation of the Beneficiary's foreign educational credentials, which states that the Beneficiary's 3-year bachelor of science degree equates to 3 years of study at a U.S. university. The evaluation further concludes that his 2-year post-graduate diploma equates to a U.S. master's degree in management. If an expert opinion conflicts with evidence of record or "is in any way questionable," we may reject it or afford it less evidentiary weight. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988); *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (noting that expert testimony may be given different evidentiary weight depending on the qualifications of the expert and the relevance, reliability, and probative value of the testimony).

The evaluation in the case cites the Electronic Database for Global Education (EDGE), an online tool that federal courts have found 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 letters and evaluations submitted by a petitioner if they differ from reports in EDGE, which is "a respected source of information").[2] EDGE concludes that a 3-year bachelor of science degree from India equates to 3 years of study at a U.S. university and that a post-graduate diploma following a 3-year bachelor's degree in India compares to a U.S. bachelor's degree, rather than to a U.S. master's degree.

Therefore, although the evaluation agrees with EDGE concerning the Beneficiary's bachelor's degree, it reaches a different conclusion regarding the post-graduate diploma. Noting EDGE's contrary conclusion, the evaluation states that the evaluator's advice may not always agree with EDGE because:

> EDGE was not designed to review institutional recognition or program availability and accreditation; to authenticate or verify foreign documents; to speak to issues of curriculum complexity; or to review the content of particular degree programs offered at specific foreign universities in comparison with similar degree programs offered in the United States.

Although the evaluation states potential reasons why its conclusion may differ from EDGE's, it evaluation does not specify why its conclusion differed from EDGE's in this particular case.

In response to the Director's request for evidence (RFE), the Petitioner submitted additional documentation, including another evaluation from the expert. The second evaluation consists of a course-by-course review of the Beneficiary's undergraduate and graduate studies in India. The second evaluation states the Beneficiary's completion of 173 semester credits of university-level coursework in India, including 34 graduate-level credits. Because accredited U.S. universities

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[2] EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." AACRAO, About Us, at http://www.aacrao.org/About-AACRAO.aspx (last visited Feb. 22, 2017).

require respective minimums of 120 and 30 semester credits for baccalaureate and master's degrees, the evaluation concludes that the Beneficiary possesses the equivalent of a U.S. master's degree. Thus, the evaluation appears to disagree with EDGE's conclusion because the amount of university credits that the Beneficiary purportedly earned in India exceeds U.S. master degree requirements. However, the second evaluation does not explain how it determined the amount of credits to award to the courses completed by the Beneficiary in India. The evaluation states that the evaluator reviewed copies of the Beneficiary's diplomas and marks sheets. But the diplomas and marks sheets do not state amounts of course credits or time spent in class. Without an explanation of its methodology for determining university credits, the second evaluation does not reliably assess the Beneficiary's foreign educational credentials. The second evaluation also states its review of the curricula of 1-year master of business administration (MBA) programs in the United States. The Petitioner submitted copies of online printouts from the websites of U.S. universities offering such accelerated MBA programs. But, without reliable information regarding the amount of university credits earned by the Beneficiary in India, the record does not establish that his degree satisfied similar requirements of these 1-year U.S. MBA programs. The record therefore does not establish the Beneficiary's possession of the educational requirements for the offered position.

On appeal, the Petitioner states that it drafted the educational requirements on the accompanying labor certification with the Beneficiary in mind. The Petitioner therefore asserts that it intended a foreign equivalent of a U.S. master's degree to include the Beneficiary's foreign educational credentials. Citing *SnapNames.com, Inc. v. Chertoff*, No. CV 06-65-MO, 2006 WL 3491005, *9 (D. Or. Nov. 30, 2006), the Petitioner asserts that we must defer to its interpretation of the educational requirements on the labor certification.

However, the Petitioner's emphasis on this case is misplaced. In *SnapNames.com*, a labor certification accompanying a skilled worker petition stated educational requirements of 4 years of college and a "B.S. or foreign equivalent." *SnapNames.com*, 2006 WL 3491005 at *1. The petitioner submitted several expert evaluations, all concluding that a combination of the beneficiary's foreign educational credentials equated to a U.S. bachelor's degree. *Id.* USCIS denied the petition, finding that the beneficiary lacked a single, 4-year, foreign equivalent degree as the agency interpreted the labor certification to require. *Id.* at *2. The court in *SnapNames.com*, however, found that the plain language of the labor certification was ambiguous regarding the position's need for a single degree. *Id.* at *8. Because neither statutes nor regulations require a skilled worker to possess a degree, the court found that USCIS lacked authority to define the educational requirements on the labor certification. *Id.* at *6. Instead, the court required USCIS to consider evidence of record of the petitioner's intention to accept any combination of foreign academic credentials evaluated by a reputable expert to equate to a U.S. bachelor's degree. *Id.* at *8.

The U.S. district court decision in *SnapNames.com* does not bind us in this matter. *See Matter of K-S-*, 20 I&N Dec. 715, 718 (BIA 1993) (finding that, even within the same district, U.S. district court decisions are not precedential). Moreover, *SnapNames.com* is distinguishable from this case. In *SnapNames.com*, the court found the requirement of a "B.S. or equivalent" on the accompanying labor certification to be ambiguous regarding the position's need for a single degree.

SnapNames.com, at *8. In this case, the accompanying labor certification unambiguously states that the offered position requires a U.S. master's degree or a foreign equivalent degree.

Part H.4 of the ETA Form 9089 states that the offered position requires a "Master's" degree, rather than a "Bachelor's" degree or some "Other" educational credential. Part H.8 of the form also states that "No" alternate combination of education and experience is acceptable. The plain language of the labor certification therefore indicates that the offered position requires a U.S. master's degree or a foreign equivalent degree.

Further, as the court in *SnapNames.com* recognized, USCIS "has an independent role in determining whether the alien meets the labor certification requirements." *SnapNames.com*, at *7. The court stated:

> where the plain language of those requirements does not support the petitioner's asserted intent, the agency does not err in applying the requirements as written. In fact, the agency is obligated to "examine the certified job offer *exactly as it is completed by the prospective employer*."

Id. (quoting *Rosedale & Linden Park Co. v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added).

In addition, as the court in *SnapNames.com* indicated, interpreting the educational requirements of the labor certification based on the Beneficiary's background could undermine the DOL's certification that his employment will not "adversely affect" U.S. workers. *Id.* at *8. Without reliable evidence of the Beneficiary's possession of the foreign equivalent of a U.S. master's degree, acceptance of his foreign educational credentials would violate DOL regulations. The Petitioner would require domestic applicants to possess U.S. master's degrees, but would accept a lesser foreign equivalency from the Beneficiary. *See* 20 C.F.R. § 656.17(i)(3) (barring an employer from requiring U.S. applicants to possess qualifications beyond those possessed by the foreign national at the time of hire). The Petitioner's interpretation of the educational requirements is therefore impermissible.

The Petitioner also asserts that we impose an additional educational requirement on the offered position that is unstated on the accompanying labor certification. The Petitioner's appeal brief states:

> Nowhere in the job-offer portion of the Petitioner's labor certification is there any requirement that states that the foreign-degree equivalent must be evaluated pursuant to the EDGE database. This "requirement" appears to have been added by the Service as a result of its internal policies.

(emphasis in original).

The Petitioner, however, misunderstands the basis of the dismissal. In visa petition proceedings, unless expressly stated otherwise on an accompanying labor certification, evaluations of foreign educational credentials need not necessarily agree with EDGE. But, as previously indicated, where evaluations of record reach different conclusions or contain inconsistencies, we may reject them or afford them less evidentiary weight. *See, e.g., Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988) (stating that "[w]here an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight"); *see also Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence). Here, the evaluations submitted by the Petitioner cite EDGE, which contradicts their conclusions. The evaluations appear to disagree with EDGE based on the amount of university credits earned by the Beneficiary in India, but the evaluations do not explain how they determined his amount of university credits. Thus, the evaluations do not sufficiently resolve the contradiction of record.

For the foregoing reasons, the record does not establish the Beneficiary's possession of a U.S. master's degree or foreign degree equivalent required for the offered position.

II. CONCLUSION

The record does not establish the Beneficiary's possession of the educational credentials required for the offered position, as specified on the accompanying labor certification. We will therefore affirm the Director's decision and dismiss the appeal.

In visa petition proceedings, a petitioner bears the burden of establishing eligibility for a requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Petitioner did not meet that burden.

ORDER: The appeal is dismissed.

Matter of ID# 132744 (AAO Feb. 27, 2017)