U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K- LLP

DATE: FEB. 28, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an accounting, audit, and tax services business, seeks to employ the Beneficiary as an international indirect tax manager. 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 concluded that the Beneficiary did not possess a U.S. bachelor's degree or a foreign equivalent degree as is required to be classified as a professional. The Director also concluded that the Petitioner had not established that the Beneficiary possessed the minimum education required by the job offer.

The matter is now before us on appeal. The Petitioner asserts that the Director erred in concluding that the Beneficiary's studies did not satisfy the education requirements to meet both the requirements of the category requested and of the job offer. Upon *de novo* review, we will dismiss the appeal.

I. BACKGROUND AND LEGAL FRAMEWORK

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). By approving the labor certification in this case, 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, 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. Finally, if USCIS approves the immigrant visa 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.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) related to the professional category 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.

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).[1]

The beneficiary must also meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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 a U.S. bachelor's degree or foreign equivalent degree from a college or university; the job offer portion of the labor certification requires at least a bachelor's degree or foreign equivalent degree; and the beneficiary meets all of the requirements of the labor certification.

It is noted that the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) uses a singular description of the degree required for classification as a professional.[2] The regulation also requires the submission of "an

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[1] 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).

[2] In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (now USCIS or the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree: "[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*" 56 Fed. Reg. 60897, 60900 (November 29, 1991) (emphasis added).

It is significant that both section 203(b)(3)(A)(ii) of the Act and the relevant regulations use the word "degree" in relation to professionals. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5th Cir. 1987). It can be presumed that Congress' requirement of a single "degree" for members of the professions is deliberate.

official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study." 8 C.F.R. § 204.5(l)(3)(ii)(C) (emphasis added).[3]

As required by statute, the I-140 petition filed in this matter is accompanied by an approved labor certification certified by the DOL.[4] The priority date of the petition based on the date that the labor certification was filed in this matter is October 29, 2014.[5]

The required education, training, experience and skills for the offered position are set forth at Part H of the labor certification. In the instant case, the labor certification states that the position has the following minimum requirements:

H.4.	Education: minimum level required: Bachelor's degree.
. . .	
H.4-B.	Major field of study: None.
. . .	
H.6.	Is experience in the job offered required for the job? No.
. . .	
H.7-A.	Is there an alternate field of study that is acceptable? 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? Yes.
H.10-A.	If Yes, number of months experience in alternate occupation required: 60.
H.10-B.	Identify the job title of the acceptable alternate occupation: Global Indirect Tax Professional.
. . .	
H.14.	Specific skills or other requirements: Bachelor's degree and five years of experience leading global indirect tax projects, including at least two years of experience working in a non-U.S. country with a VAT or similar tax regime. Position also requires two years of experience in: working with and applying European Union and Non-European Union indirect tax laws, regulations, and case law and applying global VAT/GST rules and principles such as place of supply rules, VAT/GST invoicing rules, the reverse charge mechanism, etc., and understanding of key indirect tax processes and data drivers; working

[3] In another context, Congress has broadly referenced "the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning." Section 203(b)(2)(C) of the Act (relating to aliens of exceptional ability). However, for the professional category, it is clear that the degree must be from a college or university.

[4] *See* Section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); *see also* 8 C.F.R. § 204.5(a)(2).

[5] The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

> with non-U.S., indirect tax systems (i.e., VAT, GST); working with local indirect tax jurisdiction/region and managing VAT/GST matters; and working with local indirect tax jurisdiction's local tax authority and local tax jurisdiction procedures (i.e., HM Revenue & Customs). Travel up to 40 percent of the time is required. Will accept any suitable combination of education, training or experience.

On the labor certification, in Part J.11., J.12., and J.13., the Beneficiary listed his education as a bachelor's degree in accounting from and the completed in 2005 in U.K.[6] The Petitioner submitted copies of the Beneficiary's examination transcripts from the reflecting examinations from December 1999 through December 2004. The Petitioner submitted a certificate showing that the Beneficiary was admitted as a Member of the on April 30, 2005.

The Petitioner submitted three credentials evaluations regarding the Beneficiary's educational qualifications. The first evaluation was performed on April 23, 2012, by professor and Chairperson of the Department of After reviewing the Beneficiary's educational background, acknowledged that the is not "a traditional university," but stated that the Beneficiary's course of study was comprised of "four years of bachelor's level academic studies." Specifically, the evaluator stated that the Beneficiary "completed a two-year General Certificate of Education (GCE) Advanced Level (A Level) program," then completed "one additional semester of academic studies toward a bachelor's degree" at the and finally that the Beneficiary "commenced advanced bachelor's-level studies and examinations under the auspices of the The evaluation notes that "in addition to the required academic studies, candidates [for membership in also must complete three years of practical experience in the field of Accounting." concluded that the Beneficiary had "earned an academic degree from the and that this academic degree is the foreign equivalent of a four-year US Bachelor of Science Degree in Accounting." He did not conclude, and the record does not demonstrate, that the Beneficiary's studies at the resulted in a bachelor's degree.

The second evaluation was performed on February 9, 2014, by for the concluded that the Beneficiary "completed bachelor's-level studies and professional requirements through the . . . [and] attained the equivalent of a Bachelor of Science Degree in Accounting from an accredited US college or university." also concludes that the Beneficiary's 15 years of professional

[6] We note that the academic transcript submitted by the Petitioner states that the is located in Scotland, U.K. Also, on his Form I-485 application, the Beneficiary identified his membership in the and identified it as being located in

accounting experience "qualifies for a Bachelor's equivalency . . . by virtue of applying a 'three-for-one' formula in translating his experience into equivalent academic study."[7]

The final evaluation was performed on October 3, 2014, by for the concluded that "[b]ased on the reputation of the the number of years of coursework, the nature of the coursework, the grades attained in the courses, the passage of the qualifying examinations, and the admission of [the Beneficiary] as a Member of the Association" the Beneficiary "attained the equivalent of a four-year Bachelor of Science Degree in Accounting earned from an accredited US college or university based on the single source of the candidate's admission as a Member of the ."

The Petitioner submitted an unsigned credentials evaluation printout from dated March 9, 2009. The printout summarizes that the Beneficiary completed 2 years of general studies in a GCE A Level program that equaled "one semester of undergraduate study" in the U.S., 3 years of study at the that equaled "one semester of undergraduate study" in the U.S., and completed "[t]hree years" in a program at The was the equivalent of a U.S. bachelor's degree.

II. ANALYSIS

The Director concluded that the has not been established as an academic institution that can confer an actual degree with an official college or university record." Therefore, the Director denied the petition. On appeal, the Petitioner states that the Beneficiary satisfies the requirements for classification as a professional based on his "successful completion of bachelor's-level academic coursework." The Petitioner stresses the credentials of who evaluated the Beneficiary's academic record, and concludes that "as evident from the provided documentation, [the Beneficiary] possesses a single-source foreign equivalent degree of a four-year U.S., Bachelor's degree in Accounting based on his Associate Member Degree from the However, the issue here is not the credibility or reliability of rather, the issue is whether the Beneficiary's academic credentials satisfy the requirements for classification as a professional and satisfy the terms of the labor certification.

The documentation from does not identify the institution as a university or college and does not purport to bestow any form of degree on the Beneficiary. While the evaluation from discusses at length the prestige of membership, and compares the examination topics with course topics in accounting programs at several U.S. universities, the evaluation does not identify any actual courses of study undertaken by the Beneficiary at or that issued a bachelor's degree to the Beneficiary. Likewise, the evaluation from states that her conclusion is based on "the number of years of coursework, the nature of the

[7] The evaluation in the record used the rule to equate 3 years of experience for 1 year of education, but that equivalence applies to non-immigrant H-1B petitions, not to immigrant petitions. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*).

coursework, [and] the grades attained in the courses." The record contains transcripts of the Beneficiary's examination history, but no record of coursework studied by the Beneficiary at the no record of his grades there, as alluded to by and no record of a bachelor's degree issued.

The Petitioner also refers to the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). EDGE confirms that membership represents attainment of a level of education comparable to a bachelor's degree in the United States. However, importantly, we note that EDGE states that membership in is awarded after passing three exams following each of three stages and after "at least 3 years of practical financial experience."[8]

The Petitioner submitted a transcript from the showing the schedule of exams completed by the Beneficiary. The Petitioner likens the in the United Kingdom to the American Association of Certified Public Accountants (AICPA) in the United States, "however, unlike the AICPA, the also offers its own comprehensive educational program." While the website maintained by the states that prospective candidates for its exams can prepare for the examinations by studying at "Approved Learning Partners" including "universities, colleges, or other learning providers," the website also acknowledges that "[m]any students achieve our qualifications through self-study." The record contains no evidence that itself, is a college or university,[10] and the Petitioner did not submit any evidence as to whether the Beneficiary studied at a university or college and earned a 4-year bachelor's degree in preparation for the examinations, or whether the Beneficiary prepared for the examinations through self-study. Moreover, the website[11] further states that entry for professional membership requires "[t]hree GCSEs[12] and two A Levels in five separate subjects" and that membership, itself, requires 3 years of work experience and "[u]p to 14" exams. The credential, as similarly noted by EDGE and is based partially on work experience.

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[8] In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the labor certification application specified an educational requirement of 4 years of college and a 'B.S. or foreign equivalent.' The alien had a 3-year degree and membership in the Institute of Chartered Accountants of India (ICAI). USCIS had concluded that the alien did not qualify for EB-2 or EB-3 (due to the specific job requirements on the labor certification). The court upheld the USCIS determinations on EB-2 and EB-3 as a professional but reversed USCIS in the EB-3 skilled worker classification.

In reaching its conclusions, the federal district court in *Snapnames.com, Inc.* determined that 'B.S. or foreign equivalent' relates solely to the alien's educational background, precluding consideration of the alien's combined education and work experience. *Id.* at *11-13.

[9] Getting started: Choose how you want to study. http://yourfuture.accaglobal.com/global/en/getting-started/planning-your-journey.html.

[10] We note that the Beneficiary, on his Form I-485, Application to Register Permanent Residence or Adjust Status, filed June 17, 2015, identified the as a professional organization with which he was affiliated.

[11] ACCA Accountancy Qualifications. http://www.accaglobal.com/us/en/qualifications/glance.html.

[12] According to EDGE a General Certificate of Secondary Education (GCSE) represents attainment of a level of education comparable to completion of senior high school in the United States," and an A Level "represents completion of the introductory sequence of that subject in the United States."

The website does not reveal that it awards any bachelor's degrees, or requires a bachelor's degree for membership.

The Petitioner cites conclusion that membership qualifies the member for admission to graduate school at accredited U.S. colleges and universities. However, the does not issue bachelor's degrees, which is required here to meet the terms of the professional category and the terms of the labor certification. Additionally, it is unclear whether U.S. master's programs accept the credential unconditionally, or require additional coursework prior to admission.

In summary, the Petitioner submitted evidence of the Beneficiary's membership in and a transcript of his examination history with The membership credential is not an actual bachelor's degree issued by a college or university to meet the requirements of the labor certification or the professional category. states that once a candidate is accepted into its program, it requires completion of 3 years of work experience and satisfactory completion of up to 14 exams for membership. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not a combination of academic studies, examinations, and employment experience as the membership requires. Therefore, we must conclude that the Petitioner has not established that the Beneficiary possesses a U.S. bachelor's degree or foreign equivalent degree and the Beneficiary does not qualify for classification as a professional.

In addition to meeting the requirements for classification as a professional, a beneficiary must also meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(l), (12). *See Wing's Tea House*, 16 I&N Dec. at 159; *see also Katigbak,* 14 I&N Dec. at 49. As detailed above, the terms of the labor certification require a U.S. bachelor's degree or a foreign equivalent degree. The Petitioner did not submit evidence that the Beneficiary possesses a bachelor's degree. Thus, the Petitioner did not establish that the Beneficiary met the minimum educational requirements of the offered position set forth on the labor certification by the priority date.

III. CONCLUSION

In summary, the Petitioner did not establish that the Beneficiary satisfies the requirements for classification as a professional. Further, the Petitioner did not establish that the Beneficiary possesses the minimum educational credentials required by the labor certification.

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. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of K- LLP*, ID# 99764 (AAO Feb. 28, 2017)