U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K-D-M- PLLC

DATE: JAN. 18, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a dental office, seeks to employ the Beneficiary as graphic designer. It requests classification of the Beneficiary as a professional under the third preference immigrant category. *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 "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. The Director found that the Petitioner did not adequately resolve several evidentiary matters that were raised in a request for evidence (RFE), as a result of which the Petitioner did not establish that the labor certification was properly signed, did not establish that the Beneficiary meets the minimum educational requirement for the job under the terms of the labor certification, and did not establish the *bona fides* of the job offer.

On appeal the Petitioner submits additional evidence and asserts that the record establishes its eligibility for the requested immigration benefit.

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, 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 U.S. 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 applies 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) states, in pertinent part:

> If the petition is for a professional, the petition must be accompanied by evidence that the [beneficiary] holds a United States baccalaureate degree or a foreign equivalent degree . . . . 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.

A beneficiary must also meet all of the education, training, experience, and other requirements of the labor certification as of the petition's priority date.[1] *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

II. ANALYSIS

A. Labor Certification Requirements

The key issue on appeal is whether the Beneficiary has a bachelor's degree or higher in the requisite field of study to satisfy the minimum educational requirement of the labor certification. For the reasons discussed in this decision, we conclude that she does not.

In order to determine what a job opportunity requires, we must examine "the language of the labor certification job requirements." *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine the certified job offer exactly as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). Our interpretation of the job's requirements must involve reading and applying the plain language of the alien employment certification application form. *Id.* at 834.

Section H of the labor certification sets forth the minimum education, training, experience, and other requirements to qualify for the proffered position. In this case, section H states that the minimum level of education required for the job of graphic designer is a bachelor's degree in the field of "graphic design and related" (boxes 4 and 4-B) or a "foreign educational equivalent" (box 9). Section H also states (in box 7) that an alternate field of study is not acceptable.

Section J of the labor certification claims that the Beneficiary's highest level of education relevant to the job offered is a bachelor's degree in the field of graphic design that was completed in 2008 at [redacted] in [redacted], South Korea. As evidence of the Beneficiary's educational credentials in Korea the Petitioner has submitted copies of two certificates and associated transcripts showing that the Beneficiary completed two years of study in the School of Fine Arts at [redacted] in [redacted] during the years 1999-2001, that she subsequently transferred as a junior to

[1] 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). In this case the priority date is November 1, 2016.

and that following two years of study in the Department of Art Therapy during the years 2006 and 2007 graduated with a bachelor of science degree in 2008.

With its initial evidence the Petitioner submitted an evaluation of the Beneficiary's education from First Consulting Incorporated (FCI evaluation) which asserted that the two years of coursework at majoring in fine arts, followed by two years of study at majoring in fine arts (art therapy), were equivalent to a bachelor of arts in fine arts from a U.S. college or university. In response to the RFE the Petitioner submitted an additional evaluation from an associate professor at in Pennsylvania who asserted that the Beneficiary's academic credentials from and are equivalent to a U.S. bachelor of science in art therapy, and that her academic credentials combined with over four years of professional training and work experience in graphic design are equivalent to a U.S. bachelor of arts in graphic design.

We find that the Beneficiary's bachelor of science degree from culminating four years of academic study, is comparable to a bachelor's degree from a U.S. college or university. In order to meet the minimum educational requirement of the labor certification, however, the Petitioner must also establish that the degree is in graphic design or a related field of study. The graduation certificate from states that the Beneficiary's degree was in the department of art therapy, and the accompanying transcript does not list any graphic design courses during her two years of study. Most of the courses have therapy, psychology, or counseling in their titles.

The FCI evaluation does not address the content of the Beneficiary's courses at . It claims that her bachelor of science in art therapy is equivalent to a U.S. bachelor of fine arts, without analyzing how the art therapy focus of her coursework constitutes a degree in the field of fine arts, or how art therapy is related to the field of graphic design. As for the evaluation, it does not claim that the Beneficiary's bachelor of science in art therapy from is equivalent to a U.S. bachelor's degree in the field of graphic design. What it does claim is that the Beneficiary's academic studies in the School of Fine Arts at and in the Department of Art Therapy at together with more than four years of employment experience in graphic design in the years 1998-2002, are equivalent to a bachelor of arts degree in graphic design from a U.S. college or university. There is no evidence in the record of the Beneficiary's alleged employment experience. Even if there were, a U.S. bachelor's degree equivalency in graphic design based on a combination of education and experience would not meet the requirements of the labor certification, which states that the minimum educational requirement is a bachelor's degree and (in box H.8) that an alternate combination of education and experience is not acceptable.[2]

[2] If the labor certification accepted a combination of education and experience to satisfy the minimum educational requirement for the job offered, it would no longer support the petition's requested classification of professional, which requires "a United States baccalaureate degree or a foreign equivalent degree." 8 C.F.R. § 204.5(l)(3)(ii)(C).

Evaluations of foreign educational credentials by evaluation services and individual evaluators are utilized by USCIS as advisory opinions only. When an evaluation is not in accord with evidence in the record or is in any way questionable, USCIS need not accept it or may give it less weight. *See Matter of Caron International,* 19 I&N Dec. 791 (Comm'r 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). For the reasons discussed above, the FCI and [redacted] evaluations do not establish that the Beneficiary's educational credentials are equivalent to a bachelor's degree in graphic design or a related field of study from a U.S. college or university.

Based on the foregoing analysis, we conclude that the Beneficiary does not have a bachelor's degree in graphic design or a related field of study, and therefore does not meet the minimum educational requirement of the labor certification.

B. Additional Issues

In his decision the Director discussed other grounds for denying the petition. The Director stated that the Petitioner did not fully respond to RFE, as a result of which the Petitioner did not establish that the labor certification was properly signed or that a *bona fide* job opportunity existed for a graphic designer. Since our finding that the Beneficiary does not meet the labor certification's minimum educational requirement is dispositive of this appeal, we will not address these other issues at this time. However, we reserve these issues for future proceedings.

III. CONCLUSION

We will dismiss the appeal because the Petitioner has not established that the Beneficiary has the education required by the terms of the labor certification.

ORDER: The appeal is dismissed.

Cite as *Matter of K-D-M- PLLC*, ID# 2688044 (AAO Jan. 18, 2019)