U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K-J- INC.

DATE: JAN. 25, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a diamond and jewelry trading company, seeks to employ the Beneficiary as a business consultant. 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 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 Beneficiary does not have a U.S. bachelor's degree or a foreign equivalent degree, and therefore does not meet the minimum educational requirement of the labor certification.

On appeal the Petitioner asserts that the Beneficiary has the foreign educational equivalent of a U.S. bachelor's degree, and thereby meets the educational requirement of the labor certification and qualifies for classification as a professional.

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 (ETA Form 9089, Application for Permanent Employment Certification) from the U.S. Department of Labor (DOL).[1] *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 domestic 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

[1] The date the labor certification is filed is called the "priority date." *See* 8 C.F.R. § 204.5(d). The Petitioner must establish that all eligibility requirements for the petition have been satisfied from the priority date onward.

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

II. ANALYSIS

At issue in this case is whether the Beneficiary has the requisite educational degree to meet the requirements of the labor certification and to qualify for classification as a professional. For the reasons discussed in this decision, we conclude that she does not.

A. Minimum Educational Requirements of the Labor Certification

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 business consultant is a bachelor's degree in the field of art (boxes 4 and 4-B) or a "foreign educational equivalent" (box 9). The Director found that, according to the language of the labor certification, the minimum requirement of the job offered is a U.S. bachelor's degree or foreign equivalent degree.

On appeal, the Petitioner asserts that the Director misinterpreted the minimum educational requirement of the labor certification by not recognizing the Petitioner's intent, as expressed in box H.9 of the labor certification, to accept a combination of educational credentials, such as the Beneficiary's three-year bachelor's degree and one year of master's level study, as the equivalent of a U.S. bachelor's degree. However, acceptance of a foreign educational equivalent in Part H.9 of a labor certification simply indicates an employer's willingness to accept a foreign degree that is the

foreign equivalent to a U.S. degree and is issued by a foreign college or university. It does not express an employer's willingness to accept a combination of educational programs and/or experience determined to be equivalent to a degree unless the employer so indicates elsewhere on the labor certification. The Petitioner had the opportunity in Box H.8 of the labor certification to indicate whether an alternate combination of education and experience was acceptable and, if so, to specify in boxes H.8-A, H.8-B, and H.8-C any alternate level of education that may be considered acceptable. The Petitioner made no entries in any of these boxes on the labor certification.

Moreover, the requested classification of professional requires a U.S. bachelor's degree or a foreign equivalent degree. *See* 8 C.F.R. § 204.5(l)(3)(ii)(C). If the Petitioner intended to allow a combination of lesser credentials to satisfy the minimum educational requirement for the proffered position, the labor certification would not support the classification requested in this proceeding. The bachelor's degree requirement for professional classification cannot be met with a combination of lesser credentials which may add up to the equivalent of a bachelor's degree. 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 four-year U.S. bachelor's degree or foreign equivalent degree).

As such, we find that the labor certification in this case requires a single U.S. bachelor's degree or foreign equivalent degree. Having determined the minimum education required by the labor certification, we now turn to the question of whether the Beneficiary has the required degree.

Section J of the labor certification states that the Beneficiary's highest level of education relevant to the job offered is a bachelor of arts degree in 2010 from the [redacted] in India. As evidence of the Beneficiary's educational credentials the Petitioner submitted the following documents with the petition and in response to the Director's request for evidence:

- A diploma and transcripts from the [redacted] showing that the Beneficiary completed a three-year degree program was awarded a bachelor of arts degree.
- Additional academic records from the [redacted] showing that the Beneficiary completed one year of a two-year Master of Arts degree program in the field of sociology.
- Evaluations of the Beneficiary's education from the [redacted] and [redacted] which concluded that the Beneficiary's three-year bachelor's degree and one year of master's level studies at the [redacted] were equivalent to a four-year bachelor's degree from an accredited college or university in the United States.

According to the documents submitted by the Petitioner, the Beneficiary graduated from a three-year bachelor's degree program. As was noted by the Director, a bachelor's degree in the United States is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244, 245

(Comm'r 1977). The three-year bachelor's degree from India, like the bachelor of science at issue in *Shah*, is not considered equivalent to a U.S. bachelor's degree.[2] The evaluations submitted by the Petitioner agree that the Beneficiary's three-year bachelor's degree is not equivalent to a U.S. bachelor's degree. Rather the evaluators contend that the Beneficiary had the "equivalent" of a bachelor's degree based on a combination of lesser credentials – a three-year bachelor's degree and one year of additional post-graduate study. However, as discussed above, the labor certification requires a single U.S. bachelor's degree or foreign equivalent degree. The Petitioner may therefore not rely on a combination of education to meet the labor certification requirements.

On appeal the Petitioner does not contest the finding that the Beneficiary's three-year bachelor's degree from the [redacted] is not equivalent to a U.S. bachelor's degree, but asserts that the Beneficiary's additional year of study in the university's master's degree program elevated the Beneficiary's Indian education to the equivalent of a four-year U.S. bachelor's degree. In support of this assertion the Petitioner claims that the "New Country Index" published by the International Education Research Foundation (IERP) referred to a three-year bachelor's degree plus a one-year master's degree in India as comparable to a U.S. bachelor's degree. The Petitioner has not submitted any excerpt from this publication, however, or even a citation. Thus, we cannot analyze the validity of its equivalency claim. Even if pertinent documentation were submitted, the credentials discussed in the New Country Index are not the same as the Beneficiary's in this case. The four years of study discussed in the New Country Index involve a three-year bachelor's degree plus a one-year master's degree, whereas the Beneficiary has a three-year bachelor's degree and one year of master's level study that did not result in a degree.

The Beneficiary does not have a single U.S. bachelor's degree or a foreign equivalent degree. We conclude, therefore, that the Beneficiary does not meet the minimum educational requirement of the labor certification.

B. Eligibility for Professional Classification

A petition requesting professional classification "must be accompanied by evidence that the beneficiary holds a United States baccalaureate degree or a foreign equivalent degree." 8 C.F.R. § 204.5(l)(3)(ii)(C). On appeal the Petitioner points out that the Director made no specific finding as to whether the Beneficiary qualifies for classification as a professional.

[2] In order to evaluate the Beneficiary's education, the Director also referred to the Educational Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), whose credential advice states that a three-year bachelor of arts degree in India is comparable to three years of university study in the United States, and that a master of arts degree requires two years of study beyond a three-year bachelor's degree and is comparable to a U.S. bachelor's degree. AACRAO is described on its website as "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." AACRAO, http://www.aacrao.org/about (last visited Dec. 8, 2017). EDGE is "a web-based resource for the evaluation of foreign educational credentials." AACRAO EDGE, http://aacrao.org/aacrao-solutions (last visited Dec. 8, 2017).

As discussed in this decision, the Beneficiary does not have a single U.S. bachelor's degree or a foreign equivalent degree. Therefore she does not qualify for classification as a professional.

III. CONCLUSION

The Petitioner has not established that the Beneficiary has the requisite degree to meet the minimum educational requirement of the labor certification and to qualify for classification as a professional.

ORDER: The appeal is dismissed.

Cite as *Matter of K-J- Inc.*, ID# 931248 (AAO Jan. 25, 2018)