U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-F- LLC

DATE: JULY 3, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a jewelry manufacturer and distributor, seeks to employ the Beneficiary as a business analyst. It requests his classification under the third-preference, immigrant category as a professional. 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" category allows a U.S. business to sponsor a foreign national with a bachelor's degree for lawful permanent resident status.

The Acting Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner did not establish the Beneficiary's possession of a U.S. bachelor's degree or a single, foreign equivalent degree as required for the offered position and the requested classification.

On appeal, the Petitioner asserts that the Beneficiary's three-year, foreign degree equates to a U.S. bachelor's degree.

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

I. EMPLOYMENT-BASED IMMIGRATION

Employment-based immigration generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, an employer must first obtain 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). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position, and that employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If the DOL certifies a position, an employer must next submit the certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a beneficiary meets the minimum requirements of a certified position and whether a petitioner can pay a certified proffered wage. If USCIS approves a petition, a foreign national may finally 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.

II. THE EDUCATIONAL REQUIREMENTS

The Director denied the petition finding that the Beneficiary did not qualify for the offered position or the requested classification. A petition for a professional must demonstrate that a beneficiary "holds a United States baccalaureate degree or a foreign equivalent degree." 8 C.F.R. § 204.5(l)(3)(ii)(C). A "foreign equivalent degree" means a single degree equating to at least a U.S. bachelor's degree, excluding equivalencies based on combinations of education and employment experience, and on lesser educational credentials. Addressing criticism that its proposed regulations would bar baccalaureate equivalencies based on combinations of educational and employment experience, the former Immigration and Naturalization Service found that "both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification . . ., *an alien must have at least a bachelor's degree.*" Final Rule for Employment-Based Immigrant Petitions, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

A petitioner must also establish a beneficiary's possession, by a petition's priority date, of all DOL-certified job requirements.[1] *Matter of Wing's Tea House,* 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). In evaluating a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine a position's minimum requirements. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Madany v. Smith,* 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that the "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

Here, the labor certification states the minimum educational requirements of the offered position of business analyst as a U.S. bachelor's degree, or a foreign equivalent degree, in mathematics, business administration, or a related field. On the certification, the Beneficiary attested that, by the petition's priority date, an Indian university awarded him a bachelor's degree in math.

The Petitioner provided a copy of the Beneficiary's bachelor's degree and an independent evaluation of the credential. The evaluation states that the Beneficiary's three-year degree equates to two years, eight months of post-secondary studies in the United States. After further considering the Beneficiary's employment experience, the evaluation concludes that he has the equivalent of a U.S. bachelor's degree in business administration.

Noting that the evaluation bases its baccalaureate finding on a combination of education and experience, the Director asked the Petitioner to demonstrate the Beneficiary's possession of a U.S. bachelor's degree or a single, foreign equivalent degree. In response, the Petitioner submitted a second educational evaluation and an expert opinion asserting the equivalency of the Beneficiary's foreign, three-year degree to a U.S. bachelor's degree in math.

The record, however, does not establish the equivalency of the Beneficiary's foreign degree to a U.S.

[1] This petition's priority date is January 9, 2017, the date 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).

baccalaureate. The first evaluation found the Beneficiary's degree equivalent to two years, eight months of U.S. college or university studies, while a later evaluation and expert opinion describe the credential as equivalent to a U.S. baccalaureate. The later documents state that the Beneficiary's number of "contact hours," or hours of university classroom instruction, over three years in India equals or exceeds the amount in a four-year U.S. baccalaureate program. The Petitioner has not explained the contrary conclusions of the evaluations and opinion that it submitted. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that the immigration service may reject or afford lesser evidentiary weight to expert testimony that conflicts with other evidence of record or "is in any way questionable"). Also, as the Director noted, the [redacted] an online source of foreign degree equivalencies, agrees with the first evaluation that the Beneficiary's degree equates to only three years of U.S. post-secondary education.[2]

In addition, contrary to the conclusions of the second evaluation and expert opinion, the record does not establish the Beneficiary's field of study as mathematics. A copy of his diploma describes his degree as a "Bachelor of Science" and states that he passed examinations in not only math, but also physics and chemistry. Copies of his marks statements also indicate that he completed more courses in both physics and chemistry than in math. Further, the expert opinion states: "There is no basis on the evidence provided to determine whether the coursework in the degree in question is weighted towards particular subjects or equally among all subjects concerned." For this additional reason, the record does not support the conclusions of the second educational evaluation and expert opinion.

On appeal, the Petitioner contends that USCIS' "reliance" on [redacted] is "unreasonable." The Petitioner argues that [redacted] charges fees to access the database and commercially competes with other evaluation services. Noting that [redacted] invites [redacted] subscribers to provide updated information for the database, the Petitioner also questions the database's reliability.

As previously indicated, however, the Petitioner itself submitted conflicting evidence of the U.S. equivalency of the Beneficiary's bachelor's degree. Faced with inconsistent expert opinions, the Director did not err in seeking additional information from [redacted] a resource that federal courts have found to be a reliable source of foreign educational equivalencies. Also, [redacted] subscribers cannot directly edit entries. Rather, an [redacted] council manages [redacted] content and vets suggested changes to the database. *See* [redacted] https:// [redacted] (last visited May 14, 2018).

[redacted]

The Petitioner also argues that the Beneficiary's three-year degree qualifies him for graduate study and professional employment in India. Therefore, under conventions and a recommendation of the [redacted] the Petitioner contends that USCIS should recognize the Beneficiary's credential as the equivalent of a U.S. bachelor's degree. The record, however, lacks evidence that these conventions and recommendation legally bind the U.S. government to accept the Beneficiary's degree as a U.S. baccalaureate equivalent.

The Petitioner also criticizes the Director's citation to a precedent case. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977) (holding that a petitioner did not demonstrate a beneficiary's qualifications as a professional under former provisions of the Act). The Petitioner argues that the Regional Commissioner based the *Shah* decision on the beneficiary's incomplete academic record and speculated on the meaning of terms used in the Indian educational system. The Director, however, cited *Shah* only for the commonly known fact that U.S. baccalaureate degrees generally require four years of study. *Matter of Shah*, 17 I&N Dec. at 245.

The Petitioner cites another decision of the Regional Commissioner finding that a combination of a two-year bachelor of commerce degree, graduate coursework, and experience equated to a U.S. bachelor's degree. *See Matter of Arjani*, 12 I&N Dec. 649, 652 (Reg'l Comm'r 1967). After the *Arjani* decision, however, Congress restructured the U.S. immigration system. *See* Immigration and Nationality Act of 1990, Pub. L. No. 89-649 (1990). As previously indicated, the Act and Department of Homeland Security regulations no longer allow combinations of education and experience to qualify for professional classification. The *Arjani* decision therefore is neither binding nor persuasive authority in this matter.

Finally, the Petitioner notes the citation of the expert opinion to a survey on U.S. graduate admissions. The Petitioner asserts that "at least 50% of Universities in the United States" admit students with three-year Indian bachelor's degrees into graduate programs. The expert opinion, however, states that the survey included only 53 U.S. schools and that "[o]f those, 34% would admit 3 year Indian bachelor's degree holders directly to graduate school, some with particular requirements or in particular fields only." The record therefore does not support the Petitioner's assertion that at least half of U.S. universities admit students with three-year, Indian bachelor's degree into graduate programs. Moreover, allowing admission to further study is not the same as finding the three-year degree to be the equivalent of a U.S. bachelor's degree.

For the foregoing reasons, the record does not establish the Beneficiary's possession of a U.S. bachelor's degree or a single foreign equivalent degree as required for the offered position and the requested classification.

III. ABILITY TO PAY

Although unaddressed by the Director, the record also does not establish the Petitioner's ability to pay the proffered wage. A petitioner must demonstrate its continuing ability to pay a proffered

wage, from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. *Id.*

Here, the labor certification states the proffered wage of the offered position of business analyst as $137,000 a year. As previously noted, the petition's priority date is January 9, 2017. As of the Director's decision, required evidence of the Petitioner's ability to pay the proffered wage was not yet available for 2017. Thus, in any future filings in this matter, the Petitioner must submit copies of an annual report, federal income tax return, or audited financial statements for 2017, the year of the petition's priority date.

Also, USCIS records indicate the Petitioner's recent filings of immigrant petitions for other beneficiaries. A petitioner must demonstrate its ability to pay the proffered wage of each petition it files until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). The Petitioner here must therefore demonstrate its ability to pay the combined proffered wages of this petition and its others that were pending or approved after this petition's priority date of January 9, 2017, or filed thereafter.[3] *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (affirming our revocation of a petition's approval where, as of the grant, the petitioner did not demonstrate its ability to pay multiple beneficiaries).

In any future filings in this matter, the Petitioner must provide the proffered wages and priority dates of its other, applicable petitions. It should also provide evidence of any wages paid to the other beneficiaries after January 9, 2017. The Petitioner may also submit additional evidence of its ability to pay, including evidence supporting the factors stated in *Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

IV. THE EXPERIENCE REQUIREMENTS

The record also does not establish the Beneficiary's possession of the minimum experience required for the offered position. As previously indicated, a petitioner must establish a beneficiary's possession, by a petition's priority date, of all DOL-certified job requirements. *Matter of Wing's Tea House,* 16 I&N Dec. at 160. Here, the labor certification states the minimum experience requirements of the offered position of business analyst as seven years in the job offered.

On the labor certification, the Beneficiary attested that, before joining the Petitioner in the offered position in 2014, he gained more than 11 years of full-time qualifying experience.[4] The Beneficiary stated the following experience:

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[3] The Petitioner need not demonstrate its ability to pay the proffered wages of other petitions that were denied, withdrawn, or revoked, without a pending appeal or motion.

[4] A labor certification employer cannot rely on experience that a foreign national gained with it, unless he or she obtained the experience in a substantially different position than offered or the employer can demonstrate the impracticality of training a U.S. worker for the offered position. 20 C.F.R. § 656.17(i)(3). The Petitioner here has not

- About six years, three months as a business analyst for a diamond and jewelry trader in the United States from October 2007 through December 2013;
- About two years, six months as a business analyst for another U.S. diamond and jewelry trader from March 2005 through September 2007; and
- About two years, nine months as a product development executive for a jewelry manufacturer in India from June 2002 to March 2005.

The Petitioner provided letters from the three former employers listed on the labor certification. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A) (requiring a petitioner to support a beneficiary's claimed qualifying experience with letters from former employers). Contrary to 8 C.F.R. § 204.5(l)(3)(ii)(A), however, the letter from the U.S. employer of the Beneficiary from March 2005 through September 2007 does not describe his experience. The record therefore does not establish the Beneficiary's qualifying experience during that period.

The letter from the other U.S. employer describes the Beneficiary's experience. But the description parrots the job duties of the offered position as stated on the labor certification. The word-for-word recitation of the offered position's job duties casts doubt on the signatory's personal knowledge of the Beneficiary's experience and the letter's accuracy. Also, the company's name on the letterhead is faded and uncentered. In addition, the company's address on the letter does not match its address stated on the labor certification. Rather, the company's address matches the Petitioner's address. These unexplained inconsistencies cast doubts on the letter's validity and the Beneficiary's claimed qualifying experience from October 2007 through December 2013. *See Matter of Ho*, 19 I&N Dec. at 591(requiring a petitioner to resolve inconsistencies of record by independent, objective evidence pointing to where the truth lies).

Further, the start dates on the letter from the Beneficiary's claimed former employer in India and in the first education evaluation do not match the start date listed on the labor certification. The inconsistencies casts doubt on the Beneficiary's claimed qualifying experience in India. *Id.* at 591 (stating that doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the sufficiency and reliability of remaining evidence of record).

For the foregoing reasons, the record does not establish the Beneficiary's possession of the minimum experience required for the offered position. In any future filings in this matter, the Petitioner must submit independent, objective evidence explaining the inconsistencies of record and establishing the Beneficiary's claimed, qualifying experience.

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asserted that the Beneficiary gained qualifying experience with it.

V. CONCLUSION

The record on appeal does not establish the Beneficiary's possession of the minimum educational requirements of the offered position and the requested classification. We will therefore affirm the Director's decision.

ORDER: The appeal is dismissed.

Cite as *Matter of M-F- LLC*, ID# 1367144 (AAO July 3, 2018)