U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-, LLC

DATE: JULY 18, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a business advisory firm, seeks to employ the Beneficiary as a managing director. It requests classification of the Beneficiary as a skilled worker under the third preference immigration classification. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1152(b)(3)(A)(i). This employment-based immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires at least two years of training or experience.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Beneficiary held a U.S. bachelor's degree or a foreign equivalent degree.

On appeal, the Petitioner submits additional evidence and contends that the labor certification does not require the Beneficiary to hold an actual U.S. or foreign baccalaureate degree, but rather the equivalent of such a degree based on a combination of lesser credentials.

Upon *de novo* review of the record, we will withdraw the Director's decision and remand this matter to the Director for further action consistent with this decision.

I. LAW

Employment-based immigration is generally a three-step process. First, an employer obtains 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, 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. Finally, if USCIS approves the immigrant visa petitioner, 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.

As required by statute, a labor certification, approved by DOL, accompanies the petition. 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. Section 212(a)(5)(A)(i)(I) of the Act. The DOL also certifies 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.

In visa petition proceedings, USCIS determines whether a foreign national meets the job requirements specified in the underlying labor certification and the requirements of the requested immigrant classification. *See Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981); *Tongatapu Woodcraft Haw., Ltd. v. Feldman,* 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983).

A petitioner must establish a beneficiary's possession of all the education, training, or experience stated on the labor certification by a petition's priority date. *See* 8 C.F.R. §§ 204.5(g)(2), 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). The priority date of a petition is the date that DOL accepts the underlying labor certification for processing. *See* 8 C.F.R. § 204.5(d). In evaluating a beneficiary's qualifications, we must look to the job offer portion of the labor certification to determine the requirements for the position. We may not ignore a term of the labor certification, nor may we impose additional requirements. *Madany at* 1012-13.

II. ANALYSIS

At issue in this case is whether the labor certification requires a U.S. baccalaureate (or a foreign equivalent degree), or whether it permits a combination of lesser diplomas or degrees equivalent to a U.S. bachelor's degree.

The job offer portion of the labor certification, Section H, requires the Beneficiary to have a U.S. bachelor's degree in finance, economics, business administration, accounting or a related field, or its "foreign educational equivalent." Section H.8 of the labor certification states that an alternate combination of education and experience is not acceptable. Section H.14 describes the required education for the offered position as follows: "Requires a Bachelor's in finance, economics, business administration, accounting or related field (willing to accept a foreign educational equivalent)."

The Beneficiary possesses a three-year bachelor of commerce degree from (Australia) and a diploma from in Australia. The Director concluded that the combination of the Beneficiary's three-year degree and accounting diploma did not provide him with the "foreign educational equivalent" of a U.S. bachelor's degree and therefore the Beneficiary did not possess the minimum education required by the terms of the labor certification. The Director concluded that the Beneficiary's bachelor's degree from was comparable to only three years of university study in the United States and could not be combined with his membership the which was not a college or university, to be the equivalent of a U.S. bachelor's degree.

On appeal, the Petitioner contends that the Director erred in concluding that the labor certification requires the Beneficiary to hold an actual U.S. or foreign baccalaureate degree, as Section H.9 of the labor certification indicates that it will accept a "foreign educational equivalent." It asserts that in requiring the Beneficiary to hold a single baccalaureate degree from a college or university and dismissing the diploma issued by [redacted] as it was not degree-granting institution, the Director impermissibly imposed job requirements beyond those set forth in the labor certification. The Petitioner further argues that if it had filed the labor certification with the intent to require a single degree, it would have sought classification of the Beneficiary as a professional when it filed the Form I-140 petition, not as a skilled worker. The Petitioner maintains that the Beneficiary's academic background satisfies the requirement for a degree equivalency reflected in the labor certification and, on appeal, submits a credentials evaluation in support of this claim prepared by [redacted] Department of Business Management, [redacted]

As is stated above, USCIS is bound by the terms of the labor certification to determine the requirements for the position, and we may not ignore a term of the labor certification or impose additional requirements. In *Snapnames.com, Inc. v. Chertoff,* 2006 WL 3491005 *5 (D. Or. Nov. 30, 2006), a case in which the labor certification application specified an educational requirement of four years of college and a "B.S. or foreign equivalent." The beneficiary held a three-year degree and membership in the Institute of Chartered Accountants of India. Although the court upheld USCIS' determinations that the beneficiary's academic qualifications did not allow his classification as an advanced degree professional under section 203(b)(2) of the Act or as a professional under section 203(b)(3)(A)(ii) of the Act, it reversed USCIS' decision regarding the beneficiary's eligibility for the skilled worker classification under section 203(b)(3)(A)(i) of the Act. The court noted that the word 'equivalent' in the petitioner's educational requirements was ambiguous and concluded that in the context of skilled worker petitions, where there was no statutory educational requirement, deference should be given to an employer's intent. *Id.* at *14. Although we are not bound by the decision in *Snapnames.com, Inc.*, we may consider a petitioner's intent when the labor certification contains terms that are subject to more than one interpretation.

In the present matter, the Director found that the Beneficiary did not hold the single academic degree from an accredited U.S. university of college, or foreign equivalent degree required by the labor certification and denied the visa petition on this basis. However, the Petitioner, as indicated by the fact that it checked Part 2.1.f. on the Form I-140, is seeking classification of the Beneficiary as a skilled worker, where there is no degree requirement. Section H.14 of the labor certification states that the Petitioner is "willing to accept foreign education equivalent" of a U.S. bachelor's degree, which in this context could potentially be interpreted to mean either a single foreign degree that is equivalent to a U.S. bachelor's degree or a combination of lesser diplomas or degrees equivalent to a U.S. bachelor's degree.

[1] The record also contains an evaluation of the Beneficiary's academic credentials prepared by [redacted] of [redacted] that finds the Beneficiary's degree from [redacted] and his diploma from [redacted] to provide him with the equivalent of a U.S. bachelor's degree in accounting.

Accordingly, we will remand this skilled worker petition to the Director for his consideration of the Petitioner's intent regarding the requirements for the degree equivalency stated in Section H.14 of the labor certification (i.e., whether the Petitioner intended to accept a degree equivalency based on multiple lesser degrees).[2]

Evidence of intent would include documentation concerning the minimum requirements of the position as that intent was expressed during the labor certification process to the DOL and to potentially qualified U.S. workers. This includes copies of the signed recruitment report, the prevailing wage determination, all recruitment conducted for the position, the job order, the posted notice of the filing of the labor certification, and any other communications with the DOL that may be probative of intent, such as correspondences or documents generated in response to an audit.

The Director should also review this documentation to see if the Petitioner stated that it would also accept lesser U.S. educational credentials that are equivalent to a U.S. bachelor's degree. If the Petitioner would only accept lesser foreign educational credentials that were equivalent to a U.S. bachelor's degree, then it would be impermissibly favoring foreign workers over U.S. workers in the labor certification process.

This evidence may help establish intent regarding the minimum requirements of the offered position and show that U.S. workers without four-year bachelor's degrees were in fact put on notice that they were eligible to apply for the position.

III. CONCLUSION

We will remand the matter to the Director to determine whether the terms of the labor certification permit a combination of lesser diplomas or degrees equivalent to a U.S. bachelor's degree.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of F-, LLC*, ID# 387264 (AAO July 18, 2017)

[2] We note that the Petitioner contends that this intent is communicated by its affirmative response to Section H.9 of the labor certification, "Is a foreign educational equivalent acceptable?" However, contrary to the Petitioner's assertion, the foreign educational equivalent referenced in Section H.9 reflects only a petitioner's willingness to accept a degree determined to be the foreign equivalent of a U.S. bachelor's degree, which requires the completion of one program of study for which a foreign degree equivalent to a U.S. bachelor's degree is issued by an accredited college or university. It does not reflect a willingness to accept a combination of educational programs determined to be the equivalent of a U.S. bachelor's degree, which should have been identified in Section H.8 of the labor certification.