U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF U-O-C-S-D-

DATE: JULY 19, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an institute of higher learning, seeks to employ the Beneficiary as a cytogenetic technologist II. It requests classification of the Beneficiary as a professional under the third preference immigrant category. 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 on the ground that the labor certification does not require a bachelor's degree and therefore does not support the requested visa classification of professional.

On appeal the Petitioner asserts that the labor certification supports a professional classification because its primary requirements include the educational minimum of a bachelor's degree and the Beneficiary has a bachelor's degree.

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, the 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 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.

II. ANALYSIS

At issue here is whether the labor certification supports the requested classification and whether the Beneficiary qualifies for that classification. In its Form I-140, Immigrant Petition for Alien Worker, the Petitioner checked the box at Part 2.1.e. which specifies that the petition is being filed for "[a] professional (at a minimum, possessing a bachelor's degree or a foreign degree equivalent to a U.S. bachelor's degree)."

A. Labor Certification Does Not Support Professional Classification

The regulation at 8 C.F.R. § 204.5(l)(2) defines "professional" as "a qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree." A petition seeking professional classification, therefore, must be accompanied by a labor certification that requires a minimum of a baccalaureate degree. 8 C.F.R. § 204.5(l)(3)(i). In this case, section H of the labor certification states the following with respect to the minimum requirements for the proffered position of cytogenetic technologist II:

H.4.	Education: Minimum level required:	Bachelor's Degree
H.4-B	Major Field of Study:	Medical Technology
H.5	Is training required for the job?	No
H.6	Is experience in the job offered required?	Yes
H.6-A	How long?	60 months
H.7	Is an alternate field of study acceptable?	Yes
H.7-A	What field(s)?	Biology or related field
H.8	Is an alternate combination of education and experience acceptable?	Yes
H.8-A	What level of education?	None
H.8-C	How much experience?	7 years
H.9	Is a foreign educational equivalent acceptable?	Yes
H.10	Is experience in an alternate occupation acceptable?	Yes
H.10-A	How long?	60 months
H.10-B	What job title(s)?	Not specified

In addition, H.14 of the labor certification ((Specific skills or other requirements) states that California licensure (CDPH) as a clinical cytogeneticist scientist is required, as well as proficiency in two of the following cytogenetic techniques: tissue culture (e.g. prenatal), chromosome analysis, and FISH analysis.

The Director found that because the labor certification's alternate educational and experience requirements (no education and seven years of experience) allowed someone to qualify for the job opportunity with less than a bachelor's degree, the proffered position did not qualify as a profession and the labor certification did not support the requested immigrant visa classification of professional.

On appeal the Petitioner asserts that the petition for professional classification is proper because the primary requirements of the labor certification, which are a bachelor's degree and five years of qualifying experience, include the minimum educational credential required for professional classification. We cannot ignore the labor certification's alternative requirements, however, which allow for an individual to qualify for the job of cytogenetic technologist II with seven years of relevant experience and no educational credential. Since the labor certification allows candidates to qualify for the job based on experience alone, and without a bachelor's degree, the labor certification does not support the requested visa classification of professional.

B. Beneficiary is Not Eligible for Professional Classification

Though not addressed by the Director, the record also does not demonstrate the Beneficiary's 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). The regulation specifies that "[e]vidence 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." *Id.* In this case no official college or university record has been submitted for the Beneficiary. Accordingly, the Beneficiary does not meet the basic evidentiary requirement for establishing that he holds a baccalaureate degree.

Moreover, the labor certification indicates that the Beneficiary does not hold a baccalaureate degree. Rather, it states that the Beneficiary had a high school level education in Germany which culminated in a vocational title – medical-technical laboratory assistant – awarded in 1997 upon the completion of studies and training at a hospital associated with the Universities of [redacted] and [redacted]. The record does not include copies of any specific educational credentials earned by the Beneficiary. Instead, the Petitioner has submitted two versions of an educational equivalency evaluation by International Education Evaluations, Inc. (IIE) which includes lists of the coursework allegedly completed by the Beneficiary in earning a *Zeugnis der Allgemeinen Hochschulreife*, 1993-1994, and a *Bescheinigung* from the [redacted] 1994-1997. According to the IIE evaluations the *Zeugnis der Allgemeinen Hochschulreife* ("certificate of general qualification for higher education") was equivalent to a U.S. high school education plus 30.8 semester hours of collegiate credit, and the *Bescheinigung* ("certificate") from the [redacted] that followed three years of additional coursework focused primarily in biology, chemistry, and medical lab tech, with hospital training, was equivalent to a bachelor of science degree in medical laboratory technology from a regionally accredited college in the United States. The record also includes a letter to the Beneficiary from an admissions evaluator at the University of [redacted], stating that she had reviewed the Beneficiary's documents from the [redacted] which confirmed that the Beneficiary's coursework covered three years of vocational training and that she then passed a *Staatsexaman* (state examination). According to the [redacted] admissions evaluator the Beneficiary's credential from the [redacted] was equivalent to a bachelor's degree in the United States.

The information provided by the Petitioner in the labor certification conflicts with the information provided in the IIE evaluations and the [redacted] letter with regard to the level of the Beneficiary's education and the institutions in which she studied and trained. It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's evidence also reflects on the reliability of the petitioner's remaining evidence. *See id.*

In any event, there is no documentary evidence that the Beneficiary was awarded any educational credential by the University of [redacted] or the University of [redacted], identified in the labor certification as the institutions where the Beneficiary studied. The labor certification, the IIE evaluations, and the [redacted] letter all describe the Beneficiary's education as vocational in nature, and none of these documents indicate that she earned a degree of any sort. The [redacted] letter specifically refers to the [redacted], where the Beneficiary earned her highest credential, as a vocational school, and while the IIE evaluations state that it "compares" to a U.S. college, they do not claim that the [redacted] is a degree-granting institution. Therefore, regardless of whether IIE and the [redacted] admissions evaluator may consider the Beneficiary's certificate from the [redacted] as educationally equivalent to a U.S. bachelor's degree for purposes of professional employment or admission to graduate studies, the certificate (even if there were documentary proof thereof in the record) is not "a United States baccalaureate degree or a foreign equivalent degree," as required by 8 C.F.R. § 204.5(l)(3)(ii)(C) to establish the Beneficiary's eligibility for classification as a professional.

C. Petitioner Must Demonstrate Eligibility for Classification Requested

On appeal, the Petitioner asserts that because skilled workers, professionals, and other workers are classified together in section 203(b)(3) of the Act, the distinction between them on the Form I-140 petition is inconsequential and the Petitioner's choice of "professional" rather than "skilled worker" should not determine our adjudication of the petition. We do not agree. The requirements for classification as a skilled worker, or as a professional, or as an other worker are sharply different, as set forth in subsections 203(b)(3)(A)(i), (ii), and (iii) of the Act. These differences are repeated on the Form I-140 in Part 2, where the Petitioner is directed to select the type of classification it is requesting and the requirements for a professional (box 1.e.), for a skilled worker (box 1.f.), and for any other worker (box 1.g.) are clearly distinguished from each other. Since the Petitioner selected "professional" as the classification it seeks in this petition, it must demonstrate that the labor certification requires a minimum of a bachelor's degree as required by 8 C.F.R. § 204.5(l)(3)(i) and establish that the Beneficiary holds a bachelor's degree or a foreign degree equivalent to a U.S. bachelor's degree, as required by the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C).

III. CONCLUSION

The labor certification does not support the requested classification of professional. The record also indicates that the Beneficiary does not have a bachelor's degree or a foreign equivalent degree, as

required to be eligible for classification as a professional. The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. 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 U-O-C-S-D-*, ID# 4335695 (AAO July 19, 2019)