U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-T-T-, INC.

DATE: JULY 24, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a power transformer manufacturer, seeks to employ the Beneficiary as an electrical design engineer. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. *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 petition could not be approved in the requested professional classification because the job requirements on the labor certification are less than a U.S. bachelor's or foreign equivalent degree.

On appeal the Petitioner submits a brief and supporting documents. The Petitioner asserts that the labor certification supports the requested classification by requiring at least a bachelor's degree or a foreign degree equivalent to a U.S. 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).[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,

[1] The date the labor certification is filed – in this case, August 14, 2015 – 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.

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. Under section 203(b)(A)(ii) of the Act, EB-3 classification may be granted to qualified immigrants who hold baccalaureate degrees and are members of the professions.

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 alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. 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.

In addition, 8 C.F.R. § 204.5(l)(3)(i) states that the job offer portion of the labor certification underlying a petition for a professional "must demonstrate that the job requires the minimum of a baccalaureate degree."

II. ANALYSIS

A. Minimum Educational Requirements on the Labor Certification

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)."

As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), which was certified by the DOL. Section H of the labor certification stated the following with respect to the minimum requirements for the job of electrical design engineer:

4.	Education: Minimum level required:	Bachelor's degree
4-B.	Major Field of Study:	Electrical Engineering
5.	Is training required for the job?	No
6.	Is experience in the job offered required?	Yes
6-A.	How long?	24 months
7.	Is an alternate field of study acceptable?	No
8.	Is an alternate combination of education and experience acceptable?	No
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	Yes
10-A.	How long?	24 months
10-B.	Job title of acceptable alternate occupation	Transformer design

In addition, box H.14 of the labor certification – Specific skills or other requirements – states the following:

> Any suitable combination of education, work experience, or training that is equivalent to the actual minimum requirements of the position and shows demonstrable ability in the required skill sets is acceptable. Will accept single degree or any combination of degrees, diplomas or professional credentials determined to be equivalent by a qualified evaluation service.

In section J of the labor certification the Beneficiary stated that he earned a bachelor's degree in electrical engineering at the [redacted] in [redacted] India in 2005. The Petitioner submitted copies of a degree and transcripts showing that the Beneficiary was awarded a bachelor of engineering in electrical engineering from the above-named university on May 25, 2006, following completion of a four-year, eight semester academic program in the years 2001-2005.

The Director denied the petition on the ground that the minimum job requirements in part H of the labor certification are less than a U.S. baccalaureate or foreign equivalent degree. After noting the specifications at H.4 and H.6 of the labor certification that a bachelor's degree and 24 months of experience were required, the Director quoted the language at H.14 that the Petitioner would accept not only a "single degree," but also "any combination of degrees, diplomas or professional credentials determined to be equivalent by a qualified evaluation service." Based on this language indicating that the Petitioner would accept less than a full baccalaureate degree, the Director concluded that the offered position did not qualify as a profession and the labor certification did not support the requested classification of the Beneficiary as an EB-3 professional.

On appeal the Petitioner points out that the Beneficiary has a four-year bachelor of engineering degree in electrical engineering from an Indian university,[2] and asserts that this degree is equivalent to a four-year bachelor's degree from an accredited U.S. college or university. We agree with this assertion, and find that the Beneficiary has a "foreign equivalent degree" to a U.S. baccalaureate degree as required by the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) for classification as an EB-3 professional. The issue on appeal, however, is not whether the Beneficiary meets the minimum educational requirements for the offered position of electrical design engineer. The issue is whether the labor certification requires at least a U.S. baccalaureate degree or a foreign equivalent degree in order to qualify for the job.

The Petitioner discusses the advent of three-year bachelor's degree programs in certain U.S. colleges and universities, and asserts that students in the United States can earn a bachelor's degree in less than four years with various combinations of work and study which may include high school credits,

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[2] [redacted] is recognized by [redacted] (last visited July 20, 2017).

technical training, an associate's degree, and other credentials. According to the Petitioner, it would discriminate against foreign workers to require a traditional four-year bachelor's degree from them for professional classification while allowing U.S. workers to qualify for professional classification with bachelor's degrees comprised of multiple lesser credentials. The Petitioner also quotes the so-called "*Kellogg* language" from 20 C.F.R. § 656.17(h)(4)(ii) which provides guidance to the DOL in the labor certification process by stating:

> If the alien beneficiary already is employed by the employer, and the alien does not meet the primary job requirements and only potentially qualifies for the job by virtue of the employer's alternative requirements, certification will be denied unless the application states that any suitable combination of education, training, or experience is acceptable.

The fact situation described in the above regulation, however, does not apply in this case. While the Beneficiary was already employed by the Petitioner when the labor certification was filed, the Beneficiary met the primary educational requirement of the labor certification with her bachelor of engineering degree from [redacted] – a foreign equivalent degree to a U.S. baccalaureate degree – and did not rely on the alternative requirements stated at H.14 of the labor certification.[3] The Petitioner contends that the language used at H.14 of the labor certification should not be interpreted as permitting a foreign worker to qualify for the offered position with less than a bachelor's degree. But the language at H.14 unambiguously states that a combination of academic and professional credentials, including work experience and training, may satisfy the educational requirement of the labor certification if the credentials are considered "*by a qualified evaluation service*" to be equivalent to a baccalaureate degree. Thus, the educational equivalency determination would not be made by a degree-granting institution and would not be based on "an official college or university record," as required by the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C). An equivalency determination based on "any combination of degrees, diplomas, *or professional credentials*" could be satisfied by non-academic professional credentials or a combination of lesser academic credentials.

In determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to 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) (emphasis added). Our interpretation of the job's requirements, as stated on

[3] When a beneficiary qualifies for an offered position based on employer's alternative requirements, we generally do not consider *Kellogg* language to have any material effect on the interpretation of the minimum requirements of the job opportunity. However, even if *Kellogg* language applied to the facts of this case, the requirements stated at H.14 of the labor certification is sufficiently different from the standard *Kellogg* language that we would apply its plain meaning.

the labor certification, must involve reading and applying *the plain language* of the alien employment certification application form. *Id.* at 834.

In this case, the labor certification states that a candidate may qualify for the job of electrical design engineer with less than a bachelor's degree. Box H.14 of the labor certification sets forth alternative educational requirements whereby an applicant may qualify for the job with any combination of education, work experience, and training which might be deemed "equivalent" to a bachelor's degree by a credentials evaluation service. While various combinations of education, training, and experience may be considered equivalent to a bachelor's degree for some purposes, they would not be the same as a "United States baccalaureate degree or a foreign equivalent degree," as prescribed in the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C). Thus, the "plain language" of the labor certification unambiguously states that the minimum educational requirement for the offered position is less than a U.S. bachelor's degree or a foreign equivalent degree.

The labor certification in this case does not support the requested professional classification sought in the Form I-140 petition since it allows an applicant to qualify for the job with less than a baccalaureate degree. Accordingly, the petition cannot be approved.

B. Beneficiary's Qualifying Experience

Although not discussed by the Director, we note that the record does not establish that the Beneficiary had the requisite two years of experience as an electrical design engineer or as a transformer engineer to qualify for the job offered under the terms of the labor certification. For the Beneficiary to be eligible for the visa classification requested, the Petitioner must establish that the Beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date, which was August 14, 2015. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977). As previously discussed, the labor certification requires 24 months of experience as an electrical design engineer or as a transformer engineer (boxes H.6, H.10, and H.10-B), and indicates in box J.21 that the Beneficiary did not gain any qualifying experience with the Petitioner in a substantially comparable position to the job offered.

In section K of the labor certification three jobs are listed for the Beneficiary before she began working for the Petitioner on January 18, 2010. They included two positions in India – with [redacted] in [redacted] and with [redacted] in [redacted] – and one position in the United States with [redacted] in [redacted] Michigan. The time period covered by the three jobs was approximately four and one-half years.

The regulation at 8 C.F.R. § 204.5(g)((1) sets forth the following evidentiary requirements for qualifying experience:

> Evidence relating to qualifying experience . . . shall be in the form of letter(s) from current or former employer(s) . . . and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien . . . .

The record includes letters from [redacted] in [redacted] India, stating that the Beneficiary was employed by the company as an "Executive – Design" from July 19, 2005, to October 5, 2007, and from [redacted] in [redacted] India, stating that the Beneficiary was employed by the company as "Senior Engineer (Engineering)" from October 22, 2007, to December 31, 2008. However, neither of these letters provides a "specific description of the duties performed" by the Beneficiary. Thus, they do not meet the requirements for an employment experience letter under 8 C.F.R. § 204.5(g)((1). According to the labor certification, the Beneficiary had additional qualifying experience as a program analyst with [redacted] in [redacted] Michigan, from October 1, 2009, to January 15, 2010, but no employment verification letter has been submitted from that company. Thus, the evidence of record does not establish that the Beneficiary had any qualifying experience as of the priority date.

Since the Petitioner has not established that the Beneficiary had two years of qualifying experience as an electrical design engineer or as a transformer engineer, the Beneficiary does not meet the minimum experience requirement of the labor certification. For this reason as well the petition cannot be approved.

III. CONCLUSION

The labor certification does not support the requested professional classification because the terms of the labor certification permit an individual to qualify for the job with less than a U.S. baccalaureate or foreign equivalent degree. Furthermore, the Petitioner has not established that the Beneficiary had two years of qualifying experience by the priority date, as required by the labor certification.

ORDER: The appeal is dismissed.

Cite as *Matter of P-T-T-, Inc.*, ID# 425653 (AAO July 24, 2017])