U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A- INC

DATE: JULY 24, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a restaurant franchise business, seeks to employ the Beneficiary as an accountant. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(B)(3)(A)(i). This employment-based "EB-3" 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. The Director found that the Beneficiary did not qualify for the job offered because he did not meet the minimum educational requirements specified on the labor certification.

On appeal the Petitioner submits a brief and supporting documentation and asserts that the Beneficiary has a foreign degree that meets the minimum educational requirements of the labor certification.

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. 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 applies for an immigrant

[1] The date the labor certification is filed is called the "priority date." A beneficiary must be eligible for the requested classification as of that date.

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)(B) provides, in pertinent part, that "[i]f the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification." *See also Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg'l Comm'r 1977) (a beneficiary must have all of the education, training and experience specified on the labor certification as of the petition's priority date).

II. ANALYSIS

The petitioner's Form I-140, Immigrant Petition for Alien Worker, was accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), which was filed with the DOL on September 13, 2005.[2] Section H of the labor certification specifies the following with respect to the education, training, and experience required to qualify for the job of accountant:

4.	Education: Minimum level required:	Bachelor's degree
4-B.	Major Field of Study:	Accounting or Business Administration with major in Accounting
5.	Is training required in the job opportunity?	No
6.	Is experience in the job offered required?	No
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?	No

Section J of the labor certification states that the Beneficiary's highest level of education is a bachelor's degree in business administration with a major in accounting from the [redacted] India, completed in 1999.

As evidence of the Beneficiary's education the Petitioner submitted the following documents:

- Photocopies of a degree and a statement of marks from the [redacted] showing that the Beneficiary completed a three-year Bachelor of Commerce program in 1999 and was awarded his degree at a university convocation held on September 16, 2000.
- A photocopy of a one-page sheet from the [redacted] dated February 25, 2003, listing ten courses completed by the Beneficiary from March 2001

[2] The labor certification was utilized in two previous Form I-140s filed by the Petitioner, Receipt Numbers [redacted] and [redacted] both of which were denied. An appeal of the second denial was dismissed by this office.

to December 2002, including nine in the management department of which six were accounting courses.

- An educational evaluation from [redacted] dated February 13, 2007, which claims that the Beneficiary's Bachelor of Commerce degree from the [redacted] is equivalent to a bachelor of business administration with a major in accounting from an accredited U.S. college or university.

In his denial decision the Director found that the Beneficiary's three-year Bachelor of Commerce degree from the [redacted] is equivalent to three years of university study in the United States, whereas a U.S. baccalaureate degree is generally found to require four years of education. Citing *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977), the Director determined that the Beneficiary's Indian degree was not equivalent to a U.S. bachelor's degree and, as a result, the Beneficiary did not meet the minimum educational requirement of the labor certification. Since he did not meet all the requirements of the labor certification, the Director concluded that the Beneficiary was not eligible for the requested classification.

On appeal the Petitioner asserts that the Director erroneously adjudicated the petition under the EB-3 classification of professional, rather than skilled worker, because he cited regulations applying exclusively to the professional classification which specify that a beneficiary must have a U.S. baccalaureate degree or a foreign equivalent degree, not a combination of lesser academic credentials or academic credentials plus employment experience that may be equivalent to a U.S. baccalaureate. We disagree with the Petitioner's assertion. The Director clearly stated at the outset of his decision that the petition sought skilled worker classification for the Beneficiary, that the labor certification required a bachelor's degree or a foreign educational equivalent, and that the labor certification stated that a combination of lesser credentials is not acceptable. The Director denied the petition for skilled worker classification on the ground that the Beneficiary did not meet all the requirements of the labor certification, not because he erroneously adjudicated the petition as a request for classification as a professional.

The Petitioner asserts that because the labor certification's minimum education requirement at section H.4 does not link a specific number of years with the "bachelor's" degree category, a three-year bachelor's degree is just as legitimate as a four-year bachelor's degree. We do not agree. In accord with the aforementioned decision in *Matter of Shah*, we have consistently held that a U.S. bachelor's degree generally requires four years of education, and that a three-year foreign degree is generally not equivalent to a U.S. bachelor's degree. The labor certification requires a U.S. bachelor's degree (or a foreign equivalent degree), and the Petitioner has not established that the Beneficiary's three-year degree from India is equivalent to a four-year U.S. bachelor's degree. If the Petitioner was willing to accept a three-year degree as well as a four-year degree, that intent should have been made clear on the labor certification.[3] No such intent was expressed on the labor

[3] We note that in a prior Form I-140 petition it filed on behalf of the Beneficiary, Receipt Number [redacted] which likewise sought EB-3 skilled worker classification, the labor certification specified in boxes H.4, H.4-B, and H.9 that a bachelor's degree was required in finance, commerce, accounting, or a related field, or a foreign educational

certification, however, nor in the job advertisements of the accountant position that were published in print and online.

We also find that the Beneficiary's three-year Bachelor of Commerce from the does not meet the labor certification's field of study requirement. As previously noted, the labor certification requires a degree in accounting or business administration with a major in accounting, and does not allow for any other field of study. The Beneficiary possesses a Bachelor of Commerce degree and the associated statement of marks does not list any of the courses taken by the Beneficiary. The record does not show that the Beneficiary's curriculum at the featured coursework in accounting, or even business administration. The only evidence of accounting courses taken by the Beneficiary is the record from listing the courses he completed in 2001 and 2002, which post-dated his Bachelor of Commerce and there is no evidence that the Beneficiary earned a degree from

For these reasons, we affirm the Director's decision to deny the petition.

III. CONCLUSION

We will dismiss the appeal because the Beneficiary does not meet the minimum educational requirements of the labor certification and therefore does not qualify for classification as a skilled worker.

ORDER: The appeal is dismissed.

Cite as *Matter of A- Inc.*, ID# 00413410 (AAO July 24, 2017)

equivalent, but also specified in box H.14 that the Petitioner "will accept a 3 or 4 year bachelor's degree." That petition was approved based on the same educational qualifications as those presented in the instant petition – in particular, the Beneficiary's three-year Bachelor of Commerce from the