MATTER OF C-B-A-E-C-, INC.

DATE: JULY 25, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an early childhood center, seeks to employ the Beneficiary as a preschool teacher. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. The employment-based immigrant classification for a professional allows a U.S. employer to sponsor a foreign national with a baccalaureate degree for lawful permanent resident status. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the job offer portion of the labor certification requires the minimum of a bachelor's degree for professional classification.

On appeal, the Petitioner submits additional evidence and asserts that the offered position requires a bachelor's degree for professional classification. Upon *de novo* review, we will sustain 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. 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 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.

[1] The date the labor certification is filed, in cases such as this one, is called the "priority date."

II. ANALYSIS

For professional classification, "the *job offer* portion of an individual labor certification . . . must demonstrate that the job requires the minimum of a baccalaureate degree." 8 C.F.R. § 204.5(l)(3)(i) (emphasis added).

Therefore, if the labor certification allows for less than the minimum of a baccalaureate degree, the position will not qualify for professional classification.

The required education, training, experience, and skills for the proffered position are set forth at Section H of the labor certification. In this case, Section H states that the offered position has the following minimum requirements:

H.4.	Education: Other.
H.4-A.	If Other is indicated in question 4, specify the education required: "Foreign equivalent of a bachelor's degree."
H.6.	Experience in the job offered: None.
H.8.	Is there an alternate combination of education and experience that is acceptable? No.
H.9.	Is a foreign educational equivalent acceptable? Yes.
H.10.	Is experience in an alternate occupation acceptable? No.
H.14.	Specific skills or other requirements: None.

The Director held that position offered allows for less than a bachelor's degree or foreign equivalent because the Petitioner "would accept a combination of education and experience evaluated to be equivalent to a bachelor's degree."

On appeal, the Petitioner states that the recruitment documentation in the record demonstrates that the position offered requires the minimum of a bachelor's degree or the foreign equivalent.

In order to determine what a job opportunity requires, we must examine "the language of the labor certification job requirements." *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must 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). Our interpretation of the job's requirements must involve reading and applying the plain language of the alien employment certification application form. *Id.* at 834.

We note that the Petitioner indicated in Section H.8 that there is not an alternate combination of education and experience that is acceptable. We find that this does not support the conclusion reached by the Director. In addition, the advertisements in the record state that the position offered requires a bachelor's degree. Here, we find that the labor certification and the advertisements for the position offered demonstrate that the position offered requires at a minimum a U.S. bachelor's

degree or the foreign equivalent for professional classification under section 203(b)(3)(A)(ii) of the Act.

III. CONCLUSION

The Petitioner has established that the job offered meets the minimum educational requirements for professional classification.

ORDER: The appeal is sustained.

Cite as *Matter of C-B-A-E-C-, Inc.*, ID# 591886 (AAO July 25, 2017)