U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17931178

Date: JUL. 27, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner, an operator of arts and crafts stores, seeks to employ the Beneficiary as a senior developer. The company requests his classification under the third-preference, immigrant visa category for skilled workers. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i).

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the Beneficiary's educational qualifications for the offered position.

The Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See* section 291 of the Act, 8 U.S.C. § 1361 (discussing the burden of proof); *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). Upon *de novo* review, we will dismiss the appeal.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as a skilled worker generally follows a three-step process. First, a prospective employer must apply to the U.S. Department of Labor (DOL) for certification that: (1) there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and (2) the employment of a noncitizen in the position will not harm wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5).

Second, an employer must submit an approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS determines whether a noncitizen beneficiary meets the requirements of a certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l).

Finally, if USCIS approves a petition, a designated noncitizen 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. THE EDUCATIONAL REQUIREMENTS OF THE OFFERED POSITION

A petitioner must demonstrate a beneficiary's possession of all DOL-certified, job requirements of an offered position by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). This petition's priority date is December 2, 2019, the date DOL accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

When assessing a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine a position's minimum requirements. USCIS may neither ignore a certification term nor impose additional requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

The accompanying labor certification states the minimum educational requirements of the offered position of senior developer as a U.S. bachelor's degree, or "a foreign educational equivalent," in management information systems (MIS), computer science, or a related field of study. The labor certification also states that the position requires five years of "related software development experience."

On the labor certification, the Beneficiary attested that, by the petition's priority date, an Indian institute awarded him a bachelor's degree in MIS. The Petitioner submitted copies of a diploma and marks transcript from the institute, indicating the Beneficiary's receipt of a bachelor of science degree in "IT [information technology]." The transcript states his completion of six semesters - or three academic years - of studies.

The Petitioner also submitted an independent, professional evaluation of the Beneficiary's degree. The evaluation finds the credential equivalent to three academic years of U.S. university studies. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977) (finding that U.S. baccalaureate degrees usually require four years of university studies). The evaluation also concludes that, combined with three of the nearly nine years of employment experience the Beneficiary gained by the petition's priority date, his degree equates to a U.S. baccalaureate in MIS.

The Director found that the Beneficiary's possession of the equivalent of a U.S. bachelor's degree based on a combination of education and experience does not meet the position's minimum requirement of a U.S. baccalaureate or a single, foreign degree equating to one. As previously indicated, however, the labor certification does not specify the requirement of a U.S. baccalaureate or a foreign *degree* equivalent. Rather, the certification more broadly states the need for a U.S. baccalaureate or "a foreign *educational* equivalent." (emphasis added). The requested immigrant visa category of skilled worker also does not require a degree. "Professionals" must "hold baccalaureate degrees." Section 203(b)(3)(A)(ii) of the Act. In contrast, a "skilled worker" need only be able to perform "skilled labor (requiring at least 2 years training or experience)." Section 203(b)(3)(A)(i) of the Act. Thus, because the labor certification accompanies a skilled worker petition, the certification indicates that a foreign education equating to a U.S. baccalaureate may meet the position's minimum educational requirement even if lacking a single, equivalent degree.

Nevertheless, the Petitioner has not demonstrated the Beneficiary's possession of a U.S. bachelor's degree or "a foreign *educational* equivalent." (emphasis in original). The record does not establish the Beneficiary's possession of the equivalent of a U.S. baccalaureate without combining his education with employment experience. Thus, despite misinterpreting a portion of the educational requirement, the Director correctly concluded that the record does not demonstrate the Beneficiary's educational qualifications for the offered position.

On appeal, the Petitioner argues that USCIS disregarded letters the company submitted from officials at two U.S. universities. The Petitioner asserts that, for graduate admission purposes, the universities accepted the Beneficiary's three-year bachelor's degree as the equivalent of a U.S. baccalaureate.

A letter from one of the universities, however, suggests that the Beneficiary must complete additional coursework before gaining graduate admission to the school. The letter to him states that "your educational credentials should suffice for matriculation into our graduate programs, *provided you complete any additional requirements required by the university for admission*." (emphasis added). The letter therefore does not demonstrate the university's acceptance of his degree as the equivalent of a U.S. baccalaureate.

Also, the other university letter does not overcome the evaluation's contrary finding that the Beneficiary's degree equals less than a U.S. baccalaureate. The letter does not explain why the university disagrees with the evaluator's finding or how the Beneficiary's three years of foreign university education equate to four years of U.S. university studies. *See Matter of Shah*, 17 I&N Dec. at 245 (finding that U.S. baccalaureate degrees usually require four years of university studies). Thus, a preponderance of evidence does not demonstrate the Beneficiary's qualifying education for the offered position.

The Petitioner also submitted copies of news articles about an increase in the number of three-year, baccalaureate programs in the United States. As the Petitioner noted, "the three-year U.S. programs concentrate studies within the shorter period of time." But the company has not demonstrated a similar concentration of studies in the three-year, baccalaureate program completed by the Beneficiary. Thus, the articles do not demonstrate the equivalency of his degree to a three-year U.S. bachelor's degree.

In addition, the Petitioner argues that, because it requested the Beneficiary's classification as a skilled worker, USCIS should interpret the position's minimum educational requirements consistent with the company's claimed intent to accept his combination of education and experience as the foreign equivalent of a U.S. bachelor's degree. The Petitioner cites a U.S. district court case finding that USCIS misinterpreted educational requirements like the ones here. *See SnapNames, Inc. v. Chertoff*, No. CV 06-65-MO, 2006 WL 3491005 (D. Or. Nov. 30, 2006).

In *SnapNames*, USCIS interpreted requirements of a "B.S. or foreign equivalent" on a labor certification to mean a U.S. bachelor of science degree or a single, foreign degree equating to one. *SnapNames*, 2006 WL 3491005, at *2. The court, however, found that, in interpreting the requirements under the requested *skilled worker* category, USCIS improperly relied on regulations requiring a *professional* to have a U.S. baccalaureate or a single foreign degree equivalent. *Id.* at *8, referring to 8 C.F.R. § 204.5(l)(2) (defining the term "professional" as a noncitizen "who holds at least a United States baccalaureate degree or a foreign equivalent degree"). The court stated that "the

agency's interpretation of SnapNames's educational requirement should be informed by SnapNames's intent, to the extent possible, and not on the agency's understanding of similar but inapplicable regulatory language." *Id.* at *8.

SnapNames, however, does not bind us here. *See Matter of K-S-*, 20 I&N Dec. 715, 718 (BIA 1993) (noting that a U.S. district court decision is not precedential "even in the same district"). Moreover, the *SnapNames* court agreed with USCIS that SnapNames indicated its position's need for a U.S. bachelor's degree or a foreign equivalent based solely on education. *Id.* at **7-8. The court noted SnapNames's placement of the stated requirements "B.S. or foreign equivalent" under the section of the application form entitled "College Degree Required." *Id.* at *6.[1] The requirements also did not indicate acceptance of a baccalaureate equivalency based on other than an educational background. *Id.* Thus, the *SnapNames* court concluded that USCIS:

> has an independent role in determining whether the alien meets the labor certification requirements, and where the plain language of those requirements does not support the petitioner's asserted intent, the agency does not err in applying the requirements as written.

Id. at *7.

Like SnapNames, the Petitioner indicated its acceptance of a U.S. bachelor's degree or "a foreign *educational* equivalent." (emphasis added). The Petitioner's requirements also do not indicate acceptance of a baccalaureate equivalency based on other than education. Thus, as in *SnapNames*, the plain language of the Petitioner's labor certification bars a combination of education and experience from meeting the position's minimum educational requirements. *Id.* at *7. The Petitioner's request for skilled worker classification and the company's citation to *SnapNames* therefore do not establish the Beneficiary's qualifying education.

Finally, the Petitioner's appeal includes a letter from a company vice president. Arguing that USCIS must defer to the Petitioner's intent when interpreting job requirements of a skilled worker position, the letter states the company's intent to "accept any foreign academic credentials submitted as evidence of a bachelor's degree equivalent, as determined by an appropriate credentialing agency that specializes in the evaluation of foreign credentials." Thus, the company asserts that the evaluation it initially submitted demonstrates the Beneficiary's educational qualifications for the offered position.

The Director's written request for additional evidence, however, notified the Petitioner of the need for additional proof of the Beneficiary's educational qualifications and afforded the company a reasonable opportunity to respond. We therefore decline to accept the Petitioner's additional evidence on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988).

Moreover, even if we considered the vice president's letter, it would not establish the Beneficiary's educational qualifications. The letter states the company's acceptance of "any foreign *academic* credentials" evaluated to equal a U.S. bachelor's degree. (emphasis added). The only foreign academic credentials of record are the Beneficiary's baccalaureate degree and transcript. But the evaluation

[1] *SnapNames* involved an earlier application form for labor certification than the Petitioner used.

submitted by the Petitioner finds these documents equivalent to only three years of U.S. university studies, less than a U.S. bachelor's degree. *See Matter of Shah*, 17 I&N Dec. at 245. The evaluation finds the Beneficiary's possession of the equivalent of a U.S. baccalaureate based only on a combination of education and experience. The vice president's letter does not indicate the Petitioner's intent to accept non-academic credentials like employment experience as proof of a U.S. baccalaureate equivalency. The letter therefore would not establish the Beneficiary's educational qualifications for the offered position.

III. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's possession of the minimum educational requirements of the offered position. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.