U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-P-S-

DATE: JULY 28, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a public school system, seeks to employ the Beneficiary as a kindergarten teacher. 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 immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition. The Director concluded that the credentials evaluation and academic certificate submitted by the Petitioner were not sufficient to establish that the Beneficiary possesses a bachelor's degree as required by the labor certification and for classification as a professional.

On appeal, the Petitioner states the credentials evaluation and the certification from the State of Louisiana are sufficient to establish that the Beneficiary satisfies the educational requirements.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer must obtain 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 may file 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

[1] The date the labor certification is filed is called the "priority date." *See* 8 C.F.R. § 204.5(d). A beneficiary must be eligible as of that date.

abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

When the immigrant petition is before USCIS, a petitioner must establish, among other things, that the beneficiary is eligible for the requested classification. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states that a petition for a professional "must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree. . . ." The petitioner must also demonstrate that the beneficiary meets all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

II. ANALYSIS

As required by statute, the immigrant petition is accompanied by a labor certification certified by the DOL. The labor certification requires, at the minimum, a bachelor's degree or foreign equivalent in order to qualify for the proffered position. As noted, the requested classification of professional also requires that the Beneficiary possess a U.S. bachelor's degree or foreign equivalent degree.[2] At issue is whether the Beneficiary possesses the U.S. bachelor's or foreign equivalent degree required by the terms labor certification and for classification as a professional.

On the labor certification, the Beneficiary listed her education as a bachelor's degree in education from [redacted] in [redacted] Belgium, completed in 1995. The Petitioner submitted a copy of a certificate from the [redacted]
The certificate, which is written in French, is accompanied by an English translation, which states that the document was issued under the authority of the French Community of Belgium, and that it confers upon the Beneficiary "the degree of Elementary Teacher."[3] The Petitioner also submitted copies of two pages of what appear to be transcripts of the Beneficiary's three years of coursework at [redacted] however, these documents are not accompanied by English translations.[4]

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[2] The Beneficiary must possess a single-source bachelor's degree in order to be eligible for classification as a professional. In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. *See also Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008)(for professional classification, USCIS regulations require the beneficiary to possess a single four-year U.S. bachelor's degree or foreign equivalent degree).

[3] The Director noted in his decision that the identity of the translator is not disclosed, and the document is not accompanied by a certification of the translator's competency to translate from French into English, as is required by regulation. Regarding foreign language evidence, 8 C.F.R. § 103.2(b)(3) states that "any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." On appeal, the Petitioner has overcome the Director's concerns and provided a certification from the translator.

[4] As noted, foreign language documents must be accompanied by a translation. *See id.*

The Petitioner further submitted a document on [redacted] letterhead. The document is titled "CREDENTIAL EVALUATION REPORT" but the identity of the evaluator is undisclosed and the document is unsigned. The document states that the Beneficiary holds the "equivalent of Bachelor of Arts in Early Childhood Education by regionally accredited universities in the United States." The document states that the Beneficiary completed a three-year course of study and lists the admission requirements for the Beneficiary's course of study as "[p]resentation of academic qualifications." We note that this document refers to the certificate from the French Community of Belgium as conferring a degree of "Preschool Teacher" upon the Beneficiary. USCIS may, in our discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). *See also Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011).

Here, the evidence submitted is not sufficient to establish that the Beneficiary has the U.S. bachelor's degree or foreign equivalent degree that is required by the labor certification and for classification as a professional. The Beneficiary's education was a three-year course of study; however, a U.S. bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm'r 1977). The submitted credential evaluation, while acknowledging that the Beneficiary only studied for three years, does not indicate how the evaluator found these three years of study to equate to the four years of study required for a U.S. bachelor's degree. Further the evaluation does not discuss the entrance requirements to the program, and, contrary to the Director's request for evidence, does not include a detailed course analysis explaining how any equivalency was determined. In fact, it does not appear that the evaluator reviewed the Beneficiary's transcripts, as only the certificate from the French Community of Belgium is listed as the basis for the evaluation. Moreover, the evaluation states that the certificate from the French Community of Belgium conferred upon the Beneficiary a degree of "Preschool Teacher." This contradicts the translation of the certificate that was submitted by the Petitioner, which states that the certificate conferred a degree of "Elementary Teacher." Petitioners must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the Petitioner asserts that the Director "erred in not accepting the findings of the credential evaluation report." The Petitioner cites the experience and longevity of the company that performed the evaluation and notes that while the identity of the evaluator is not recorded on the evaluation, the "name and the qualifications of the senior evaluator . . . are available for review online." The Petitioner stresses that the evaluation is "based on 'original official documents.'" However, as noted above, considering the deficiencies in the evaluation and the unresolved contradictions between the evaluation and other evidence submitted by the Petitioner, we conclude that the credentials evaluation does not establish that the Beneficiary possesses a U.S. bachelor's degree or foreign equivalent degree, as required by the labor certification and for classification as a professional.

The Petitioner also submitted a "Foreign Language Elementary Education" certificate from the State of Louisiana, Department of Education, valid from January 29, 2013, until January 29, 2018. The document states that the certificate is based upon the Beneficiary's "B.S., Foreign College or University, 1995." On appeal, the Petitioner asserts that the certificate could only be awarded if the Beneficiary has a bachelor's degree and urges us to defer to the Louisiana Department of Education determination that the Beneficiary had this degree. The Petitioner also submits a copy of Title 28 Louisiana Administrative Code, Part CXXXI, Bulletin 746, Louisiana Standards of Certification of School Personnel, and states that there are two types of teacher preparation programs in Louisiana, both of which require bachelor's degrees. The Petitioner therefore concludes that the Beneficiary's teacher certification establishes that she possesses a bachelor's degree.

However, as Title 28 of the Louisiana Administrative Code states in section 201, these are standards that govern state-approved teacher preparation programs in Louisiana. This title does not indicate that all applicants must attend one of these state-approved teacher preparation programs to become a certified teacher in Louisiana. Rather, according to the Louisiana Department of Education, applicants with foreign credentials need not attend a state-approved teach training program, but may instead apply as out-of-state applicants. In order to do so, they must have their foreign credentials evaluated by the dean of education at a regionally accredited institution in the United States or by the American Association of Collegiate Registrars and Admissions Officers, Office of International Education Services or World Education Services.[5] The Louisiana Department of Education goes on to state that any evaluation of foreign credentials must include a statement verifying the comparability of the baccalaureate degree in the field of education with a course-by-course evaluation. As such, it appears that whatever documentation was submitted in support of the Beneficiary's application for a Louisiana teaching certificate is not the same as the evidence submitted to support this petition; as the evidence submitted here does not include a course-by-course evaluation. Although the Beneficiary may be qualified for employment as an elementary school teacher according to the state, the Beneficiary's certification does not establish that she is eligible for the offered position under the requirements stated in the labor certification or for classification as a professional.

Therefore, the record does not demonstrate that the Beneficiary's three-year "degree of Elementary Teacher" from Belgium is a U.S. bachelor's or foreign equivalent degree required by the terms of the labor certification and for classification as a professional.

III. CONCLUSION

The Petitioner has not established that the Beneficiary possesses a U.S. bachelor's degree or a foreign equivalent degree, as is required by the labor certification and for classification as a professional. Accordingly, the Petitioner has not established the Beneficiary's eligibility for the immigration benefit sought.

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[5] *See Louisiana Department of Education, Teach Louisiana, Certification, Foreign Application Packet.* https://www.teachlouisiana.net/Teachers.aspx?PageID=12311129 (last accessed July 5, 2017).

ORDER: The appeal is dismissed.

Cite as *Matter of L-P-S-*, ID# 533111 (AAO July 28, 2017)