U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-S-, INC.

DATE: JUNE 11, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a supermarket, seeks to employ the Beneficiary as an accounting system expert.[1] It requests classification of the Beneficiary as a professional under the third preference immigrant category. 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, finding that the Beneficiary did not have a U.S. bachelor's degree or a foreign equivalent degree and therefore did not meet the minimum educational requirement for the job under the terms of the labor certification and did not qualify for classification as a professional. The Petitioner filed an appeal, which we dismissed. Like the Director, we found that the Beneficiary did not have the requisite degree to meet the minimum educational requirement of the labor certification and to qualify for classification as a professional. We also found that the evidence of record did not establish that the Beneficiary had the experience required by the labor certification. The matter is now before us on a motion to reopen and motion to reconsider.

Upon review, we will grant the motion to reopen in part and deny it in part. We will withdraw our finding that the Beneficiary lacks the experience required by the labor certification, but affirm our finding that the Beneficiary does not have the requisite educational degree to meet the terms of the labor certification and qualify for professional classification. We will deny the motion to reconsider.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must be supported by a pertinent precedent or adopted decision, a statutory or regulatory provision, or a statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security (DHS) policy. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

A petition filed for professional classification must be accompanied by evidence that the beneficiary holds a U.S. bachelor's degree or a foreign equivalent degree. *See* 8 C.F.R. § 204.5(l)(3)(ii)(C). A beneficiary must also meet all of the education, training, experience, and other requirements of the labor certification as of the petition's priority date.[1] *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 150 (Acting Reg'l Comm'r 1977). In our decision dismissing the appeal, we found that the Beneficiary's three-year bachelor of commerce degree from the in India is not equivalent to a bachelor's degree from a U.S. college or university, which generally requires four years of study. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). We concluded that the Beneficiary does not meet the minimum educational requirement of the labor certification, which is a bachelor's degree in commerce or accounting or a foreign educational equivalent, and does not qualify for classification as a professional because she does not have a U.S. bachelor's degree or a foreign equivalent degree. We also found that the Petitioner did not establish that the Beneficiary had five years of prior employment as an accounts manager or accountant, as required by the labor certification. While the labor certification claimed that the Beneficiary had more than five years of qualifying employment with in India, during the years 1996-2002, no employment verification letter was submitted from as required by 8 C.F.R. § 204.5(l)(3)(ii)(A). Furthermore, two other employment verification letters in the record, in addition to containing certain inconsistencies, were from companies not listed in the labor certification as prior employers of the Beneficiary.

A. Motion to Reopen

1. Beneficiary's Education

The Petitioner asserts that we did not give due weight in our analysis of the Beneficiary's education to the two evaluations it submitted from and which claim that the Beneficiary's three-year Indian degree is equivalent to a U.S. bachelor's degree. The Petitioner focuses on the footnote at the bottom of page 6 of our decision in which we noted some anomalies in the Beneficiary's transcripts that should be explained in any future proceedings, and suggests that our finding that the Beneficiary does not have the U.S. equivalent of a bachelor's degree rested on doubts about the veracity and reliability of the transcripts. The Petitioner submits an affidavit from the Beneficiary which addresses the various anomalies identified in our footnote, accompanied by another document from the identifying the Beneficiary as a student in April 1993. Based on these materials we are satisfied that the Beneficiary earned a three-year bachelor's degree at the As explained in our previous decision, however, a three-year bachelor's degree from an Indian university, like the Beneficiary's bachelor of commerce from the , is not equivalent to a U.S. bachelor's degree. Establishing the veracity of the Beneficiary's transcripts does not overcome this infirmity, and gives no credence to the claims in the

[1] The "priority date" of a petition is the date the underlying labor certification is filed with the Department of Labor. *See* 8 C.F.R. § 204.5(d). In this case the priority date is June 17, 2011.

and evaluations that the Beneficiary's three-year Indian degree is equivalent to a U.S. bachelor's degree. Thus, the new materials submitted on motion do not overcome our previous finding that the Beneficiary does not have the equivalent of a U.S. bachelor's degree. As such, the Petitioner has not demonstrated that the Beneficiary has the minimum level of education required by the terms of the labor certification and for classification as a professional.

2. Beneficiary's Experience

As further evidence of the Beneficiary's experience, the Petitioner submits a letter from which meets the substantive requirements of 8 C.F.R. § 204.5(l)(3)(ii)(A) and states that the Beneficiary was employed as an accounts manager in on a full-time basis from May 1996 through January 2002. In her affidavit the Beneficiary states that she had a second job during her time with and specifically refers to her work for As discussed in our previous decision, the record includes a letter from in certifying that it employed the Beneficiary in a computer-related position from November 1998 to November 2002.[2] While the overlapping employment claimed by the Beneficiary does bear scrutiny, we are persuaded by a preponderance of the evidence that the Beneficiary was employed as an accounts manager by as claimed in the labor certification, from May 1996 to January 2002. Accordingly, we find that the Beneficiary meets the minimum experience requirement of the labor certification, and has overcome this ground for denial.

B. Motion to Reconsider

The Petitioner does not allege that our decision dismissing the appeal was based on any incorrect application of law or policy, as required by 8 C.F.R. § 103.5(a)(3). Nor does the Petitioner cite any precedent or adopted decision, any statutory or regulatory provision, or any statement of USCIS or DHS policy in support of its motion to reconsider. Therefore, we will deny this motion.

III. CONCLUSION

On motion the Petitioner has established, by a preponderance of the evidence, that the Beneficiary has more than five years of qualifying employment and therefore meets the experience requirement of the labor certification. However, the Petitioner has not established that the Beneficiary possesses a U.S. bachelor's degree or a foreign equivalent degree. Therefore, the Beneficiary does not meet the minimum educational requirement of the labor certification and does not qualify for classification as a professional. Accordingly, the Petitioner has still not established the Beneficiary's eligibility for the immigrant benefit sought in this proceeding and the petition remains denied.

[2] The Beneficiary's affidavit does not mention any other prior employment, though as discussed in our previous decision the record includes a letter from in which certified that it employed the Beneficiary as a computer programmer from April 1994 to June 1998.

ORDER: The motion to reopen is granted in part and denied in part.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of M-S-, Inc.* ID# 1548730 (AAO June 11, 2018)