U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF O-W-, INC.

DATE: JUNE 20, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a management and financial services consulting firm, seeks to employ the Beneficiary as a CIB Engagement Manager I. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. 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 Acting Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary met the requirements of the offered position set forth on the labor certification. Specifically, the Director determined that the Beneficiary's degree from a university in Germany is not equivalent to a U.S. bachelor's degree.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary has the equivalent of a U.S. bachelor's degree.

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

I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS

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, the 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. *See* 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

[1] The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is January 9, 2017. *See* 8 C.F.R. § 204.5(d).

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.

II. THE BENEFICIARY'S EDUCATION

The Director concluded that the Petitioner did not establish that the Beneficiary possessed the education required by the labor certification as of the priority date.

A beneficiary must meet 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); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977). In this case, the labor certification requires a master's degree in business administration, engineering, economics, or related quantitative field and 24 months of strategic management consulting experience focusing on business strategy; or a bachelor's degree and three years of experience. Part H.14 of the labor certification lists additional required special skills. At issue here is the Beneficiary's education.

The labor certification states that the Beneficiary qualifies for the offered position based on his bachelor's degree in business administration from the in Germany, issued on June 15, 2011. With the petition, the Petitioner submitted the Beneficiary's bachelor of science degree in business administration from the together with English translation. It also submitted the Beneficiary's transcript from the together with English translation, indicating that the Beneficiary attended six semesters of college and earned 183 European Credit Transfer System (ECTS) credits. The Petitioner also submitted an evaluation of the Beneficiary's education prepared by the It states that the Beneficiary's education is equivalent to a U.S. bachelor of business administration degree with a concentration in finance.[2]

In a request for evidence (RFE), the Director indicated that the Electronic Database for Global Education (EDGE)[3] shows that the Beneficiary's bachelor of science degree is equivalent to three years of university study in the United States. The RFE asked the Petitioner to submit evidence establishing that the Beneficiary's degree is equivalent to a four-year U.S. bachelor's degree. In response to the RFE, the Petitioner asserted that its alternate education requirement does not exclude three-year bachelor's degrees, and that the Beneficiary's three-year bachelor's degree qualifies him

[2] USCIS may, in its 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, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

[3] EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in more than 40 countries." *About AACRAO*, https://www.aacrao.org/who-we-are (last visited June 11, 2018). According to the registration page for EDGE, EDGE is "a web-based resource for the evaluation of foreign educational credentials." *AACRAO EDGE*, http://edge.aacrao.org/info.php (last visited June 11, 2018).

for the offered position. It submitted evidence showing that other employees in the offered job hold three-year bachelor's degrees.[4]

In her decision, the Director determined that the Beneficiary's degree is equivalent to a three-year Bachelor (FH) degree in Germany and represents only three years of U.S. college education. Under the professional classification, the Director indicated that the Beneficiary must have the equivalent of a four-year bachelor's degree. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm'r 1977). The Director further noted that no evidence was submitted to establish that the other workers' petitions had been approved under the professional classification.

On appeal, the Petitioner asserts that the Beneficiary completed the equivalent of a four-year U.S. bachelor's degree in Germany. The Petitioner submits an academic evaluation from , of The evaluation states that the Beneficiary has the equivalent of a four-year U.S. bachelor of business administration degree with a concentration in finance. The evaluation indicates that the Beneficiary completed an *Abitur* program of "preliminary post-secondary studies" at in Germany prior to completing his bachelor of science degree at the . It states that the *Abitur* program included one year of university-level studies, equivalent to the first year of college in the United States. Thus, the evaluation indicates that the applicable EDGE entry for the Beneficiary's degree from the which was awarded after the Beneficiary completed 13 years of primary and secondary school followed by three years of university study, equates the degree to a U.S. bachelor's degree.

On appeal, the Petitioner relies on a different EDGE entry than the one relied on by the Director. The Director utilized the EDGE entry for a German "Bachelor (FH)," which EDGE indicates is awarded after completion of six semesters (180 ECTS) at a German university of applied sciences.[5] *AACRAO EDGE,* http://edge.aacrao.org/country/credential/bachelor-fh?cid=single (last visited June 11, 2018). EDGE states that the German Bachelor (FH) represents attainment of a level of education comparable to three years of postsecondary study in the United States. *Id.*

The evaluation submitted by the Petitioner on appeal asserts that the is a German research university, and not a university of applied sciences as referenced in the EDGE

[4] If the petition is for a professional, the petition must be accompanied by evidence that the beneficiary holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the beneficiary is a member of the professions. 8 C.F.R. § 204.5(l)(3)(ii)(C). The petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation. *See* 8 C.F.R. § 204.5(l)(3)(ii)(C). In addition, the job offer portion of the labor certification underlying a petition for a professional "must demonstrate that the job requires the minimum of a baccalaureate degree." 8 C.F.R. § 204.5(l)(3)(i). In this case, if the job offered does not require a U.S. baccalaureate degree or a foreign equivalent degree, the petition may not be approved in the professional classification.

[5] The entry requirement for a Bachelor (FH) is a *Zeugnis der Fachhochschulreife*, which "represents attainment of a level of education comparable to completion of a vocational or other specialized high school curriculum in the United States." *AACRAO EDGE,* http://edge.aacrao.org/country/credential/zeugnis-der-fachhochschulreife?cid=single (last visited June 11, 2018).

entry for the Bachelor (FH). Thus, it asserts that this EDGE entry does not apply. Instead, the Petitioner asserts that the Beneficiary has a German "*Bakkalaureaus* (Bachelor)," which EDGE indicates is awarded after three to four of university study preceded by 13 years of primary and secondary school.[6] *AACRAO EDGE,* http://edge.aacrao.org/country/credential/bakkalaureus?cid=single (last visited June 11, 2018). EDGE states that the German *Bakkalaureaus* "represents attainment of a level of education comparable to a bachelors degree in the United States." *Id.*

On appeal, the Petitioner submits an English translation of an "*Abitur* Graduation Program and Leaving Certificate."[7] The translation states that the Beneficiary received his *Abitur* from [redacted] in 2007. The *Abitur* translation appears to support the Petitioner's assertion that the Beneficiary has the equivalent of a U.S. bachelor's degree, based on completion of the *Abitur* and the *Bakkalaureaus*. However, the Petitioner has not provided a copy of the Beneficiary's German language *Abitur*. Without the foreign language document, we cannot determine whether the Beneficiary possessed the education required by the labor certification as of the priority date. A petitioner bears the burden of establishing eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). The Petitioner has not met its burden in this case.

Thus, the Petitioner has not established that the Beneficiary possessed the education required by the labor certification as of the priority date.

III. ABILITY TO PAY THE PROFFERED WAGE

The Director incorrectly determined that the Petitioner established its continuing ability to pay the proffered wage from the petition's priority date onward. The proffered wage is $153,000 per year.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful

[6] The entry requirement for a *Bakkalaureaus* is a *Zeugnis der allgemeinen Hochschulreife*, which "represents attainment of a level of education comparable to completion of senior high school in the United States with the possibility of awarding up to one year of advanced credit." *AACRAO EDGE,* http://edge.aacrao.org/country/credential/zeugnis-der-allgemeinen-hochschulreife-ii?cid=single (last visited June 11, 2018). It is also known as the *Abitur*, the capstone examination administered at the end of 13th grade. *AACRAO EDGE,* http://edge.aacrao.org/country/overview/germany-overview (last visited June 11, 2018).

[7] A full English language translation must accompany any document containing foreign language. 8 C.F.R. § 103.2(b)(3).

> permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.[8]

In determining a petitioner's ability to pay, we first examine whether it paid a beneficiary the full proffered wage each year from a petition's priority date. If a petitioner did not pay a beneficiary the full proffered wage, we next examine whether it had sufficient annual amounts of net income or net current assets to pay the difference between the proffered wage and the wages paid, if any. If a petitioner's net income or net current assets are insufficient, we may also consider other evidence of its ability to pay the proffered wage.[9]

In this case, the Petitioner submitted copies of paychecks demonstrating that it employed and paid the Beneficiary $96,050.02 through May 15, 2017. The Petitioner must demonstrate its ability to pay the difference between the annual proffered wage and the amounts it paid to the Beneficiary, which is $56,949.98 in 2017. However, the Petitioner did not submit its federal tax return, audited financial statements, or annual report for 2017 as required by 8 C.F.R. § 204.5(g)(2). Instead, it submitted the 2016 annual report of its parent company, , a separate entity.[10] While the annual report shows the operating revenues of the Petitioner for 2016, it does not show the Petitioner's net income or net current assets for 2017, the year of the priority date. Thus, the Petitioner has not established its continuing ability to pay the proffered wage from the petition's priority date onward.

IV. CONCLUSION

The Petitioner has not established that the Beneficiary possessed the education required by the labor certification as of the priority date. Further, the Petitioner has not established its continuing ability to pay the proffered wage from the petition's priority date onward

[8] If a petitioner employs 100 or more workers, we may accept a statement from a financial officer of the petitioner which establishes its ability to pay the proffered wage. 8 C.F.R. § 204.5(g)(2). In this case, although the petition indicates that the Petitioner employs 3,000 workers, the Petitioner did not submit a letter from a financial officer indicating that it employs 100 or more workers.

[9] Federal courts have upheld our method of determining a petitioner's ability to pay a proffered wage. *See, e.g., River St. Donuts, LLC v. Napolitano*, 558 F.3d 111, 118 (1st Cir. 2009); *Tongatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984); *Estrada-Hernandez v. Holder*, -- F. Supp. 3d --, 2015 WL 3634497, *5 (S.D. Cal. 2015); *Rizvi v. Dep't of Homeland Sec.*, 37 F. Supp. 3d 870, 883-84 (S.D. Tex. 2014), *aff'd*, 627 Fed. App'x. 292, 294-295 (5th Cir. 2015).

[10] Because a corporation is a separate and distinct legal entity from its shareholder, the income and assets of the Petitioner's parent company cannot be considered in determining its ability to pay the proffered wage. *See Matter of Aphrodite Invs., Ltd.*, 17 I&N Dec. 530 (Comm'r 1980). In a similar case, the court in *Sitar v. Ashcroft*, No. Civ. A. 02-30197-MAP, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage."

ORDER: The appeal is dismissed.

Cite as *Matter of O-W-, Inc.*, ID# 1493294 (AAO June 20, 2018)