U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17460819

DATE: June 28, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for a Skilled Worker

The Petitioner, a healthcare staffing business, seeks to employ the Beneficiary as a registered nurse. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(B)(3)(A)(i). This employment-based "EB-3" immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires at least two years of training or experience.

The Director of the Nebraska Service Center denied the petition on the ground that the Petitioner failed to establish that the Beneficiary has the requisite educational credential to meet the minimum educational requirement stated on the ETA Form 9089, Application for Permanent Employment Certification (ETA 9089).

On appeal the Petitioner asserts that the Director's decision was erroneous and that the Beneficiary meets the minimum educational requirement on the ETA 9089.

In visa petition proceedings it is the petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

This petition is for a Schedule A occupation. A Schedule A occupation is one codified at 20 C.F.R. § 656.5(a) for which the Department of Labor (DOL) has determined that there are not sufficient U.S. workers who are able, willing, qualified and available and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of aliens in such occupations. The current list of Schedule A occupations includes professional nurses. *Id*. Petitions for Schedule A occupations do not require the petitioner to test the labor market and obtain a certified ETA 9089 (Application for Permanent Employment Certification) from the DOL prior to filing the petition with U.S. Citizenship and Immigration Services (USCIS). Instead, the petition is filed directly with USCIS with an uncertified ETA 9089 in duplicate. *See* 8 C.F.R. § 204.5(a)(2); *see also* 20 C.F.R. § 656.15.

II. ANALYSIS

To be eligible for classification as a skilled worker a beneficiary must have at least two years of training or experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(B). Relevant post-secondary education may be considered as training for the purpose of qualifying for skilled worker classification. *See* 8 C.F.R. § 204.5(l)(2). A beneficiary must also meet the specific educational, training, experience, and other requirements of the ETA 9089 that accompanies the petition. *See* 8 C.F.R. § 204.5(l)(3)(ii)(B). All requirements must be met by the petition's priority date,[1] which in this case is June 22, 2020. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

A. Requirements of the Labor Certification

The requirements for the proffered position of registered nurse are indicated in section H of the ETA 9089 (Job Opportunity Information). The pertinent requirements are as follows:

4.	Education: Minimum level required:	Associate's
4-B.	Major field of study	Nursing
5.	Is training required for the job?	No
6.	Is experience in the job offered required?	No
7.	Is an alternate field of study acceptable?	No
8.	Is an alternate combination of education and experience acceptable?	No
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	No
14.	Specific skills or other requirements:	
	Nursing Degree and proof of NCLEX[2] passage, CGFNS[3] Certificate or licensing in the state of intended employment	

B. Beneficiary's Qualifications

With its initial evidence the Petitioner submitted a copy of the Beneficiary's educational credential which shows that she was awarded a "Certificate of General Nursing and Midwifery" by [redacted] Nurses and Midwives Council in [redacted] India, on August 10, 1990, following completion of a three-year program at the School of Nursing [redacted] in [redacted] from January 1987 to January 1990, and the passage of the final examination in March 1990. The Petitioner also submitted a partial copy of the Beneficiary's application for a CGFNS Certificate in 2004 which stated that she had received a diploma (not a degree) of "General nurses' & Midwifery" from the [redacted]

[1] The "priority date" of an employment-based immigrant petition is ordinarily the date the underlying labor certification application was filed with the DOL. *See* 8 C.F.R. § 204.5(d). In this case, however, since the petition did not require a certified ETA 9089, the "priority date" is the date the petition (with the completed but uncertified ETA 9089) was filed with USCIS.

[2] National Council Licensure Examination for Registered Nurses.

[3] Commission on Graduates of Foreign Nursing Schools.

School of Nursing, a printout stating that the Beneficiary passed the NCLEX-RN on June 7, 2007, and a copy of the Beneficiary's current CGFNS Certificate, issued on February 2, 2020.

In response to the Director's request for evidence (RFE) the Petitioner submitted an evaluation of the Beneficiary's education from the Foundation for International Services, Inc. (FIS evaluation), dated October 20, 2020, which asserted that the Beneficiary's Certificate of General Nursing and Midwifery from [redacted] Nurses and Midwives Council was equivalent to an associate's degree in nursing from a regionally accredited institution in the United States.

In denying the petition the Director cited the credential advice in the Electronic Database for Global Education (EDGE),[4] created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO),[5] which stated that the Diploma of General Nursing and Midwifery in India is comparable to a diploma in nursing in the United States. The Director indicated that a diploma in nursing, though an acceptable level of education for a registered nurse, is not the same as an associate's degree in nursing. The Director reviewed the three educational paths to becoming a registered nurse – including a bachelor's degree in nursing, an associate's degree in nursing, or a diploma from an approved nursing program – and indicated that the ETA 9089 in this case required an associate's degree in nursing, not a diploma. The Director concluded that the Beneficiary did not have the requisite educational credential to qualify for the proffered position under the terms of the ETA 9089.

On appeal the Petitioner submits a second evaluation of the Beneficiary's nursing credential from Park Evaluations which, like the earlier FIS evaluation, asserts that the Certificate of General Nursing and Midwifery is equivalent to a U.S. associate's degree in nursing. According to the Park evaluation the [redacted] College of Nursing has been an affiliate of [redacted] University, is currently affiliated with the [redacted] University of Health Sciences, and itself grants bachelor's degrees and master's degrees. The Park evaluation acknowledges that "Nursing Diploma" programs typically only consist of practical nursing training, but asserts that the Beneficiary's transcripts show that she completed three years of college level studies consistent with an associate's degree program, not a diploma program. The Petitioner sums up the Park evaluation as confirming that the Beneficiary's nursing program was equivalent to a U.S. associate's degree program because (1) the Indian school is associated with a university, (2) the school is a degree-granting institution on par with a university, and (3) the Beneficiary's course load was consistent with a U.S. associate's degree in nursing. Finally, the Petitioner contends that regardless of what the Beneficiary's educational credential is called in India, in this case a Certificate of General Nursing and Midwifery, its coursework was substantively equivalent to that of a two-year associate's degree in nursing in the United States. Therefore, the title of the Indian credential should not be controlling in evaluating its equivalency to a U.S. associate's degree.

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[4] EDGE is described on its registration page as "the leading US resource for evaluating foreign educational credentials for more than 15 years." *http://aacrao.org/edge/about-edge* (last visited June 25, 2021). Federal courts have upheld the utilization of EDGE by USCIS as a resource for determining the U.S. equivalency of foreign educational credentials. *See Confluence International, Inc. v. Holder*, 2009 WL 825793 (D. Minn. March 27, 2009); *Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E. D. Mich. August 20, 2010); and *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464134 (E. D. Mich. August 30, 2010).

[5] AACRAO is described on its website as "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries." *http://www.aacrao.org/who-we-are* (last visited June 25, 2021).

To determine what a job opportunity requires, 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 labor certification application form. *Id.* at 834. USCIS may not ignore a term of the ETA 9089, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). "The Form ETA 9089 is a legal document and as such the document must be considered in its entirety." *Matter of Symbioun Techs., Inc.*, 2010-PER-10422, 2011 WL 5126284 (BALCA Oct. 24, 2011) (finding that a "comprehensive reading of all of Section H" of the labor certification clarified an employer's minimum job requirements).[6] In other words, the ETA 9089 must be read as a whole.

Applying these guidelines to the case at hand, we do not agree with the Petitioner's argument that the title of the Beneficiary's educational credential is not important in our determination of whether it meets the minimum educational requirement of the ETA 9089. Sections H.4 and H.9 of the ETA 9089 state that an associate's level of education in the field of nursing, or a foreign educational equivalent, is the minimum educational requirement for the job of registered nurse, and lest there be any question as to the exact type of credential required, section H.14 specifies that it must be a nursing degree. Based on the plain language of the ETA 9089, and considering the document as a whole, we conclude that a nursing degree, not a nursing certificate or diploma, is required to qualify for the job offered.

With regard to the Park evaluation submitted on appeal, the Petitioner's three-point summation does not appear to reflect what it actually says. The Park evaluation states that [redacted] College of Nursing" has university affiliations and grants bachelor's and master's degrees. However, the Beneficiary did not earn her nursing certificate from the [redacted] College of Nursing, but rather from the [redacted] School of Nursing. According to its website, the [redacted] College of Nursing (established in 2002) is a different institution from the [redacted] School of Nursing (established in 1969) and was not even in existence at the time the Beneficiary attended the latter institution in the years 1987-1990. *See* [redacted] (last visited June 25, 2021). Therefore, the Park evaluation seems to have focused on the wrong institution, and does not assert that the [redacted] School of Nursing, which the Beneficiary attended, has university affiliations or that it grants bachelor's and master's degrees. Furthermore, while the Park evaluation states that the Beneficiary's course load at the [redacted] School of Nursing was consistent with a U.S. associate's degree in nursing, no transcripts were provided with the evaluation to confirm what courses actually comprised the Beneficiary's nursing program.[7] Thus, the Park evaluation's claim that the substance of the Beneficiary's educational credential from the [redacted] School of Nursing was equivalent to a U.S. associate's degree in nursing has no foundation in the record.

[6] Although we are not bound by decisions issued by the Board of Alien Labor Certification Appeals (BALCA), we may nevertheless take note of the reasoning in such decisions when considering issues that arise in the employment-based immigrant visa process.

[7] The earlier evaluation from FIS likewise failed to identify the Beneficiary's course load at the [redacted] School of Nursing, and did not claim that any transcripts were reviewed.

Contrary to the Petitioner's claim, there is no evidence in the record that the [redacted] School of Nursing is a degree-granting institution. The educational credential earned by the Beneficiary at that school was not an associate's degree, or a degree of any kind, but rather a Certificate of General Nursing and Midwifery. The Beneficiary expressly acknowledged this difference on her application for a CGFNS Certificate in 2004 by checking the box for Certificate/Diploma, not the box for Degree, in identifying her type of credential. While many of the courses in the general nursing and midwifery program at the [redacted] School of Nursing may correspond to courses in an associate's degree program at another institution, the fact remains that the Beneficiary was awarded a Certificate of General Nursing and Midwifery, not an associate's degree in nursing. Therefore, the Beneficiary's credential does not meet the minimum educational requirement of the ETA 9089, which is an associate's degree in nursing, whether U.S. or a foreign equivalent.

III. CONCLUSION

The Petitioner has not established that the Beneficiary meets the minimum educational requirement of the ETA 9089 to qualify for the proffered position of registered nurse. The appeal will be dismissed for this reason.

ORDER: The appeal is dismissed.