U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-E-, INC.

DATE: MAR. 13, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an electrical contractor, seeks to employ the Beneficiary as a business operations specialist. It requests her classification as a professional under the third-preference, immigrant category. *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, "EB-3" category allows a U.S. business to sponsor a foreign national with a bachelor's degree for lawful permanent resident status.

After the Director of the Nebraska Service Center denied the petition, we dismissed the Petitioner's appeal. *See Matter of D-E-, Inc.*, ID# 595227 (AAO Aug. 18, 2017). Affirming the Director's decision, we concluded that the Petitioner did not establish the equivalency of the Beneficiary's foreign university diploma to a U.S. bachelor's degree, as required for the offered position and the requested classification.

The matter is again before us on the Petitioner's motions to reopen and reconsider. The Petitioner submits additional evidence and asserts that our appellate decision violates Department of Homeland Security (DHS) regulations, the Petitioner's due process rights, and equitable principles of law.

Upon review, we will deny the motions.

I. LAW

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

II. THE MOTION TO RECONSIDER

On appeal, we found that the Beneficiary's three-year Romanian degree did not equate to a U.S. bachelor's degree, as required for the offered position and the requested classification. On motion,

the Petitioner asserts that we must find that the Beneficiary has the required bachelor's degree because USCIS previously granted her H-1B nonimmigrant visa status. The Petitioner states that, because the Beneficiary qualified for an H-1B, she "should not have been denied Permanent Employment Status under a new set of rules."

As explained in our appellate decision, however, the educational criteria for H-1B and EB-3 professionals differ. An H-1B beneficiary may have a U.S. baccalaureate equivalency based on a combination of education and experience. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) (allowing three years of work experience to substitute for one year of U.S. university education).[1] The preamble to the regulations governing employment-based immigrant petitions, however, specifies that EB-3 professionals must have U.S. baccalaureate equivalencies based solely on degrees, uncombined with experience. *See* Final Rule for Employment-Based Petitions, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (stating that "both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification . . ., an alien must have at least a bachelor's degree"). Thus, USCIS' approval of the Beneficiary's H-1B petition did not guarantee her qualifications as an EB-3 professional because the regulatory scheme governing H-1B nonimmigrant visa petitions differs from the one governing employment-based immigration.[2] Here, the Petitioner did not establish the Beneficiary's possession of the degree required by the labor certification and for professional classification.

The record on motion lacks any pertinent precedent or adopted decision, statutory or regulatory provision, or statement of DHS or USCIS policy to support the Petitioner's contention that our prior decision was incorrect. Rather, the Petitioner makes general claims that our decision deprived it of due process rights. After twice finding in H-1B proceedings that the Beneficiary has a U.S. baccalaureate equivalency, the Petitioner asserts that USCIS did not properly notify it of her diploma's insufficiency for professional classification in immigrant visa petition proceedings. Our

[1] Even if USCIS had determined that her diploma alone equates to a U.S. baccalaureate degree, the service center decision would not have bound us in this matter. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000) (holding that the AAO need not follow contrary service center decisions).

[2] The Petitioner asserts that we "violated . . . regulations" by discounting an evaluation that equated the Beneficiary's foreign university diploma to a U.S. bachelor's degree. The Petitioner notes that an evaluation by a reliable credentials evaluation service may establish a beneficiary's possession of a U.S. baccalaureate equivalency. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*2*). The regulation cited by the Petitioner governs H-1B proceedings. Nonetheless, we agree that an evaluation from a reliable credentials service may also establish a beneficiary's possession of a U.S. baccalaureate equivalency in immigrant visa proceedings. But an evaluation does not always establish a beneficiary's educational qualifications. We may reject such expert testimony, or give it lesser evidentiary weight, if it conflicts with evidence of record or "is in any way questionable." *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). Here, other evidence of record conflicts with the evaluation's conclusion. Copies of records from a Romanian university indicate that the Beneficiary received her diploma after completing six semesters of coursework. A U.S. bachelor's degree typically requires four years, or eight semesters, of college coursework. *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). The evaluation does not explain how the Beneficiary's six-semester diploma equates to an eight-semester U.S. bachelor's degree. The evaluation therefore does not establish the Beneficiary's possession of a foreign equivalent of a U.S. bachelor's degree. Because the evaluation conflicts with other evidence of record, we did not violate regulations by discounting it.

review of the record and the adverse decision, however, indicates that the Director properly applied the applicable statute and regulations governing the professional immigrant classification to the Petitioner's case. As previously discussed, the Petitioner has not demonstrated that the denial was erroneous.

Finally, the Petitioner asserts that, because it relied on USCIS' H-1B approvals as confirming the Beneficiary's possession of a U.S. baccalaureate equivalency, the petition's denial should be estopped. We have no authority to apply the judicially devised doctrine of equitable estoppel to preclude a USCIS component from undertaking a lawful course of action that it is empowered to pursue by statute and regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338-39 (BIA 1991). Estoppel is an equitable form of relief that is available only through the courts. There is no delegation of authority, statute, regulation, or other law that permits us to apply this doctrine to the cases before us. *Id.* For the foregoing reasons, the motion to reconsider does not establish our misapplication of law or policy. We will therefore deny the motion to reconsider.

III. THE MOTION TO REOPEN

In support of its estoppel argument, the Petitioner submitted an affidavit from its president. The affidavit states the company's reliance on the Beneficiary's performance of her duties and on USCIS' findings regarding her educational qualifications in H-1B proceedings. As discussed above, we lack authority to apply estoppel. The affidavit does not otherwise demonstrate the Beneficiary's possession of the minimum education required for the offered position and the requested classification. We will therefore deny the motion to reopen.

IV. CONCLUSION

The Petitioner has not shown proper cause for reopening or reconsideration, or established eligibility for the benefit sought.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of D-E-, Inc.*, ID# 962883 (AAO Mar. 13, 2018)