U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7880559

Date: MAR. 13, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Professional

The Petitioner seeks to employ the Beneficiary as a property manager (director of operations) under the third-preference, immigrant classification as a member of the professions. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii).

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the Beneficiary's possession of the minimum education required for the offered position and the requested visa classification.

The Petitioner bears the burden of establishing 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. EMPLOYMENT-BASED IMMIGRATION

Immigration as a professional generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain DOL certification. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for an offered position. *Id.* Labor certification also indicates that employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS determines whether a beneficiary meets the requirements of a DOL-certified position and a requested visa classification. If USCIS grants a petition, a foreign national may finally apply 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 REQUIRED EDUCATION

A professional must hold a U.S. bachelor's degree or a foreign equivalent degree. 8 C.F.R. § 204.5(l)(2) (defining the term "professional"). A petitioner must also demonstrate a beneficiary's

possession of all DOL-certified job requirements of an offered position by a petition's priority date.[1] *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). In evaluating a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine a position's minimum job requirements. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

Here, the accompanying labor certification states the minimum educational requirements of the offered position of property manager as a U.S. bachelor's degree or a foreign equivalent degree in "Liberal Arts." On the labor certification, the Beneficiary attested that, by the petition's priority date, an Irish university awarded him a bachelor's degree in humanities. As proof of the Beneficiary's educational qualifications, the Petitioner submitted copies of his bachelor of arts (honours) diploma from the university and his examination results. The Petitioner also submitted an independent, professional evaluation of the Beneficiary's foreign educational credentials, concluding that his Irish bachelor's degree equates to a U.S. bachelor's degree in humanities.

Noting that the Beneficiary's exam results indicated his completion of a three-year degree, the Director concluded that the Petitioner did not demonstrate the Beneficiary's possession of a foreign equivalent of a U.S. bachelor's degree. U.S. baccalaureate degrees usually require four years of study. *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). The Director also consulted the Electronic Database for Global Education (EDGE), an online, peer-reviewed resource that federal courts have found to be a reliable source of foreign educational equivalencies.[2] EDGE indicates that, while a four-year bachelor (honours) degree from Ireland compares to a U.S. bachelor's degree, a three-year, Irish bachelor (honours) degree equates to only three years of U.S. university or college study.

On appeal, the Petitioner asserts that, as of the petition's priority date in May 2018, the Beneficiary met the minimum educational requirement of the offered position and the requested visa classification. The Petitioner states that, at that time, EDGE equated the Beneficiary's three-year Irish degree to a U.S. bachelor's degree. The Petitioner provided copies of an e-mail exchange between its evaluator and an EDGE representative. The evaluator's message states:

> As of at least March 2018 your organization viewed all Irish Bachelor (Honours) credentials as equivalent to a bachelor's degree in the United States. I first noticed in December 2018 that you added the three-year Irish Bachelor (Honours) to the entry

[1] This petition's priority date is May 17, 2018, the date DOL accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

[2] EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), "a non-profit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in more than 40 countries." AACRAO, "Who We Are," https://www.aacrao.org/who-we-are (last visited Mar. 10, 2020); *see also Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as "a respected source of information").

> and advised the equivalent of three years of university study. Would it be possible to let me know when you added the three-year entry to the database?

The EDGE representative responded: "I believe that update was made in October [2018]."

The Petitioner argues that, because EDGE considered the Beneficiary's degree the equivalent of a U.S. bachelor's degree as of the petition's priority date, "the change in EDGE's criteria is irrelevant to the adjudication of this petition." The Petitioner cites *Wing's Tea House* and a prior case, both holding that beneficiaries must meet DOL-certified job requirements by petitions' priority dates.

Contrary to the Petitioner's argument, however, a petitioner must establish eligibility not only as of a petition's priority date, but also at the time of its filing and throughout its adjudication. 8 C.F.R. § 103.2(b)(1).

Also, a favorable EDGE opinion is not required to establish the equivalency of a foreign credential to a U.S. degree. EDGE is a respected tool that USCIS may use when facing inconsistent evidence or questions regarding foreign educational credentials. But EDGE represents only one expert opinion. Despite an unfavorable EDGE report, a petitioner may demonstrate the required equivalency of a foreign credential by submitting expert opinions from other sources or by rebutting EDGE's opinion. We must weigh expert testimony under a variety of factors, including: the extent of an expert's qualifications; and the testimony's relevance, reliability, and probative value regarding specific facts at issue. *See Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing expert testimony in the context of removal proceedings).

Following EDGE's change of opinion, the Petitioner does not submit a revised evaluation or opinions from other sources. Rather, it relies on the original evaluation it submitted with the petition and EDGE's prior concurrence with it. The evaluation states that it does not rely solely on EDGE. A footnote in the evaluation states: "The FIS equivalency was not reached by simply referencing one proprietary online database [EDGE]." But the evaluation does not establish the equivalency of the Beneficiary's three-year Irish bachelor's (honours) degree in humanities to a U.S. baccalaureate degree in humanities. The evaluation does not explain how the Beneficiary's three years of university study in Ireland equates to the usual four years of baccalaureate study in the United States. The evaluation does not, for example, compare the Beneficiary's curriculum and credits to those of U.S. baccalaureate programs in humanities. In fact, the evaluation does not even mention the length of the Beneficiary's baccalaureate program. As such, the Petitioner's original evaluation appears deficient.

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary's possession of a U.S. bachelor's degree or a foreign equivalent degree by the petition's priority date. The record therefore does not establish the Beneficiary's qualifying education for the offered position or the requested visa classification.

III. ABILITY TO PAY THE PROFFERED WAGE

Although unaddressed by the Director, the record also does not establish the Petitioner's ability to pay the proffered wage of the offered position. A petitioner must demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). If a petitioner employs less than 100 people, as in this case, evidence of ability to pay must include copies of annual reports, federal tax returns, or audited financial statements. *Id.*

Here, the labor certification states the proffered wage of the offered position of property manager as $56,000 a year. As previously noted, the petition's priority date is May 17, 2018.

The Petitioner submitted a copy of its federal income tax return for 2017. Contrary to 8 C.F.R. § 204.5(g)(2), however, the record lacks required evidence of the Petitioner's ability to pay the proffered wage in 2018, the year of the petition's priority date, or thereafter. The record therefore does not establish the Petitioner's continuing ability to pay from the petition's priority date onward.

In any future filings in this matter, the Petitioner must submit copies of annual reports, federal tax returns, or audited financial statements for 2018 and, if available, 2019. The Petitioner may also submit additional evidence of its ability to pay, including proof of wage payments to the Beneficiary during the relevant period and materials supporting the factors stated in *Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

IV. CONCLUSION

The record on appeal does not establish the Beneficiary's possession of the minimum education required for the offered position or the requested visa classification. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.