U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13714893

DATE: MAR. 19, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for a Professional

The Petitioner, a jewelry wholesale and retail business, seeks to employ the Beneficiary as a management analyst. It requests professional classification for the Beneficiary 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 on the ground that the Petitioner did not establish that the Beneficiary has a U.S. bachelor's degree or a foreign equivalent degree, as required to meet the educational requirement of the labor certification and to qualify for classification as a professional.

On appeal the Petitioner submits a brief and supporting documentation, most of which was already in the record. According to the Petitioner the evidence establishes that the Beneficiary has a foreign equivalent degree to a U.S. bachelor's degree, and therefore has the requisite education to meet the labor certification requirement and qualify for professional classification.[1]

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

I. LAW

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). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are

[1] The Form I-290B, Notice of Appeal or Motion, was filed by the Petitioner without legal representation on July 30, 2020. On September 8, 2020, an appeal brief with supporting materials was filed by the Petitioner's former counsel, [redacted], of the [redacted]. However, the filing was not accompanied by a new, properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, as required by the regulation at 8 C.F.R. § 292.4(a). Therefore, on October 5, 2020, we sent a Notice of Self-Representation to the Petitioner, stating that: "This notice is to inform you that we consider the . . . petitioner to be self-represented for the above-referenced appeal."

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 approves the petition, the foreign national may 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. ANALYSIS

The instant petition was accompanied by a labor certification that was filed with the DOL on June 18, 2013, and certified by the DOL on February 18, 2014. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in pertinent part:

> 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 . . . Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.

A beneficiary must also meet the specific educational, training, experience, and other requirements of the labor certification as of the petition's priority date,[2] which in this case is June 18, 2013. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

The requirements for the proffered position of management analyst are indicated in section H of the labor certification, which specifies that a bachelor's degree in "science/business management" or a foreign educational equivalent is required. According to section J (boxes 11-16) of the labor certification, the Beneficiary met the educational requirements of section H by virtue of a bachelor of science degree in 1988 from [redacted] University in [redacted] India.

As evidence of the Beneficiary's educational credentials the Petitioner submitted copies of the following documents:

- A diploma and transcript from [redacted] University indicating that the Beneficiary received a bachelor of science after examinations in February 1988 that completed either a two-year or a three-year degree program.[3]
- A statement of marks, a provisional certificate, and a diploma from [redacted] University in [redacted] India, according to which the Beneficiary was awarded a master of science in zoology on January 28, 2005, after completing an academic program of uncertain length and passing the degree examination in December 2004.

[2] The priority date of an employment-based immigrant petition is the date the underlying labor certification is filed with the DOL. *See* 8 C.F.R. § 204.5(d).

[3] Neither the diploma nor the transcript is clear on its face as to whether the bachelor of science is a two-year or a three-year degree.

- An evaluation of the Beneficiary's educational credentials by Multinational Education & Information Services, Inc. (MEIS), dated January 15, 2015, which asserts that the Beneficiary's bachelor's degree from [redacted] University is equivalent to three years of academic studies at a U.S. university,[4] that his master of science degree from [redacted] University is equivalent to two years of postgraduate study at a U.S. university, and that the second degree following the first is equivalent to a bachelor's degree in science plus one year of graduate studies from a U.S. university.

Thus, the Petitioner submitted documentary evidence of an educational degree for the Beneficiary at [redacted] University that was not identified or claimed in the labor certification.

Though the labor certification does not require any experience to qualify for the proffered position, the Beneficiary's prior work experience is nonetheless listed in section K. Three jobs are listed from July 2001 to the filing of the labor certification application in June 2013. As listed in the labor certification, the jobs include: (1) manager of a jewelry business in [redacted] India, from July 2001 to October 2003; (2) manager of a jewelry business in [redacted] Michigan, from November 2003 to November 2008; and (3) management analyst with the Petitioner in [redacted] Missouri (a former address), from November 2009 onward.

In a notice of intent to deny (NOID) issued on April 21, 2020, the Director reviewed the Petitioner's three previous Form I-140 petitions filed on behalf of the Beneficiary in 2010, 2012, and 2014, the first two of which requested advanced degree professional classification, and the third of which (like the current petition filed in 2015) requested professional classification. The first two petitions were accompanied by a labor certification that was filed with the DOL and certified in 2010, while the third and fourth petitions were accompanied by the labor certification that was filed with the DOL in 2013 and certified in 2014. Neither of the labor certifications, including that filed with the advanced degree professional petitions, claimed that the Beneficiary earned a master's degree at [redacted] University in 2005 and no claim was made in any of the first three petitions that the Beneficiary earned such a degree. All three of the previous petitions were denied on the ground that the Beneficiary's degree from [redacted] University, the only educational degree identified in the labor certifications, was not equivalent to a U.S. bachelor's degree, as required for professional or advanced degree professional classification.

The Director also highlighted the fact that the labor certification in this matter indicates the Beneficiary was working in [redacted] Michigan, from November 2003 to November 2008,[5] and that

[4] An earlier evaluation by MEIS, authored by the same evaluator on March 25, 2009, and submitted in support of previous Form I-140 petitions submitted by the Petitioner on behalf of the Beneficiary in 2010, 2012, and 2014, asserted that the Beneficiary's bachelor of science degree from [redacted] University was equivalent to two (not three) years of academic studies at a U.S. university. Furthermore, the MEIS evaluation in 2009, unlike the later evaluation in 2015, made no mention of any master's degree earned by the Beneficiary at [redacted] University in 2005. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). We may give an opinion less weight, however, if it is not in accord with other information in the record or is in any way questionable. *Id.* Due to the inconsistencies in the two MEIS evaluations discussed above, the 2015 evaluation submitted in this proceeding has limited evidentiary weight.

[5] The earlier labor certification filed with the Petitioner's first two Form I-140 petitions also listed the Beneficiary's [redacted] Michigan, employment in the years 2003-2008.

employment verification letters were submitted with the earlier petitions to substantiate the employment claims. In view of the Beneficiary's employment history, the Director questioned how the Beneficiary could study and earn a degree at an Indian university in 2004-2005 at the same time he was working in the United States.

In response to the NOID the Petitioner asserted that the Beneficiary was able to work in the United States while earning a master's degree in India because "the Master's Program was done through correspondence, which is evidenced by the Marksheet, which indicates that there were no lab classes for this course." According to the Petitioner, the Beneficiary's master's degree from [redacted] University was not mentioned in either of the two labor certifications "[s]ince USCIS does not give much importance to the correspondence courses."

The Director regarded the Petitioner's response to the NOID as inadequate, and denied the petition. In his decision the Director pointed out that the statement of marks from [redacted] University does not identify any of the classes as correspondence courses. The Director also noted that the Petitioner did not provide any documentation from the university confirming that it offers correspondence courses or a letter from the university verifying the Beneficiary's degree. In sum, the Director indicated that he was not persuaded as to the authenticity of the Beneficiary's degree from [redacted] University. The Director also stated that the foregoing circumstances indicated the possibility of fraud or willful misrepresentation of a material fact in the labor certification and the associated petition, though no specific finding was made in this regard.

On appeal the Petitioner reiterates its contention that the Beneficiary earned a two-year master's degree through correspondence courses at [redacted] University at the same time he was working in the United States; that this degree, building on the Beneficiary's previous three-year bachelor's degree from [redacted] University, is equivalent to a U.S. bachelor's degree and one year of post-graduate study; and that the U.S. equivalency of the Beneficiary's degree from [redacted] University meets the educational requirement of the labor certification and qualifies him for professional classification. However, the Petitioner does not submit any further documentation to verify the authenticity of the Beneficiary's alleged degree from [redacted] University. Contrary to the Petitioner's claim, the statement of marks does not identify any of the listed classes as correspondence courses. Moreover, the academic record appears incomplete since the statement of marks is identified as the final year of the Beneficiary's Master of Science (Zoology), Session 2004-2005. There is no statement of marks for any prior year in the degree program. Furthermore, the Petitioner failed to submit a letter from an authorized official of [redacted] University verifying the authenticity of the Beneficiary's degree, as noted in the Director's decision.

It is remarkable that a master's degree from an accredited Indian university would not be identified in the labor certifications accompanying four separate I-140 petitions, especially since all four requested professional or advanced degree professional classification and the three earlier petitions were all denied on the ground that the Beneficiary's (two-year) bachelor's degree from [redacted] University was not equivalent to a U.S. bachelor's degree. The labor certification accompanying the instant petition continues to identify the Beneficiary's bachelor's degree from [redacted] University in 1988 (now claimed to be a three-year degree) as the Beneficiary's highest level of education relevant to the proffered position of management analyst. Considering the Petitioner's prior petitions all resulted in

denials for professional or advanced degree professional classification based on the Beneficiary's 1988 degree from [redacted] University, the Petitioner's explanation that it did not mention a 2005 master's degree from [redacted] University in either of the two labor certifications because "USCIS does not give much importance to the correspondence courses" does not seem credible. If USCIS does not believe that a fact stated in support of a petition is true, it may reject that fact. *See* section 204(b) of the Act; *Anetekhai v. INS*, 876 F.2d 1218, 1220 (5th Cir. 1989; *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F.Supp.2d 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS*, 153 F.Supp.2d 7, 15 (D.D.C. 2001).

It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's evidence also reflects on the reliability of the petitioner's remaining evidence. *See id.*

As discussed in the foregoing analysis, the Petitioner has not resolved the inconsistencies in the record. It has not offered a plausible explanation for its failure to identify the Beneficiary's alleged master's degree from [redacted] University in the labor certifications accompanying four separate I-140 petitions, including the current one. It has not submitted the Beneficiary's complete academic record from that university. Most importantly, it has not submitted a letter from an authorized official of [redacted] University verifying the authenticity of the Beneficiary's degree. Accordingly, the Petitioner has not established that the Beneficiary has a master's degree from [redacted] University.

Thus, the Beneficiary's highest degree, as far as the record establishes, is his two- or three-year bachelor of science from [redacted] University, which is not equivalent to a U.S. bachelor's degree which generally requires four years of academic studies. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). The degree from [redacted] University does not meet the educational requirement of the labor certification and is insufficient to qualify the Beneficiary for the requested classification of professional.

III. CONCLUSION

The Petitioner has not established that the Beneficiary has a U.S. bachelor's degree or a foreign equivalent degree, as required to meet the educational requirement of the labor certification and to qualify for professional classification. We will dismiss the appeal for this reason.

ORDER: The appeal is dismissed.