U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-M-, INC.

DATE: MAR. 21, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a mosque, seeks to employ the Beneficiary as an imam. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The petition was initially approved, but the approval was subsequently revoked by the Director of the Texas Service Center on multiple grounds. The Director found that the Petitioner did not establish that the Beneficiary satisfied the minimum educational and experience requirements of the labor certification – specifically, a 4-year bachelor's degree or a foreign equivalent degree and 5 years of progressive experience in the job offered. The Director also found that the Petitioner did not provide evidence of its ability to pay the proffered wage.

The matter is now before us on appeal. The Petitioner has submitted a brief and asserts that the petition should be re-approved based on the evidence of record. Upon *de novo* review, we will dismiss the appeal.

I. LAW

A. Classification as Advanced Degree Professional

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1). The term "advanced degree" is defined, in pertinent part, as follows in 8 C.F.R. § 204.5(k)(2):

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

A beneficiary must also meet all of the education, training, experience and other requirements specified on the labor certification as of the priority date of the petition. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

The regulation at 8 C.F.R. § 204.5(g)(2) provides that "[a]ny 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."

B. Revocation of an Approved Immigrant Petition

Section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *See Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

II. ANALYSIS

The Director revoked the petition's approval finding that it was approved in error. As discussed below, we find that the Director properly revoked the petition's approval, as the record does not demonstrate that the Petitioner and the Beneficiary are eligible for the benefit sought.

A. Beneficiary Does Not Possess the Education Required for the Offered Position or for Classification as an Advanced Degree Professional

The Form I-140 petition, Immigrant Petition for Alien Worker, was accompanied, as required by statute, by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), which had been filed with and certified by the U.S. Department of Labor (DOL). The date the labor certification was received by the DOL, July 17, 2012, is the priority date of the petition. *See* 8 C.F.R. § 204.5(d).

As noted, in order to be eligible for classification as an advanced degree professional, the Beneficiary must possess an advanced degree or its equivalent and otherwise qualify for the offered position, as it is described on the labor certification. In section H of the labor certification the Petitioner stated that the minimum requirements to qualify for the job offered are a bachelor's degree in Islamic studies, or a foreign educational equivalent, plus 60 months of experience in the job offered. In section J of the labor certification the Beneficiary claimed that he met the bachelor's degree requirement with a degree in Islamic studies from in Pakistan. In section K of the labor certification the Beneficiary claimed that he met the 5-year experience requirement of the job offered with two previous jobs as an imam, totaling 9 years of experience. Thus, the Petitioner asserts that the Beneficiary is eligible for classification as an advanced degree professional and meets the terms of the labor certification on the basis of the Beneficiary's possession of a foreign equivalent degree to a U.S. bachelor's degree in Islamic studies and 5 years of qualifying experience as an imam, in accord with 8 C.F.R. § 204.5(k)(3)(i)(B).

As evidence of the Beneficiary's educational credentials, the Petitioner has submitted documentation of his secondary, intermediate, higher, and post-secondary education at religious institutions in Pakistan. This evidence indicates that the Beneficiary, a Pakistani national born in received a religious education at in from 1984 to 1992, and later pursued further religious studies at in The Beneficiary earned the following credentials:

- a "Certificate of Intermediate (F.A.)" from after passing an examination in 1989;
- a "Higher Degree (Bachelor of Arts)" from on July 10, 1991;
- a certificate of issued by the on May 31, 1992;[1] and
- a certificate issued by the on April 28, 1999.[2]

In attempt to establish the U.S. educational equivalency of the foregoing credentials the Petitioner submitted an academic equivalency evaluation by which asserted that the Beneficiary's diploma in Arabic and Islamic studies from the in 1992 – an – was a post-secondary certificate equivalent to 2 to 3 years of academic studies toward a bachelor of arts degree at an accredited U.S. college or university. evaluation also asserted that the Beneficiary's subsequent certificate from the in 1999 followed the completion of advanced baccalaureate-level studies concentrating in Islamic studies. Taken together viewed the Beneficiary's certificates from the and the as equivalent to a bachelor of arts degree in Islamic studies from an accredited U.S. college or university. According to it

[1] The certificate notes that the Beneficiary passed exams and was awarded the certificate by but identifies the Beneficiary as a student of

[2] The certificate notes that the Beneficiary passed exams and was awarded the certificate by but identifies the Beneficiary as a student of

reviewed the subject matter and credit hours of the courses taken by the Beneficiary to earn his credentials from the and the but no specifics were provided and no transcripts were attached to the evaluation.

The Petitioner submitted another academic equivalency evaluation from the in which asserted that the certificate earned by the Beneficiary at the in 1992 – the – is considered by some as equivalent to a master of arts in Arabic/Islamic studies, but would have to be augmented by two additional subjects to qualify the holder to employment other than teaching. No further elucidation was provided by the evaluator, nor any corroborating documentation.

Thus, the evaluations from and the are not consistent, not well supported, and short on persuasive analysis. Evaluations of academic credentials by evaluation services are utilized by U.S. Citizenship and Immigration (USCIS) as advisory opinions only. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). We find that the inconsistent and substantively deficient evaluations from and the have little probative value as evidence of the U.S. equivalency of the Beneficiary's educational credentials from the and the

The Educational Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), is another resource for assessing the U.S. equivalency of foreign educational credentials. USCIS considers EDGE to be a reliable, peer-reviewed source of information about the equivalencies of foreign educational credentials. [3]

Based on the EDGE overview of the Pakistani educational system and the Beneficiary's credentials in this case, we find that the "Certificate of Intermediate (F.A.)" awarded to the Beneficiary after passing the requisite examination in 1989 was comparable to the completion of senior high school in the United States. EDGE indicates that after a secondary school certificate (comparable to an 11th grade education in the United States) a 2-year diploma can be earned which is comparable to the completion of vocational or other specialized high school curriculums in the United States, or a 3-year diploma which is comparable to 1 year of U.S. university study. In addition, a 2- or 3-year bachelor of arts degree can be earned after a higher secondary school certificate (comparable to a high school education in the United States) which is comparable to 2 or 3 years of university study in the United States. It is not clear whether any of these post-secondary credentials described in EDGE

[3] 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 and agencies in the United States and in over 40 countries." AACRAO, http://www.aacrao.org/homea/about (last accessed March 17, 2017). "Its mission is to provide professional development, guidelines, and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology, and student services." *Id.* EDGE is "a valuable resource for evaluating educational credentials earned in foreign systems." AACRAO EDGE, http://aacrao.org/aacrao-solutions/aacrao-international/aacrao-edge/edge (last accessed March 17, 2017).

corresponds to the post-secondary credentials earned by the Beneficiary. No transcripts have been submitted listing the Beneficiary's coursework at the [redacted] or the [redacted] which could serve to clarify the educational content of his credentials from those institutions. In any event, none of the 2- or 3-year credentials described in EDGE is comparable to a U.S. bachelor's degree, which generally takes 4 years to complete. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977).

Furthermore, it does not appear that any of the Beneficiary's post-secondary credentials were earned at an accredited college or university. For classification as a member of the professions the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." We cannot conclude that the evidence required to demonstrate that a beneficiary is an advanced degree professional is any less than the evidence required to show that a beneficiary is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) *per APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction). Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree [emphasis added]." 56 Fed. Reg. 30703, 30306 (July 5, 1991).[4]

We have consulted the EDGE database for Pakistan, which includes a list of universities and degree awarding institution that are recognized by the country's Higher Education Commission (HEC). Neither [redacted] nor [redacted] is included in the list. *See http:/www.hec.gov.pk/ English/universities/pages/recognized.aspx* (last accessed March 17, 2017). Thus, Pakistan's HEC does not recognize either [redacted] or [redacted] as a university or any other type of degree-granting institution.

In summation, the Beneficiary must have a single foreign degree that is equivalent to a U.S. baccalaureate degree to be eligible for classification as an advanced degree professional, and the degree must be from a college or university. In this case, however, the Petitioner has not submitted an official academic record showing that the Beneficiary has a foreign equivalent degree to a U.S. baccalaureate, as required by 8 C.F.R. § 204.5(k)(3)(i)(B), and has not submitted evidence that either of the institutions that issued the Beneficiary's post-secondary credentials is an HEC-recognized college or university. The Petitioner has not established that the Beneficiary has the foreign educational equivalent of a U.S. bachelor's degree in Islamic studies, as required by the labor certification to qualify for the job opportunity. Accordingly, the Petitioner has not established that the Beneficiary is eligible

[4] Compare to 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to foreign nationals of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, *diploma, certificate or similar award* from a college, university, *school or other institution of learning* relating to the area of exceptional ability").

for classification as an advanced degree professional or that he qualifies for the proffered position of imam under the terms of the labor certification.

For the reasons discussed above, we will affirm the Director's decision to revoke the prior approval of the petition because the Beneficiary does not have the requisite educational degree.

B. Beneficiary's Qualifying Experience

The Director also found that the record did not establish the Beneficiary's claimed experience. In section K of the labor certification the Beneficiary stated that he had been employed by the Petitioner as an imam since January 1, 2009, and claimed that he met the 5-year experience requirement of the job offered with two previous jobs as an imam, totaling 9 years of experience, at mosques in New Jersey, from January 1, 2001, to December 21, 2005, (at the , and in New York, from January 1, 2006, to December 31, 2008, (at the and).

After reviewing the entire record, including the appeal brief, and applying the preponderance of the evidence standard of proof, we conclude that the Petitioner has established the Beneficiary more likely than not had at least 5 years of qualifying experience as an imam, as required by the labor certification. Accordingly, we will withdraw the Director's finding that the Beneficiary did not meet the labor certification requirement of 5 years of progressive experience in the job offered.

C. Petitioner has not Established its Ability to Pay the Proffered Wage

The regulation at 8 C.F.R. § 204.5(g)(2) – *Ability of prospective employer to pay wage* – provides, in pertinent part, as follows:

> 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 permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. . . . In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records may be submitted by the petitioner or requested by the Service.

Thus, the Petitioner must demonstrate its continuing ability to pay the proffered wage beginning on the priority date. In this case, the proffered wage is $43,100 per year and the priority date is July 17, 2012.

The Petitioner must establish that its job offer to the Beneficiary is a realistic one. Because the filing of a labor certification application establishes a priority date for any immigrant petition later based on that

labor certification, the Petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the Beneficiary obtains lawful permanent residence. The Petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, USCIS requires the Petitioner to demonstrate financial resources sufficient to pay the Beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will also be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. at 612.

In determining the Petitioner's ability to pay the proffered wage, USCIS first examines whether the Beneficiary was employed and paid by the Petitioner during the period following the priority date. If the Petitioner establishes by documentary evidence that it employed the Beneficiary at a salary equal to or greater than the proffered wage, the evidence is considered proof of the Petitioner's ability to pay the proffered wage.

The Petitioner claims on the labor certification to have employed the Beneficiary since 2009, and has submitted copies of the Forms W-2, Wage and Tax Statements, it issued to the Beneficiary for the years 2013-2015. They show that the Petitioner paid the Beneficiary "wages, tips, other compensation" totaling $42,000 in 2013, $42,000 in 2014, and $31,500 in 2015. The record also includes tax return transcripts confirming the Beneficiary's income figures for 2013, 2014, and 2015, and also indicating that his "wages, tips, other compensation" in 2012 amounted to $18,000. Thus, the Forms W-2 and income tax transcripts indicate that the Beneficiary's pay was under the proffered wage in each of the years 2012-2015. Therefore, the Petitioner has not established its ability to pay the proffered wage from the priority date of July 17, 2012, up to the present based on the wages actually paid to the Beneficiary.

If the Petitioner does not establish that it has paid the Beneficiary an amount at least equal to the proffered wage from the priority date onward, U.S. Citizenship and Immigration Services (USCIS) will examine the net income and net current assets figures entered on the Petitioner's federal income tax return(s). If either of these figures equals or exceeds the proffered wage or the difference between the proffered wage and the amount paid to the Beneficiary in a given year, the Petitioner would be considered able to pay the proffered wage during that year. There is ample judicial precedent for determining a petitioner's ability to pay the proffered wage based on its federal income tax returns. *See e.g. Elatos Restaurant Corp. v. Sava*, 632 F.Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Togatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)).

In this case, however, the Petitioner has not provided copies of its federal tax returns despite the Director's specific request for such in the notice of intent to revoke (NOIR). Federal tax returns are identified in 8 C.F.R. § 204.5(g)(2) as one of three types of required evidence, along with annual reports and audited financial statements, to establish an employer's ability to pay the proffered wage. The Petitioner has not submitted any annual reports either, and the one financial statement in the record for fiscal year 2012, which preceded the NOIR, is not an audited financial statement. The regulation at 8 C.F.R. § 103.2(b)(14) provides that "[f]ailure to submit requested evidence which

precludes a material line of inquiry shall be grounds for denying the benefit request." On appeal the Petitioner refers to previously submitted evidence, but has not submitted any federal tax returns, annual reports, or audited financial statements.

Since the Petitioner has not paid the proffered wage to the Beneficiary in any year since the priority date and has not submitted any of the required types of evidence requested by USCIS, we will affirm the Director's decision to revoke the approval of the petition on the additional ground that the Petitioner has not established its continuing ability to pay the proffered wage from the priority date up to the present.

III. CONCLUSION

For the reasons discussed in this decision, the Petitioner has not established that the Beneficiary has the education required for classification as an advanced degree professional and to qualify for the job offered under the terms of the labor certification. In addition, the Petitioner has not established its continuing ability to pay the proffered wage from the priority date onward. Although we withdraw the Director's finding that the Petitioner did not establish the Beneficiary's 60 months of qualifying experience in the job offered, the revocation of the petition is affirmed for the above-stated reasons.

ORDER: The appeal is dismissed.

Cite as *Matter of A-M-, Inc.*, ID# 102551 (AAO Mar. 21, 2017)