U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-C-C- INC

DATE: MAR. 27, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a general contracting and construction company, seeks to employ the Beneficiary as a project manager. It requests classification of the Beneficiary as a professional 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 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. The Director found that the Beneficiary does not have a U.S. bachelor's degree or a foreign equivalent degree, and therefore does not meet the minimum educational requirement for the job, under the terms of the labor certification, or for classification as a professional.

On appeal, the Petitioner asserts that the Beneficiary has a foreign equivalent degree to a U.S. bachelor's degree, and thereby meets the educational requirement of the labor certification and the requested classification.[1]

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

[1] We decline the Petitioner's request for oral argument. 8 C.F.R. § 103.3(b).

[2] The date the labor certification is filed, in this case March 24, 2017, is called the "priority date" of the petition. *See* 8 C.F.R. § 204.5(d).

if USCIS approves the petition, the foreign national applies 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.

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

II. ANALYSIS

At issue in this case is whether the Beneficiary has the requisite educational degree to meet the requirements of the labor certification and to qualify for classification as a professional. For the reasons discussed in this decision, we conclude that he does not.

A. Minimum Educational Requirements of the Labor Certification

In order to determine what a job opportunity requires, we must examine "the language of the labor certification job requirements." *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). 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 alien employment certification application form. *Id.* at 834.

Section H of the labor certification sets forth the minimum education, training, experience, and other requirements to qualify for the proffered position. In this case, section H states that the minimum level of education required for the job of project manager (construction) is a bachelor's degree in the field of construction management (boxes 4 and 4-B) or a "foreign educational equivalent" (box 9). The Director found that, according to the language of the labor certification, the minimum educational requirement of the job offered is a four-year U.S. bachelor's degree or a foreign equivalent degree.

On appeal, the Petitioner asserts that a U.S. bachelor's degree need not necessarily require four years of tertiary education, that a baccalaureate level of education may include a work component, and that the Beneficiary has a bachelor's degree equivalent comprised of less than four years of tertiary study plus experience. The Petitioner claims that the Director ignored its intent, as expressed in an academic equivalency evaluation and a statement from its principal, to accept the Beneficiary's

combination of education and experience as the equivalent of a U.S. bachelor's degree in fulfillment of the labor certification's minimum educational requirement. Our interpretation of the labor certification's requirements, however, is controlled by the language of the labor certification, not the language of extraneous documents. As discussed, the labor certification states in boxes H.4, H.4-B, and H.9 that the minimum educational requirement is a bachelor's degree or a foreign educational equivalent. The Petitioner had the opportunity in box H.8 to indicate whether an alternate combination of education and experience was acceptable and, if so, to specify in boxes H.8-A and H.8-B any alternate level of education that would be acceptable. It did not do so. Rather, the Petitioner indicated in box H.8 that no alternate combination of education and experience was acceptable, and made no entries in boxes H.8-A and H.8-B. As such, the language of the labor certification unambiguously requires a U.S. bachelor's degree or a foreign equivalent degree.

Furthermore, the requested classification of professional requires a U.S. bachelor's degree or a foreign equivalent degree. *See* 8 C.F.R. § 204.5(l)(3)(ii)(C). If the Petitioner intended to allow a combination of lesser credentials to satisfy the minimum educational requirement for the proffered position, the labor certification would not support the classification requested in this proceeding. The bachelor's degree requirement for professional classification cannot be met with a combination of lesser credentials which may add up to the equivalent of a bachelor's degree. In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. *See also Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008) (for professional classification, USCIS regulations require the beneficiary to possess a single four-year U.S. bachelor's degree or foreign equivalent degree).

Therefore, we find that the labor certification in this case requires a single U.S. bachelor's degree or a foreign equivalent degree. Having determined the minimum education required by the labor certification, we now turn to the question of whether the Beneficiary has the required degree.

Section J of the labor certification states that the Beneficiary's highest level of education relevant to the job offered is a bachelor's degree in construction management in 2009 [redacted] As evidence of the Beneficiary's education the Petitioner submitted the following documents with the petition and in response to the Director's request for evidence:

- Copies of a diploma and transcripts from [redacted] showing that the Beneficiary was awarded a bachelor of science in construction management in June 2009 after completing two years of coursework.
- An "Evaluation of Training, Education, and Experience" [redacted] which concluded that the Beneficiary's bachelor of science coursework [redacted] plus some general studies at that institution were equivalent of three years of study at an accredited U.S. college or university, and that this education in addition to six years and four months of work experience in construction management and related areas amounted to

> the equivalent of a bachelor of science degree in construction management from an accredited college or university in the United States.

Thus, the record shows that the Beneficiary's bachelor of science degree comprised two, or at most three, years of coursework. As noted by the Director, however, a bachelor's degree in the United States is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Comm'r 1977). The evaluation submitted by the Petitioner does not claim that the Beneficiary's degree from is equivalent to a U.S. bachelor's degree. It only claims that the degree is equivalent to three years of study at a U.S. college or university. The evaluation contends that the Beneficiary has the "educational equivalent" of a U.S. bachelor's degree in construction management based on a combination of lesser credentials consisting of his two- or three-year degree from Ireland and more than six years of experience in the field. As discussed above, however, the labor certification requires a single U.S. bachelor's degree or a foreign equivalent degree. The Petitioner may not rely on the combination of a lesser educational credential and work experience to meet the labor certification's minimum educational requirement.

The Beneficiary does not have a single U.S. bachelor's degree or a foreign equivalent degree. We conclude, therefore, that the Beneficiary does not meet the minimum educational requirement of the labor certification.

B. Eligibility for Professional Classification

A petition requesting professional classification "must be accompanied by evidence that the beneficiary holds a United States baccalaureate degree or a foreign equivalent degree." 8 C.F.R. § 204.5(l)(3)(ii)(C). As noted, the bachelor's degree requirement for professional classification cannot be met with a combination of lesser credentials which may add up to the equivalent of a bachelor's degree. See *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005; *see also Maramjaya v. USCIS*, Civ. Act No. 06-2158 (for professional classification, USCIS regulations require the beneficiary to possess a single four-year U.S. bachelor's degree or foreign equivalent degree). As discussed in this decision, the Beneficiary does not have a single U.S. bachelor's degree or a foreign equivalent degree. Therefore he does not qualify for classification as a professional.

III. CONCLUSION

The Petitioner has not established that the Beneficiary has the requisite degree to meet the minimum educational requirement of the labor certification and to qualify for classification as a professional.

ORDER: The appeal is dismissed.

Cite as *Matter of J-C-C- Inc*, ID# 1051990 (AAO Mar. 27, 2018)