U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF SA-A-, INC.

DATE: MAR. 27, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a business software company, seeks to employ the Beneficiary as a senior support engineer. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires at least two years of training or experience.

The Acting Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary met the requirements of the offered position set forth on the labor certification by the priority date of the petition. Specifically, the Director determined that the Beneficiary's diploma from [redacted] University in China is not equivalent to a U.S. awarded bachelor's degree.

On appeal, the Petitioner asserts that the Beneficiary's graduation certificate, his transcripts, and a certification letter from the university establish that he completed the equivalent of a U.S.-awarded bachelor's degree in computer science.

Upon *de novo* review, we will dismiss the appeal.

I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS

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).[1] *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the 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

[1] The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is May 20, 2015. *See* 8 C.F.R. § 204.5(d).

Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, 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.

II. THE BENEFICIARY'S EDUCATION

A beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(l), (12); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977). In this case, the labor certification requires a bachelor's degree in computer science, engineering, math, physics, information systems or a related field, and five years of experience; or a master's degree and three years of experience. The labor certification states that the experience must involve at least two of the areas of E2E solutions operations listed at Part H.14.

The labor certification states that the Beneficiary qualifies for the offered position based on his bachelor's degree in computer science issued by [redacted] University in China in 2004, together with over five years of experience earned in China.

The record contains a credential from [redacted] University issued to the Beneficiary on July 1, 2004, which is translated as a "General Higher Education Institute Diploma." It states that the Beneficiary was "enrolled in the four-year undergraduate program... majoring in computer science and technology (Teacher-training Direction). He satisfied the curriculum requirements with passing grades, and is permitted to graduate." The record also contains the Beneficiary's transcripts from [redacted] University. Further, the record contains a May 2016 certification from the [redacted] University Archives stating that the Beneficiary "was enrolled in the four-year undergraduate (teacher training) academic program... completed the entire curriculum in July 2004 with passing grades, and was permitted to graduate."

The record also contains an evaluation of the Beneficiary's education prepared by the [redacted]. It states that the Beneficiary's education is equivalent to a U.S.-awarded bachelor of science degree in computer science. However, it does not state the number of semesters he completed at [redacted] University or the number of credits he was awarded there. The evaluation also does not list the educational documents that the evaluator reviewed in reaching his conclusion. As the evaluation refers to the Beneficiary being awarded a "Diploma for a Bachelor's Degree," it is not clear if the credentials reviewed by the evaluator were the same educational documents that were submitted to the record in this case.[2]

Further, the [redacted] evaluation lists the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) as a

[2] The Petitioner must resolve these ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

reference. However, EDGE's conclusion regarding the Beneficiary's education differs from the conclusion of . EDGE states that:

> [T]here are two different certificates in most cases: graduation certificate and degree certificate. Graduation certificate (Zhuanke or Benke) is given when the required coursework is completed. Degree certificate, on the other hand, is awarded when all other requirements such as foreign language requirements, a thesis requirement, etc. are met in addition to the coursework required for the program. When reviewing credentials for admission, both documents should be requested, if not presented.

AACRAO EDGE, http://edge.aacrao.org/country/overview/china-overview (last visited Feb. 21, 2018). EDGE further states that the Benke Certificate is "awarded to students who completed 4 to 6 years of Benke 'bachelor's' program. The Benke Certificate is not the award of the bachelor's degree." *AACRAO EDGE,* http://edge.aacrao.org/country/credential/benke-program-graduation-certificate-from-regular-higher-education-institutions?cid=single (last visited Feb. 21, 2018). It further states that the "BENKE Program Graduation Certificate from regular higher-education institutions represents attainment of a level of education comparable to 4 to 6 years of university study in the United States. Credit may be awarded on a course-by-course basis." *Id.* The credential issued to the Beneficiary, translated as "General Higher Education Institute Diploma," appears to be a Benke program graduation certificate, as the term "degree" is not listed on the Beneficiary's diploma, his transcripts, or the certification from the University Archives. A corresponding degree certificate signifying the award of the actual degree has not been submitted. Thus, unlike the evaluation, EDGE does not conclude that the Beneficiary's diploma is the equivalent of a U.S.-awarded bachelor's degree.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). *See also Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony); *Viraj, LLC v. U.S. Att'y Gen.*, 2014 WL 4178338 *4 (11th Cir. 2014) (we are entitled to give letters from professors and academic credentials evaluations less weight when they differ from the information provided in EDGE). Because of the ambiguities in the evaluation and the conflict with EDGE in its conclusion regarding the Beneficiary's education, we decline to rely on the evaluation in this case.

The Director issued a request for evidence (RFE) to the Petitioner. The RFE noted that the Beneficiary's transcripts from University indicate that he only completed seven semesters there, and asked the Petitioner to submit evidence that the Beneficiary was awarded a bachelor's degree.[3] Following the Petitioner's response to the RFE, the Director denied the petition

[3] A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N

because the record does not contain the Beneficiary's degree certificate from University.

On appeal, the Petitioner asserts that the Beneficiary completed the equivalent of a U.S.-awarded bachelor's degree in computer science.[4] It notes that the evaluation concluded that the Beneficiary's diploma is equivalent to a U.S.-awarded bachelor's degree. However, as detailed above, the evaluation does not address the differing conclusion of EDGE regarding the Beneficiary's diploma, and the evaluation contains ambiguities that have not been resolved. Further, the Petitioner did not address the Director's concern noted in the RFE that the Beneficiary completed only seven semesters of study at University.

On appeal, the Petitioner further states that USCIS regularly accepts letters from registrar offices confirming that individuals have completed all of the requirements for a degree as evidence of the completion of the degree. It submits the H-1B nonimmigrant visa instructions from the USCIS website, which indicate that if a beneficiary has met all of the requirements for a degree, but the degree has not yet been awarded, the petitioner may submit a copy of the beneficiary's final transcript or a letter from the registrar confirming that the beneficiary has met all of the degree requirements, as evidence of the beneficiary's educational credentials. However, the instructions for filing H-1B nonimmigrant petitions do not apply to filing immigrant petitions.

The Petitioner further asserts on appeal that our decision in *Matter of O-A-*, Adopted Decision 2017-2 (AAO Apr. 17, 2017), permits the acceptance of the graduation certificate, together with the transcripts showing completion of the 4-year undergraduate program. In *Matter of O-A-*, we analyzed provisional certificates issued by recognized Indian universities, and we stated that:

> [W]e must conduct a case-specific analysis to determine whether, at the time a provisional certificate is issued, the individual has completed all substantive requirements to earn the degree and the college or university has approved the degree. We must consider evidence presented regarding the individual nature of each university's or college's requirements for each program of study and each student's completion of those requirements. A petitioner will bear the burden to establish that a beneficiary's provisional certificate reflects that, at the time the certificate was issued, all of the substantive requirements for the degree were met and the degree was in fact approved by the responsible college or university body.

On the matter of provisional certificates issued by recognized Indian universities, AACRAO EDGE states:

> The Provisional Degree Certificate is evidence of completion of all requirements for the degree in question, the name of the degree and the date upon which it was

---

Dec. 244 (Reg'l Comm'r 1977).

[4] On appeal, the Petitioner makes the same assertions that were contained in its RFE response.

> approved by the responsible university governing body, and is comparable to an official US academic transcript with a degree statement certifying completion of all requirements for the degree, the name of the degree and the date upon which it was approved by the academic senate at universities in the United States.[5]

In this case, the Beneficiary has not provided his degree certificate or other evidence indicating that all of the substantive requirements for the degree have been met by the Beneficiary and that the degree was approved by the responsible university body at [redacted] University.[6] The Petitioner has not established that the Beneficiary's diploma from [redacted] University in China is equivalent to a U.S.-awarded bachelor's degree. Thus, it has not established that the Beneficiary met the requirements of the offered position set forth on the labor certification by the priority date of the petition.

III. THE BENEFICIARY'S EXPERIENCE

Although not addressed by the Director in her decision, the Petitioner did not establish that the Beneficiary possessed the experience required by the labor certification as of the priority date. As noted above, the labor certification requires a bachelor's degree and five years of experience; or a master's degree and three years of experience. Part H.14 of the labor certification requires the following specific skills:

> Experience must involve at least two areas within E2E solution Operations: E2E Root Cause Analysis and diagnostics (including certification), E2E Change Control Management, E2E Business Process Integration and Automated Management, or E2E Enterprise SOA; ABAP and Java programming/performance analysis; SAP Process Integration and integration technologies; Cloud integration; and Enterprise SOA based platform.

The labor certification states that the Beneficiary qualifies for the offered position based on experience as a senior support engineer with the Petitioner in [redacted], Pennsylvania, from March 16, 2010, to the date the labor certification was filed on May 20, 2015;[7] as a support consultant with [redacted] In China from April 2, 2007, to March 15,

---

[5] *See India: Provisional Degree Certificate*, AACRAO, http://edge.aacrao.org/country/credential/provisional-degree-certificate (last visited Feb. 21, 2018).

[6] The term "degree" is not listed on the Beneficiary's diploma, his transcripts, or the certification from the [redacted] University Archives.

[7] A labor certification employer cannot rely on experience that a foreign national gained with it, unless the experience was in a job substantially different than the offered position or the employer demonstrates the impracticality of training a U.S. worker for the offered position. 20 C.F.R. § 656.17(i)(3). For these purposes, a job is substantially different from an offered position if it requires performance of the same job duties less than 50 percent of the time. 20 C.F.R. § 656.17(i)(5)(ii). On the labor certification, the Beneficiary attested that his job duties as a senior support engineer with the Petitioner match those of the offered position of senior support engineer. The record therefore does not support the Petitioner's use of experience that the Beneficiary gained with it and does not establish his qualifications for the offered position.

2010; as a Java manager with [redacted] in China from February 5, 2007, to March 23, 2007; as a senior developer with [redacted] In China from September 25, 2006, to December 20, 2006; and as a project manager with [redacted] in China from November 8, 2004, to September 19, 2006.

Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. *See* 8 C.F.R. § 204.5(l)(3).

The record contains the following experience letters:

- Letter from [redacted], stating that it employed the Beneficiary as a support consultant from April 2, 2007, to March 15, 2010;
- Letter from [redacted], stating that it employed the Beneficiary as a Java manager from February 5, 2007, to March 23, 2007;
- Letter from [redacted], stating that it employed the Beneficiary as a Java manager from February 5, 2007, to March 23, 2007;
- Letter from [redacted], stating that it employed the Beneficiary as a senior Java developer from September 25, 2006, to December 20, 2006; and
- Letter from [redacted], stating that it employed the Beneficiary as a project manager from November 8, 2004, to September 19, 2006.

None of the letters submitted by the Petitioner contain the address of the writer as required by 8 C.F.R. § 204.5(l)(3). Thus, the letters do not certify the Beneficiary's experience listed on the labor certification. The Petitioner has not established that the Beneficiary possessed the experience required by the labor certification as of the priority date.

IV. CONCLUSION

The Petitioner has not established that the Beneficiary met the educational and experience requirements of the offered position by the priority date.

ORDER: The appeal is dismissed.

Cite as *Matter of SA-A-, Inc.*, ID# 1040712 (AAO Mar. 27, 2018)