U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-G-, INC.

DATE: MAR. 28, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an exporter of aerospace services and supplies, seeks to employ the Beneficiary as a market research analyst. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. *See* 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 Texas Service Center denied the petition, concluding that the Beneficiary did not have the foreign equivalent of a U.S. bachelor's degree, as required for the requested classification, and did not meet the educational requirements of the labor certification. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner asserts that the Beneficiary meets the educational requirements of the labor certification; that, in the alternative, the Beneficiary is eligible for the skilled worker classification; and that the petition should be approved in our discretion due to humanitarian and public policy reasons.

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

I. LAW

A. Employment-Based Immigration

Employment-based immigration is generally a three-step process. First, an employer must obtain an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). As required by statute, an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the DOL, accompanies the petition. By approving the labor certification, the DOL certified that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position. Section 212(a)(5)(A)(i)(I) of the Act. The DOL also certified that the employment of a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. Section 212(a)(5)(A)(i)(II) of the Act.

Next, U.S. Citizenship and Immigration Services (USCIS) must approve an immigrant visa petition. *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, the foreign national must 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.

In these visa petition proceedings, USCIS determines whether a foreign national meets the job requirements specified on a labor certification and the requirements of the requested immigrant classification. *See* section 204(b) of the Act (stating that USCIS must approve a petition if the facts stated in it are true and the foreign national is eligible for the requested preference classification); *see also, e.g., Tongatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983) (both holding that USCIS has authority to make preference classification decisions).

B. Professional Classification

In this case, the Petitioner requests classification of the Beneficiary as a professional. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in part:

> If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. 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.

Section 101(a)(32) of the Act defines the term "profession" to include, but is not limited to, "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." If, as in this case, the offered position is not statutorily defined as a profession, "the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation." 8 C.F.R. § 204.5(l)(3)(ii)(C). In addition, the job offer portion of the labor certification underlying a petition for a professional "must demonstrate that the job requires the minimum of a baccalaureate degree." 8 C.F.R. § 204.5(l)(3)(i).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) and section 203(b)(3)(A)(ii) of the Act use a singular description of the degree required for classification as a professional. 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, a petition for a professional must establish that the occupation of the offered position is listed as a profession at section 101(a)(32) of the Act or requires a bachelor's degree as a minimum for entry; the beneficiary possesses at least a U.S. bachelor's degree or a single foreign equivalent degree from a college or university; and the job offer portion of the labor certification requires at least a bachelor's degree or a foreign equivalent degree. The Beneficiary must also meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition.

II. ANALYSIS

A. The Beneficiary Does Not Possess a U.S. Bachelor's Degree or Foreign Equivalent Degree

In this case, the labor certification states that the offered position has the following minimum requirements:

> H.4. Education: Bachelor's degree in Trade & Tourism, Business Administration.
> H.5. Training: None required.
> H.6. Experience in the job offered: 12 months required.
> H.7. Alternate field of study: None accepted.
> H.8. Alternate combination of education and experience: None accepted.
> H.9. Foreign educational equivalent: Accepted.
> H.10. Experience in an alternate occupation: None accepted.
> H.14. Specific skills or other requirements: BA in Trade & Tourism, Business Administration, Management, Finance or related field or its foreign equivalent. Will accept any suitable combination of education, training or experience. 1 year business experience. Business fluency in Kannada and Hindi.

The labor certification states that the Beneficiary qualifies for the offered position based on her bachelor's degree in tourism and business administration from [redacted] in [redacted] India, completed in 2002.

The record contains a copy of the Beneficiary's post-secondary diploma in business administration and transcripts from [redacted] in [redacted] India, issued in May 1999; her bachelor's degree in tourism studies and transcripts from [redacted] in [redacted] India, issued in December 2002; and a statement of marks from [redacted] indicating that the Beneficiary had completed 36 credits toward a master of arts in tourism management as of December 2001, but had not yet completed the requirements for the degree.

The record also contains three evaluations of the Beneficiary's credentials. The first evaluation was prepared by [redacted] The evaluation states that the

Beneficiary's diploma in business administration and her bachelor's degree in tourism studies are the equivalent of a bachelor of arts degree, with a dual major in communications and tourism studies.[1]

The second evaluation was prepared by [redacted] Ph.D. for [redacted] It states that the Beneficiary's over 11 years of work experience, her diploma in business administration, and her bachelor's degree in tourism studies are the equivalent of a bachelor's degree in business administration and tourism from an accredited university in the United States.[2] As noted by the Director in his decision, the evaluation used the rule to equate three years of experience for one year of education, but that equivalence applies to nonimmigrant H-1B petitions, not to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(*5*).

The third evaluation was prepared by [redacted] The evaluation states that the Beneficiary's diploma in business administration, her bachelor's degree in tourism studies, and her one year of study in the master of arts program of tourism management, are the equivalent of a bachelor's degree in tourism management from an accredited institution of higher education in the United States.[3]

The Petitioner relies on the Beneficiary's three-year bachelor's degree combined with a post-secondary diploma, additional coursework, work experience, or some combination of them, as being equivalent to a U.S. bachelor's degree. A three-year bachelor's degree will generally not be considered to be a "foreign equivalent degree" to a U.S. baccalaureate. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). Where the analysis of the beneficiary's credentials relies on a combination of lesser degrees and work experience, the result is the "equivalent" of a bachelor's degree rather than a full U.S. baccalaureate or foreign equivalent degree required for classification as a professional.

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[1] The evaluation independently equates the Beneficiary's diploma in business administration to three years of university study, and equates the Beneficiary's bachelor's degree in tourism studies to three years of university study. It states that the entry requirement for the Beneficiary's diploma in business administration was completion of secondary education equivalent to a U.S. high school diploma. It does not indicate the entrance requirements for the Beneficiary's bachelor's program and does not mention the Beneficiary's master's studies.

[2] The evaluation independently equates the Beneficiary's bachelor's degree in tourism studies to three years of university study, and states that the Beneficiary's diploma in business administration "likely enabled her to gain entry into the Bachelor's program with advanced standing." However, the record contains no evidence that she entered the bachelor's program with advance standing. The evaluation also states that the coursework the Beneficiary completed in the master's program is substantially similar to bachelor's-level coursework. It states that enrollment in [redacted] is based on graduation from high school and competitive entrance examinations, and it does not make a distinction in entrance requirements for the bachelor's and master's programs.

[3] The evaluation states that the entry requirement for the Beneficiary's diploma in business administration was graduation from lower secondary school and competitive entrance examinations. It further states that the entry requirement for the Beneficiary's bachelor's degree in tourism studies is graduation from the U.S. equivalent of high school and competitive entrance examinations. It does not indicate the entrance requirements for the Beneficiary's master's program, but states that the Beneficiary was concurrently enrolled in both the bachelor's program and the master's program at [redacted]

None of the evaluations submitted by the Petitioner establish that the Beneficiary possesses a single degree from a college or university that is at least a U.S. baccalaureate degree or a foreign equivalent degree, as is required for professional classification.

We have also reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).[4] EDGE provides a great deal of information about the educational system in India. According to EDGE, a three-year bachelor's degree from India is comparable to "three years of university study in the United States."[5] EDGE also discusses post-secondary diplomas, for which the entrance requirement is completion of secondary education. EDGE provides that a post-secondary diploma is comparable to one year of university study in the United States,[6] but does not suggest that, if combined with a three-year degree, it may be deemed a foreign equivalent degree to a U.S. 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 Int'l*, 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).

Based on the conclusions of the evaluations submitted by the Petitioner, as well as EDGE, the evidence in the record is not sufficient to establish that the Beneficiary possesses the foreign equivalent of a U.S. bachelor's degree. After reviewing all of the evidence in the record, we conclude that the Petitioner has not established that the Beneficiary has a U.S. baccalaureate degree or a single foreign equivalent degree from a college or university. Therefore, the Beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act.

On appeal, the Petitioner asserts that the Beneficiary alternatively qualifies for the skilled worker classification under section 203(b)(3)(A)(i) of the Act.[7] However, at Part 2. of the Form I-140, the

[4] According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in more than 40 countries." *About AACRAO*, http://www.aacrao.org/home/about (last visited Mar. 7, 2017). According to the registration page for EDGE, EDGE is "a web-based resource for the evaluation of foreign educational credentials." *AACRAO EDGE*, http://edge.aacrao.org/info.php (last visited Mar. 7, 2017).

[5] *AACRAO EDGE*, http://edge.aacrao.org/country/credential/bachelor-of-arts-ba-bachelor-of-commerce-bcom-bachelor-of-science-bsc?cid=single (last visited Mar. 7, 2017).

[6] *AACRAO EDGE*, http://edge.aacrao.org/country/credential/post-secondary-diploma?cid=single (last visited Mar. 7, 2017).

[7] Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers

Petitioner selected 1.e. indicating that it was filing the petition under the professional classification. There is no provision in statute or regulation that compels USCIS to readjudicate a petition under a different visa classification once the decision has been rendered. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988).[8]

B. The Beneficiary Does Not Meet the Minimum Requirements of the Offered Position

The terms of the labor certification require a single U.S. bachelor's degree in trade and tourism, business administration, management, finance, or related field, or a foreign equivalent degree.[9] It is noted that, if the labor certification did not require at least a single U.S. bachelor's degree or a foreign equivalent degree, the petition could not be approved. *See* 8 C.F.R. § 204.5(l)(3)(i) (the labor certification underlying a petition for a professional must require at least a U.S. bachelor's degree or a foreign equivalent degree). As discussed above, the Petitioner has not established that the Beneficiary has a single U.S. bachelor's degree or foreign equivalent degree in trade and tourism, business administration, management, finance, or related field, as required by the labor certification.

The Petitioner also did not establish that the Beneficiary had business fluency in Kannada and Hindi as required by the terms of Part H.14. of the labor certification. While the record contains several letters verifying the Beneficiary's experience, none of them verify her business fluency in Kannada and Hindi. The regulation at 8 C.F.R. § 204.5(l)(3) states that any requirements of training or experience for professionals must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the Beneficiary.

In summary, the Petitioner did not establish that the Beneficiary possessed a U.S. bachelor's degree or a single foreign equivalent degree as required by the terms of the labor certification. The Petitioner also did not establish that the Beneficiary met the minimum skill requirements of the offered position set forth on the labor certification.

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are not available in the United States.

[8] The Petitioner refers to our 2007 non-precedent decision approving a petition in the skilled worker category. This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Notably, in 2007, the Form I-140 had only one box to select both the professional and skilled worker classifications. The January 6, 2010, version of the Form I-140 required petitioners to make a distinction in the classification categories of professional or skilled worker using separate selection boxes.

[9] The labor certification states that the Petitioner will accept any suitable combination of education, training, or experience, but as noted by the Director, the Petitioner has not specified what suitable combination would be acceptable. The record contains the Petitioner's advertisements for the proffered job. The advertisement on the website states that job requirements are one year of experience and a bachelor's degree. The advertisement on also lists the required education level as a bachelor's degree. None of the advertisements specified what combination of education, training, or experience would be suitable to qualify an applicant for the job.

C. Ability to Pay the Proffered Wage

Although not discussed by the Director, the Petitioner has not demonstrated its ability to pay the proffered wage as of the February 28, 2014, priority date onward.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* 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.

A 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 be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). The proffered wage is $67,517 per year.

In this case, the record does not contain annual reports, federal tax returns, or audited financial statements for the Petitioner from 2014 onward as required by 8 C.F.R. § 204.5(g)(2).[10] Therefore, the Petitioner has not established its continuing ability to pay the proffered wage from 2014 onward. In any future proceedings, the Petitioner must submit regulatory-required evidence of its continuing ability to pay the proffered wage.

D. Labor Certification Inconsistencies

Also, beyond the Director's decision, we find that the labor certification presents inconsistent information regarding the employer and proffered position. Specifically, the labor certification was filed by with federal employer identification number located at TX This address was also listed as the primary worksite for the proffered job on the labor certification. However, the petition was filed by the Petitioner, with located at TX This address was also listed on the Form I-140 as the address where the Beneficiary will work. The employer names and addresses on the labor certification and petition do not match.[11]

[10] The record contains two paychecks issued by the Petitioner to the Beneficiary in 2015, and the Petitioner's 2013 IRS Form 1120S, U.S. Income Tax Return for an S Corporation.

[11] A labor certification for a specific job offer is valid only for the particular job opportunity and for the area of intended

Further, the proffered wage listed on the labor certification is $67,517 per year.[12] However, on the Form I-140, the Petitioner indicated at Part 6 that the offered wage is $61,517 per year, which is below the prevailing and proffered wage for the offered job.[13] In any future proceedings, the Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).[14]

III. CONCLUSION

The Petitioner has not established that the Beneficiary has a U.S. baccalaureate degree or a single foreign equivalent degree from a college or university to qualify for professional classification, or that the Beneficiary met the minimum requirements for the proffered position as of the priority date. Further, the Petitioner has not established that it had the continuing ability to pay the proffered wage from the priority date, and it has not resolved inconsistencies in the labor certification.

ORDER: The appeal is dismissed.

Cite as *Matter of I-G-, Inc.*, ID# 78276 (AAO Mar. 28, 2017)

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employment stated on the labor certification. 20 C.F.R. § 656.30(c)(2).

[12] This is also the prevailing wage for the proffered job.

[13] According to 20 C.F.R. § 656.10(c), the Petitioner must certify that the offered wage equals or exceeds the prevailing wage, and that the wage it will pay to the Beneficiary to begin work will equal or exceed the prevailing wage that is applicable at the time the Beneficiary begins work or from the time the Beneficiary is admitted to take up the certified employment.

[14] The Petitioner asserts on appeal that we should use our discretion to approve the petition for humanitarian reasons and public policy, including the Beneficiary's status as a single mother, the potential outsourcing of the proffered job if the petition is not approved, and the Beneficiary's potential contributions to society. We disagree. These considerations do not apply to adjudications of third preference employment-based immigrant petitions.