U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-T-G- INC.

DATE: MAR. 31, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an IT services business, seeks to permanently employ the Beneficiary in the United States as a software engineer. 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 Director of the Nebraska Service Center denied the petition after determining that the Petitioner had not established that the Beneficiary possesses the minimum educational requirements detailed in the job offer. Specifically, the Director determined that the Beneficiary's 3-year foreign degree in computer science was not the foreign equivalent to the bachelor's degree required on the labor certification and that the Beneficiary's master of computer application degree was not in the field of study required by the job offer.

The matter is now before us on appeal. The Petitioner asserts that the Beneficiary possesses two degrees that combine to form the equivalent of the degree required by the job offer. Upon *de novo* review, we will dismiss the appeal.

I. THE JOB OFFER

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). By approving the labor certification in this case, 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, the employer may file an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, if USCIS approves the immigrant visa 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.

The priority date of the petition is February 20, 2015.[1] The required education, training, experience and skills for the offered position are set forth at Part H of the labor certification. In the instant case, the labor certification states that the position has the following minimum requirements:

H.4.	Education: minimum level required: Bachelor's degree.
. . .	
H.4-B.	Major field of study: computer science.
. . .	
H.6.	Is experience in the job offered required for the job? Yes.
H.6-A.	If Yes, number of months experience required. 60.
H.7.	Is there an alternate field of study that is acceptable? No.
. . .	
H.8.	Is there an alternate combination of education and experience that is acceptable? No.
. . .	
H.9.	Is a foreign educational equivalent acceptable? Yes.
H.10.	Is experience in an alternate occupation acceptable? Yes.
H.10-A.	If Yes, number of months experience in alternate occupation required: 60.
H.10-B.	Identify the job title of the acceptable alternate occupation: Analyst, programmer, developer, lead, administrator, manager, architect.
. . .	
H.14.	Specific skills or other requirements: Any suitable combination of training, education or experience is acceptable.

On the labor certification, in Lines J.11., J.12., and J.13., the Beneficiary listed his education as a master's degree in computer science from [redacted] of Professional Studies in [redacted] India, completed in 2005. The Petitioner submitted copies of the Beneficiary's academic transcripts and bachelor of science diploma issued by [redacted] India. The Petitioner also submitted copies of the Beneficiary's academic transcripts, provisional degree certificate and diploma reflecting his master of computer applications degree from [redacted] India, following his studies at Pioneer Institute of Professional Studies.

The Petitioner submitted a credentials evaluation performed by [redacted] Ph.D., for [redacted] considered the Beneficiary's 3-year Indian bachelor of science degree, which included "general studies and concentrated studies in 2001," and concluded that the degree "has satisfied requirements substantially similar to those required towards the completion of a three-year university-level credit from an accredited college or university in the United States." He doesn't identify a specific field equivalency for these years of education. The evaluator also considered the Beneficiary's 3-year master of computer applications degree and found

[1] The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

that the Beneficiary had "satisfied requirements substantially similar to those required towards the completion of academic studies leading to graduate-level Masters in Computer Information Systems from an accredited college or university in the United States." Considering the Beneficiary's combined educational record, the evaluator concluded that the Beneficiary "has an educational equivalent of Masters in Computer Information Systems from a regionally accredited college or university in the United States." As the Beneficiary did not have the degree in the required field of study, the Director denied the petition.

II. LAW

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 regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined as:

> [A]ny 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. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.[2]

An advanced degree professional petition must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree.

The Director concluded that the Beneficiary's 3-year bachelor of science degree was not the foreign equivalent to a U.S. bachelor's degree and that the Beneficiary's master of computer application degree was not in the field of study required by the job offer. The Director noted that the sole credentials evaluation provided by the Petitioner concluded that the Beneficiary's academic studies were substantially similar to a master's degree in computer information systems, which is not a field of study identified as acceptable by the labor certification. Accordingly, the Director denied the petition.

[2] *See also* 8 C.F.R. § 204.5(k)(3)(i), a petition for an advanced degree professional must be accompanied by: "An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree." Alternatively, the petition must be accompanied by "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."

III. ANALYSIS

A. The Beneficiary's Education

On appeal, the Petitioner states that the Beneficiary possesses "a U.S. masters [sic] equivalence in Computer Information Systems which we believe is a related degree to the field of study of computer science." The Petitioner also asserts that the Beneficiary can "combine both degrees and have an equivalence of Bachelors [sic] degree in computer science."

In support of the assertions, the Petitioner submits a new credentials evaluation from Computer Science Department, discusses that the Beneficiary has 3 years of undergraduate education and 3 years of graduate level courses, which "taken together his education equates to a computer-related discipline." He concludes that the Beneficiary "has acquired an educational equivalency to a Bachelor's Degree in Computer Science and Master's degree in Information Systems by virtue of his three years of undergraduate education and his three-year master's degree that includes all of the curricular areas included in Computer Science programs from regionally accredited universities in the United States."

We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).[3] EDGE states that a bachelor of arts/bachelor of commerce/bachelor of science degree in India "represents attainment of a level of education comparable to two to three years of university study in the United States." Therefore, the Beneficiary's 3-year bachelor of science degree does not satisfy the education requirements of the labor certification.

EDGE states that entrance into the master's of computer applications program in India requires completion of a 3-year bachelor's degree, and that the degree itself is awarded upon completion of 3 years of study beyond the 3-year bachelor's degree. EDGE concludes that a master of computer applications degree in India "represents attainment of a level of education comparable to a master's degree in the United States." However, EDGE also states that a master of computer applications degree in India is "[c]omparable to a degree in computer application, not computer science." Therefore, while we would accept the Beneficiary's master's degree to show that he has above the level of education required, we must still determine whether the Beneficiary's education is in the required field of study and if he meets the employment experience requirements specified on the labor certification.

[3] AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in over 40 countries." http://www4.aacrao.org/centennial/about.htm (last visited March 15, 2017). According to its registration page, EDGE is "a web-based resource for the evaluation of foreign educational credentials." http://edge.aacrao.org/info.php (last visited March 15, 2017).

The two credentials evaluations submitted by the Petitioner note that the Beneficiary's bachelor's degree is equivalent to only 3 years of study in the United States. Therefore, the Beneficiary's undergraduate education would not meet the required bachelor's degree. The evaluations submitted seek to rely on the Beneficiary's masters of computer applications degree as being equivalent to a U.S. master's degree. Considering the Beneficiary's combined educational record, the first evaluator concluded that the Beneficiary "has an educational equivalent of Masters in Computer Information Systems from a regionally accredited college or university in the United States." The second evaluator concluded, on what also appears to be the Beneficiary's combined education, that the Beneficiary "has acquired an educational equivalency to a Bachelor's Degree in Computer Science and Master's degree in Information Systems."[4]

As noted above, EDGE expressly advises that an Indian master of computer applications degree is "[c]omparable to a degree in computer application, not computer science." The Petitioner's evaluations compare the Beneficiary's graduate education, which serves to meet the bachelor's requirement as either equivalent to computer information systems, or information systems, which are different fields of study. Each program of study forming a degree is considered individually and would not be combined to form the equivalent of a degree in computer science.[5]

While a degree in computer applications, information systems, or computer information systems, would be related to computer science, the labor certification only allows for qualification based on computer science and does not list any alternate field of study. The Petitioner was free to indicate at Lines H.4-B, H.7-A, or H.14[6] of the labor certification that it would accept additional fields of study or indicate that it would consider a "related field of study" to the specified field.[7] The record does not contain evidence of the Petitioner's recruitment efforts underlying the labor certification, and, therefore, nothing shows that the Petitioner allowed for any additional or related fields in its advertisements, or that the Petitioner considered applicants with degrees other than computer

[4] 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. 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. Mayorkas*, 2014 WL 4178338 *4 (C.A.11 Ga. Aug. 25, 2014) (we are entitled to give letters from professors and academic credentials evaluations less weight when they differ from the information provided in EDGE).

[5] Where the analysis of the beneficiary's credentials relies on a combination of degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree." *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

[6] The statement in H.14 seems to reflect 20 C.F.R. § 656.17, that if the foreign national "does not meet the primary job requirements and only potentially qualifies for the job by virtue of the employer's alternate requirements, certification will be denied unless the application states that any suitable combination of education, training, or experience is acceptable." The language in H.14 itself would not be read as an alternate requirement. Additionally, the Petitioner has not submitted any recruitment to establish that this would be read differently.

[7] The Petitioner clearly specified in H.10-B. a number of alternate occupation titles related to qualifying experience and similarly could have, but did not, specify any alternate education fields on Lines H.4. or H.7.

science. On the labor certification, the Petitioner specifically limited the job offer to candidates possessing a bachelor's degree in computer science. The Beneficiary does not possess such a degree. Thus, the Petitioner did not establish that the Beneficiary met the minimum educational requirements of the offered position set forth on the labor certification by the priority date.

B. Ability to Pay the Proffered Wage

The record lacks sufficient documentation to determine whether the Petitioner can establish its continuing ability to pay the Beneficiary's $128,773 proffered wage as of the priority date. The regulation 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.

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 be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). Where a petitioner has filed multiple petitions, we will also consider the petitioner's ability to pay the combined wages of each beneficiary. *See Patel v. Johnson*, 2 F.Supp.3d 108 (D. Mass. 2014); *see also Great Wall*, 144-145.

The Petitioner stated on the labor certification that it was formed in 2008 and that it employed 125 workers. On the petition, the Petitioner stated that it currently employed 105 U.S. workers. USCIS records reveal that since February 20, 2010, (5 years before the current priority date) it has filed 137 employment-based immigrant petitions and 473 employment-based non-immigrant petitions.

The Director issued a request for evidence (RFE) and asked the Petitioner to document whether any of its other petitions have been withdrawn, revoked, or denied, and to provide information as to whether any of the other beneficiaries have obtained lawful permanent residence by or before the priority date of the current petition. The Director also requested evidence to document the priority date, proffered wage, and wages paid to each beneficiary since the current priority date.

In response to the RFE the Petitioner submitted a list of 94 beneficiaries on whose behalf it had filed immigrant petitions. The Petitioner noted the wage proffered to 92 of these beneficiaries,[8] and also

[8] The Petitioner listed beneficiaries J.K. and S.B., and provided copies of forms W-2 showing the wages paid to these

submitted copies of IRS Form W-2 Wage and Tax Statements for 57 of the listed beneficiaries. Eleven of the beneficiaries[9] had been paid at least the full proffered wage in 2015; however, the Petitioner did not establish that it paid the full proffered wage to the other 44 beneficiaries, as reflected below:

Beneficiary	Proffered wage	2015 wages paid	2015 difference
A.K.	$116,272.00	$102,466.72	$13,805.28
C.A.	$84,302.40	$55,284.44	$29,017.96
H.P.	$86,278.00	$57,079.99	$29,198.01
D.S.	$116,272.00	$93,680.95	$22,591.05
A.S.	$94,307.00	$51,071.94	$43,235.06
B.N.	$128,773.00	$70,638.92	$58,134.08
C.S.	$109,117.00	$9,053.10	$100,063.90
C.S.R.K.	$116,272.00	$98,408.00	$17,864.00
D.N.	$84,302.00	$82,198.27	$2,103.73
G.S.	$112,590.00	$86,742.52	$25,847.48
H.K.	$116,272.00	$92,950.11	$23,321.89
J.D.	$112,590.00	$88,282.15	$24,307.85
J.P.	$116,272.00	$91,936.11	$24,335.89
K.S.	$109,116.80	$76,746.47	$32,370.33
K.P.C.	$112,590.00	$82,456.85	$30,133.15
L.V.	$86,278.00	$85,315.48	$962.52
M.P.	$84,302.40	$60,308.32	$23,994.08
M.B.J.	$84,302.40	$76,094.55	$8,207.85
M.K.	$86,278.00	$61,523.80	$24,754.20
N.P.	$109,116.80	$60,308.48	$48,808.32
P.R.	$157,643.00	$57,208.34	$100,434.66
P.K.	$94,307.00	$17,338.56	$76,968.44
P.K.T.	$112,590.00	$78,166.06	$34,423.94
R.E.	$156,312.00	$104,801.94	$51,510.06
R.B.A.	$101,899.00	$85,308.35	$16,590.65
R.S.	$116,272.00	$79,723.62	$36,548.38
S.K.	$156,312.00	$69,692.00	$86,620.00
S.D.	$116,272.00	$94,515.58	$21,756.42

beneficiaries in 2015; however, the Petitioner did not identify the wages proffered to these beneficiaries on their respective labor certifications.

[9] The forms W-2 submitted by the Petitioner show that the Petitioner paid at least the claimed proffered wage to beneficiaries A.J., K.P., M.J.D., V.S., V.K.C., G.V.K., S.P., A.S., P.G., P.N., and N.K. in 2015.

S.S.	$116,272.00	$109,515.30	$6,756.70
S.G.	$156,312.00	$104,372.57	$51,939.43
S.S.S.	$116,272.00	$98,385.10	$17,886.90
S.C.	$116,272.00	$105,284.65	$10,987.35
S.T.G.	$112,590.00	$69,731.31	$42,858.69
S.R.	$157,643.00	$71,342.28	$86,300.72
S.M.	$109,117.00	$99,699.95	$9,417.05
S.N.	$156,312.00	$90,569.89	$65,742.11
S.B.	$156,312.00	$61,423.31	$94,888.69
S.D.	$116,272.00	$84,138.86	$32,133.14
S.M.	$86,278.00	$82,224.59	$4,053.41
V.K.	$94,307.00	$80,247.76	$14,059.24
V.V.	$101,899.00	$100,884.90	$1,014.10
R.P.	$116,272.00	$108,769.43	$7,502.57
V.T.G.	$112,590.00	$35,953.87	$76,636.13
V.N.	$156,312.00	$98,000.58	$58,311.42

The differences between proffered wages and wages paid in 2015 to these 44 beneficiaries alone totals $1,588,396.83. The Petitioner did not submit documentation regarding the wages paid to the 37 other beneficiaries (including this Beneficiary) on its list and did not indicate that any of the other petitions had been withdrawn, revoked, or denied, or whether any of the other beneficiaries have obtained lawful permanent. The difference between the 94 beneficiaries named by the Petitioner and the 137 beneficiaries reflected in USCIS records should be resolved in any further filings. The Petitioner stated that its 2015 federal tax return was not due to be filed until September 15, 2016. The record still lacks this required documentation for 2015.

USCIS may also consider the overall magnitude of a petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Sonegawa,* 12 I&N Dec. at 612. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

In the instant case, unlike the petitioner in *Sonegawa*, the Petitioner has not established its reputation within its industry, nor has it claimed the occurrence of any uncharacteristic business expenditures or losses during the years in question. While the petitioner in *Sonegawa* established the historical growth of its business, the current Petitioner has submitted incomplete tax records for only one year, which occurred before the current priority date; the Petitioner has not provided copies of annual reports, federal tax returns, or audited financial statements for the year of the priority date, or any

subsequent year. The Petitioner did not demonstrate any wages paid to this Beneficiary or to 36 of the beneficiaries of its other identified employment-based immigrant petitions. Additionally, USCIS records seem to reflect additional filings that the Petitioner has not listed in their response. While the Petitioner paid at least the proffered wage to 11 of its other beneficiaries, the 44 other beneficiaries for whom it provided records account for a total shortfall of $1,588,396.83 in 2015. The Petitioner states that it has sponsored 94 workers, but its 2014 tax return indicates only $8,020 on the first page of its Form 1120 in salaries and wages paid. Without the Petitioner's full tax returns and schedules, we cannot fully determine how they reported wages, and in what amount. Without the complete information requested by the Director, and the Petitioner's 2015 tax return, we cannot fully assess the totality of the Petitioner's financial standing to determine whether it can pay the proffered wage to the Beneficiary and the proffered wages to the Petitioner's other sponsored workers.[10]

IV. CONCLUSION

In summary, the record does not establish that the Beneficiary possessed an advanced degree in the field of study required by the labor certification as of the priority date. Further, the record does not contain enough evidence to establish the Petitioner's ability to pay the proffered wage to the Beneficiary as well as to the other beneficiaries on whose behalf it had filed employment-based immigrant petitions.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of P-T-G- Inc.*, ID# 80738 (AAO Mar. 31, 2017)

[10] We note that the Petitioner stated on the Form I-140 petition that it employed 105 U.S. workers and USCIS records reveal it has filed combined non-immigrant and immigrant employment-based petitions on behalf of 610 workers in the 5 years before it applied for the current labor certification. The Petitioner's website states that the company offers numerous types of staffing solutions to supply workers at client worksites and the W-2s that the Petitioner submits show that some of its employees are employed in other states. In light of these factors, it is not clear that the Petitioner intends to employ the Beneficiary at Washington, as was stated on the labor certification. The Petitioner listed no alternative worksites. A labor certification for a specific job offer is valid only for the particular job opportunity, the foreign national for whom the certification was granted, and for the area of intended employment stated on the labor certification. 20 C.F.R. § 656.30(C)(2). This issue must be addressed in any further proceedings.