U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30240490

Date: MAY 3, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Professional)

The Petitioner – a provider of physical, occupational, and speech therapy services – seeks to permanently employ the Beneficiary as a physical therapist. The company requests his classification under the employment-based, third-preference (EB-3) immigrant visa category as a "professional." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). U.S. businesses may sponsor noncitizens in this category to work in the United States in jobs requiring at least bachelor's degrees. *Id.*

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Beneficiary needed to have a master's degree in physical therapy or its equivalent at the time of his U.S. licensure in the field and that the Petitioner did not demonstrate his possession of such credentials. On appeal, the Petitioner contends that the Director overlooked evidence.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the Director erred in requiring the Beneficiary to have a master's degree in physical therapy or its equivalent. But, because the company has not established his possession of a bachelor's degree in the field as required by the offered job and the requested immigrant visa category, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Immigration as a professional typically follows a three-step process. First, to permanently fill a position in the United States with a foreign worker, a prospective employer obtains 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). Second, if DOL approves a position for a foreign worker, an employer submits the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). Finally, if USCIS grants a petition, the noncitizen beneficiary applies abroad for an immigrant visa or, if eligible, adjustment of status in the United States. *See* section 245(a) of the Act, 8 U.S.C. § 1255(a).

DOL, however, has predetermined that the United States lacks sufficient "physical therapists" and that noncitizens' employment in these Schedule A jobs would not harm the wages or working conditions of U.S. employees in similar positions. 20 C.F.R. § 656.5. Thus, U.S. organizations seeking to employ noncitizen physical therapists need not file individual labor certification applications with DOL to test the U.S. labor market for qualified workers. Rather, DOL has authorized USCIS to adjudicate Schedule A labor certification applications in petition proceedings. 20 C.F.R. § 656.15(a). Therefore, in this matter, USCIS rules not only on the immigrant visa petition, but also on its accompanying labor certification application. *See* 20 C.F.R. § 656.15(e) (describing USCIS' determinations on Schedule A labor certification applications as "conclusive and final").

II. ANALYSIS

A. Background Facts

The record shows that the Beneficiary, an Indian native and citizen, earned a four-year bachelor's degree in physiotherapy in his home country in 2015. The following year, he came to the United States to study. In November 2017, the Beneficiary received a license to practice physical therapy in Indiana. In January 2018, an Indiana employer successfully petitioned to employ him as a physical therapist in H-1B nonimmigrant work visa status. *See* section 101(a)(15)(H) of the Act, 8 U.S.C. § 1101(a)(15)(H). Later that year, he received a U.S. master of health science degree. In 2019, the Petitioner successfully filed an H-1B petition for him. He has worked for the company as a physical therapist at a client hospital in Indiana since January 2020.

In May 2023, the Petitioner filed this immigrant visa petition for the Beneficiary. The Director denied the petition, finding that the company did not demonstrate the Beneficiary's qualifications for the offered occupation. The Director found that physical therapists like the Beneficiary who received physical therapy degrees between July 2009 and December 2017 require master's degrees in physical therapy to receive U.S. state licenses. Finding that the Petitioner did not demonstrate the Beneficiary's possession of a master's degree in physical therapy, the Director denied the petition.

B. The Schedule A Labor Certification Application

A Schedule A labor certification application must include:

- an uncertified labor certification application form, *see* 20 C.F.R. § 656.15(a);
- a permanent, full-time job offer in a Schedule A occupation, *see* 20 C.F.R. § 656.3 (defining the term "employment");
- a prevailing wage determination from DOL, *see* 20 C.F.R. § 656.15(b)(1) (referencing 20 C.F.R. §§ 656.40, 656.41); and
- a notice of the application's filing provided to a bargaining representative, if applicable, or to employees, *see* 20 C.F.R. § 656.15(b)(2) (referencing 20 C.F.R. § 656.10(d)).

Also, a U.S. organization seeking to employ a noncitizen physical therapist must submit evidence establishing that the beneficiary has a permanent license to practice physical therapy in the state of intended employment. 20 C.F.R. § 656.15(c)(1); *see generally* 6 *USCIS Policy Manual* E.(7)(F)(1), www.uscis.gov/policy-manual. Alternatively, an employer may submit a statement from an

authorized physical therapy licensing official in the state of intended employment indicating a beneficiary's eligibility to take a written physical therapy licensing examination in the state. *Id.*

The record supports the Petitioner's compliance with Schedule A labor certification requirements. The Petitioner submitted a labor certification application stating the company's offer to employ the Beneficiary as a physical therapist on a permanent, full-time basis. The application states the job's minimum requirements as a U.S. bachelor's degree or foreign equivalent degree in physical therapy and possession of, or eligibility for, an Indiana physical therapy license.

The Petitioner also submitted a prevailing wage determination (PWD) indicating that it would employ the Beneficiary at a wage rate of $80,552 a year, exceeding the occupation's annual prevailing wage in the worksite's geographical area of $73,216. As required, the PWD's validity ranges from 90 days to one year, and the company filed the labor certification application during the wage determination's validity period. *See* 20 C.F.R. § 656.40(c).

The company further complied with filing notice requirements. It submitted a notice stating that the posting stems from a labor certification application and that anyone may provide evidence on the application to DOL. *See* 20 C.F.R. § 656.10(d)(3)(i), (ii). The notice also provides DOL's proper address in Washington, D.C. and indicates its posting at the worksite for at least 10 consecutive business days, between 30 and 180 days before the application's filing. *See* 20 C.F.R. §§ 656.10(d)(1)(ii), (3)(iii), (iv).

Also consistent with DOL regulations, the Petitioner documented the Beneficiary's licensure as a physical therapist in Indiana since November 2017. But, by requiring the Beneficiary to have a master's degree in physical therapy or its equivalent, the Director effectively questioned his license's validity.

The Director explained that current U.S. physical therapy graduates must receive doctorate degrees in the field to obtain state licensure in the United States. The Director noted that U.S. physical therapists with only master's or bachelor's degrees in the field at the time of their licensing can still extend the validity of their licenses and practice physical therapy. *See* 6 *USCIS Policy Manual* E.(7)(G)(1) ("[M]any states have 'grandfathering' clauses that allow those who obtained a bachelor's degree under the previous licensing requirements to continue working in the field"). But the Director found that state licensing rules at the time the Beneficiary received his license in 2017 required him to have a U.S. master's degree in physical therapy or its equivalent. The Director stated:

> Physical Therapists who graduated from July 1, 2009 through December 31, 2017 must have the foreign equivalent of a U.S. master's degree in physical therapy. Thus, at the time of filing, the beneficiary must have a U.S. Master's degree (or foreign equivalent) or a U.S. Bachelor's degree (or foreign equivalent) and at least five years of progressive post-baccalaureate experience in the specialty. [*See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" and equating a bachelor's degree followed by five years of progressive experience in a specialty to a master's degree in the field.] These requirements, for U.S. students of Physical Therapy, are set by the Commission on Accreditation of Physical Therapy Education (CAPTE), an arm of APTA (the American Physical Therapy Association).

The Petitioner documented the Beneficiary's receipt of his 2015 Indian bachelor of physiotherapy degree and his 2018 U.S. master of health science degree. But the Director found that the Beneficiary's master of health science degree does not lie in the required field of physical therapy. The Director also found that, because the Petitioner did not demonstrate the Beneficiary's possession of five years of progressive, post-baccalaureate experience in physical therapy, the company did not establish that he has the equivalent of a U.S. master's degree in physical therapy. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A) (requiring a petitioner to document a beneficiary's qualifying experience for an offered job with letters from their current or former employers).

The Director erred in requiring the Petitioner to demonstrate the Beneficiary's possession of a master's degree in physical therapy or its equivalent. Under DOL Schedule A regulations, the Beneficiary need only have a physical therapist license in the state of intended employment or eligibility to take the state's licensing examination. *See* 20 C.F.R. § 656.15(c)(1); *see also* 6 *USCIS Policy Manual* E.(7)(F)(1). The Petitioner documented the Beneficiary's possession of an Indiana physical therapy license since November 2017. Also, in response to the Director's notice of intent to deny (NOID) the petition, the company submitted a July 2023 letter from an Indiana licensing official. The letter states: "As of November 2, 2017 [the date the Beneficiary received his physical therapy license], Indiana's minimum requirement to obtain the physical therapy license was a bachelor's degree for physical therapy."

Further, at that time, assuming an applicant for a physical therapy license passed criminal and disciplinary checks and the required examination, Indiana law allowed the state's physical therapy committee to "license as a physical therapist . . . any person who has graduated as a physical therapist . . . in a foreign country from an educational program approved by the committee." Ind. Code § 25-27-1-9 (2017). Thus, because the Petitioner met DOL requirements and the record shows his valid receipt of an Indiana physical therapist's license, the Director erred in requiring the company to demonstrate his possession of a master's degree in physical therapy or its equivalent.

In support of her finding that applicants for physical therapy licenses who graduated between 2009 and 2017 must have master's degrees in the field, the Director referenced CAPTE and APTA. But the Director did not cite any specific publications from the organizations stating that requirement, nor were we able to find any. Thus, a preponderance of the evidence demonstrates the Beneficiary's possession of a valid Indiana physical therapy license at the time of the application's filing. The Petitioner's Schedule A labor certification application therefore complies with DOL regulations.

C. The Petition Requirements

While the Petitioner has met the Schedule A labor certification requirements, it must also comply with immigrant visa petition requirements under 8 C.F.R. § 204.5. For example, a petition for a professional must include "evidence that the [noncitizen] holds a United States baccalaureate degree or a foreign equivalent degree." 8 C.F.R. § 204.5(l)(3)(ii)(C). "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." *Id.*

The plain language of the regulation indicates that a professional must have a single "degree" – uncombined with other education or experience – that is either a U.S. baccalaureate in the required

field or a foreign degree equivalent. *See* Final Rules for Employment-Based Immigrants, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) ("[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification . . ., a [noncitizen] must have at least a bachelor's degree.")

The Petitioner submitted copies of official university records showing the Beneficiary's receipt of the Indian bachelor of physiotherapy degree in August 2015 and the U.S. master of health science degree in August 2018. The record, however, does not demonstrate that either degree equates on its own to at least a U.S. bachelor's degree in physical therapy or a foreign equivalent degree as stated on the labor certification application and as required for the requested immigrant visa classification.

The Petitioner submitted three independent, professional evaluations of the Beneficiary's credentials. When considering expert opinions, USCIS may reject or give lesser evidentiary weight to testimony that conflicts with other information or "is in any way questionable." *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988).

A 2019 report from the Foreign Credentialing Commission on Physical Therapy (FCCPT) concludes that the Beneficiary's university academic and clinical coursework, in India and the United States combined, equates to a U.S. doctor of physical therapy degree.[1] The evaluation, however, does not specify whether his baccalaureate or master's degree, on its own, equates to at least a U.S. bachelor's degree of physical therapy.

A 2023 evaluation concludes that the Beneficiary has the equivalent of at least a U.S. master's degree in physical therapy. But, contrary to the requirements of the offered job and the requested immigrant visa category, the evaluation bases its conclusion not only on his university coursework, but also his employment experience as a physical therapist. The evaluation states that the Beneficiary's U.S. graduate curriculum "contains courses and practicum experiences that are strongly reflective of many of the courses you would find in a typical Master of Physical Therapy program." Neither the copies of the Beneficiary's master's diploma nor an accompanying transcript indicate that he majored in physical therapy. A university letter states that his master of health science degree had a "concentration" in physical therapy. But none of the materials state that the Beneficiary's master of health degree, alone, equates to a U.S. master of physical therapy degree.

The 2023 evaluation also asserts that, by approving H-1B nonimmigrant visa petitions for the Beneficiary, USCIS has "verified" the equivalency of his Indian bachelor's degree to a U.S. baccalaureate in physical therapy. But petitioners for H-1B "professional workers" may demonstrate a U.S. baccalaureate equivalency based on training/experience alone or a combination of education and training/experience. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) (for H-1B purposes, equating three years of training or work experience to one year of higher education in a relevant field). Thus, the evaluation does not demonstrate that the Beneficiary's Indian bachelor's degree, alone, equates to a U.S. bachelor's degree in physical therapy.

[1] The Department of Homeland Security has authorized FCCPT to issue required certificates to foreign healthcare workers in the field of physical therapy. Section 212(a)(5)(C) of the Act, 8 U.S.C. § 1182(a)(5)(C); 8 C.F.R. § 212.15(e)(3). FCCPT issued the Beneficiary a foreign healthcare worker certificate. The Beneficiary would require the certificate before becoming a U.S. permanent resident. But it is not required for this petition's approval.

The third evaluation finds the Beneficiary's Indian bachelor's degree equivalent to four years of university study in the United States. U.S. baccalaureate degrees usually require four years of college or university study. *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). But the evaluation does not specify the equivalency of the Beneficiary's foreign degree to a U.S. baccalaureate. The evaluation finds that his Indian university coursework equates to 124.5 U.S. university credits. The FCCPT evaluation, however, indicates that four years of U.S. university study for a physical therapist typically requires 128 credits. Thus, the evaluations submitted by the Petitioner do not establish that either the Beneficiary's master or bachelor's degree equates to a U.S. bachelor's degree in physical therapy.

The Director did not notify the Petitioner of this evidentiary deficiency. We will therefore remand the matter. On remand, the Director should inform the company of the need for additional evidence that one of the Beneficiary's degrees equates to at least a U.S. bachelor's degree in physical therapy.

If supported by the record, the Director may notify the Petitioner of any other potential denial grounds. The Director, however, must give the company a reasonable opportunity to respond to all issues raised on remand. Upon receipt of a timely response, the Director should review the entire record and enter a new decision.

III. CONCLUSION

The Director erred by requiring the Petitioner to demonstrate the Beneficiary's receipt of a master's degree in physical therapy or its equivalent. But the company has not established his possession of the minimum education required for the offered job or the requested immigrant visa category.

ORDER: The Director's decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.