U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30340706

Date: MAY 9, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a public school system, seeks to employ the Beneficiary as a French immersion teacher. It requests classification of the Beneficiary under the third-preference, immigrant classification for professional workers. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based category 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 Petitioner did not establish that the Beneficiary possessed the minimum education for the offered position as described on the labor certification. The Director denied a subsequent motion to reopen and motion to reconsider. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position. *Id.* Labor certification also indicates that the employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a beneficiary meets the requirements of a certified position and a requested immigrant visa classification. If USCIS approves the petition, a foreign national may finally 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.

II. ANALYSIS

To be eligible for classification as a professional a beneficiary must have a U.S. baccalaureate degree or a foreign equivalent degree and be a member of the professions. *See* 8 C.F.R. § 204.5(l)(3)(ii)(C). Furthermore, the beneficiary must possess all of the specific educational, training, experience, and other requirements of the labor certification by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). The "priority date" of a petition is the date the underlying labor certification was filed with the Department of Labor (DOL). *See* 8 C.F.R. § 204.5(d). The priority date in this case is May 17, 2021.

When assessing a beneficiary's qualifications for an offered position, USCIS must examine the job-offer portion of an accompanying labor certification to determine the job's minimum requirements. USCIS may neither ignore a certification term nor impose unstated requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

As required by statute, the immigrant petition is accompanied by a labor certification certified by the DOL. The labor certification lists the minimum requirement for the offered position as a bachelor's degree or foreign equivalent in education, French, foreign language or related field, with no experience. As noted, the requested classification of professional also requires that the Beneficiary possess a U.S. bachelor's degree or foreign equivalent degree.[1] At issue is whether the Beneficiary possesses the U.S. bachelor's or foreign equivalent degree required by the terms labor certification and for classification as a professional.

On the labor certification, the Petitioner listed the Beneficiary's education as a bachelor's degree in education from [redacted] Belgium, completed in 2010. The Petitioner submitted a copy of a certificate from the [redacted] The certificate is written in French and is accompanied by a certified English translation. The translation states that the document was issued under the authority of the French Community of Belgium, and that it awards the Beneficiary "the academic status of Bachelor of Secondary Education (Junior High)." The Petitioner also submitted a "Diploma Supplement" which states that the length of the Beneficiary's program at [redacted] was "three years – 180 credits (ECTS)."

The record also includes an evaluation of the Beneficiary's academic credentials from [redacted] of [redacted] Mr. [redacted] states that the Beneficiary's degree from [redacted] was awarded after three years of study and is "comparable to a bachelor's degree (Bachelor of Education with concentration in Teaching Dutch and English at the Lower-Secondary Level) from a regionally accredited institution of higher education in the United States."

[1] The Beneficiary must possess a single-source bachelor's degree in order to be eligible 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).

In describing the education system in Belgium, Mr. [redacted] states:

> The three-year bachelor's degrees, while lacking much of the general education requirements of most four-year U.S. bachelor's degree programs, mostly concentrate the coursework in the field of study. It is the position of this office that holders of three-year Bologna Process bachelor's degrees are generally at least as prepared for graduate admission as holders of four-year U.S. bachelor's degrees, however it is at an individual institution's discretion to decide whether or not to accept this position.

The Director issued a Request for Evidence (RFE), informing the Petitioner that the record did not establish that the Beneficiary possessed the minimum education for the offered position, as required by the labor certification. The Director cited to the Electronic Database for Global Education (EDGE), which is a web-based resource for the evaluation of foreign educational credentials created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).[2]

EDGE describes a "bachelors" from Belgium as "[a]warded upon completion of three years, 180 ECTS, of study at a university. First cycle Bologna-compliant degree, it replaces the Candidature/Kandidaat(ur) and the Gradue. Awarded in all fields including engineering, law, medicine, etc. Insufficient for professional licensing in these fields." According to EDGE, a "bachelors" from Belgium "represents attainment of a level of education comparable to three years of university study in the United States. Credit may be awarded on a course-by-course basis."

In response to the RFE, the Petitioner submitted a letter from Mr. [redacted] Mr. [redacted] states, "The general position of this office is that, with certain exceptions, a foreign degree must include at least four years of full-time undergraduate-level study to equate to a four-year U.S. bachelor's degree." He explains that his office updated its equivalency for degrees issued under the Bologna Process, launched by the European Higher Education Area in 1999, to equate to U.S. bachelor's degrees. He further states that "not all credential evaluation organizations and admissions offices have the same policy regarding Bologna degrees, although the trend in the field is increasingly in favor of equating these degrees to U.S. bachelor's degrees."

The Director denied the petition, concluding that the evidence did not establish that the Beneficiary has a single U.S. baccalaureate degree or foreign equivalent degree that requires four years of education. Rather, the Director determined, the Beneficiary has a foreign three-year baccalaureate degree which is the equivalent of three years of post-secondary education.

On appeal, the Petitioner asserts that the Director erred in not accepting the findings of the credential evaluation, as "the industry-wide standards of higher education" accept three-year degree programs following the Bologna process as "sufficient to prepare foreign nationals to enter into Master's degree programs." The Petitioner cites to the "World Education Services Advisor Blog," and lists several U.S. universities that it asserts accept students with three-year foreign degrees. The Petitioner also states that USCIS has previously considered "a three-year university degree equivalent to a U.S. bachelor's degree if the country's education system has a 13-year education program." It cites to

[2] AACRAO is a nonprofit professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries. *See* http://www.aacrao.org/who-we-are. USCIS considers EDGE to be a reliable source of information about foreign credentials equivalencies.

EDGE in concluding that the education system in Belgium requires 13 years of study because EDGE states "education in Belgium is compulsory between the ages of 6 and 18 years of age." The Petitioner submits copies of the Beneficiary's academic records for his primary and secondary education and asserts that "the educational requirements in the Beneficiary's home country in conjunction with his bachelor's degree program renders Beneficiary's degree equivalent to a 4-year U.S. bachelor's degree."

Here, the evidence submitted is not sufficient to establish that the Beneficiary has the U.S. bachelor's degree or foreign equivalent degree that is required by the labor certification and for classification as a professional. The Beneficiary's education was a three-year course of study; however, a U.S. bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm'r 1977).

The evaluation of the Beneficiary's academic credentials, while acknowledging that the Beneficiary only studied for three years, does not indicate how the evaluator found these three years of study to equate to the four years of study required for a U.S. bachelor's degree. The evaluation does not discuss the individual courses the Beneficiary completed to meet the degree requirements. In fact, it does not appear that the evaluator reviewed the Beneficiary's transcripts, as only the certificate from the French Community of Belgium is listed as the basis for the evaluation. Nor does the record include the Beneficiary's academic transcripts from [redacted] Moreover, although Mr. [redacted] states that the "trend in the field" is to equate Bologna degrees to U.S. bachelor's degrees, he does not address the credential advice in EDGE, which concludes that the three-year, first cycle Bologna-compliant degree is comparable to three years of university study in the United States rather than to a bachelor's degree. Mr. [redacted] also readily admits that that "not all credential evaluation organizations and admissions offices have the same policy regarding Bologna degrees," which essentially acknowledges that the credential is not universally considered equivalent to a U.S. bachelor's degree.

USCIS may, in our 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 we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). *See also Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011).

Although the Petitioner asserts that the three-year foreign degree is commonly recognized in the industry of higher education as equivalent to a U.S. bachelor's degree, its citation to the "World Education Services Blog" is misplaced. The blog, dated August 22, 2019, is titled "Why Should You Evaluate a 3-Year Indian Bachelor's Degree?" However, the Beneficiary's degree is from Belgium and nothing in the record compares the Beneficiary's academic credentials to a degree from an Indian institution. Further, while the blog lists U.S. universities "that are more likely to consider candidates with a three-year bachelor's degree," it does not indicate that acceptance of a three-year degree is an industry standard.

The Petitioner also references a printout of the Syracuse University website discussing the equivalence of a U.S. bachelor's degree for graduate admissions. The website lists the "general equivalents to a U.S. bachelor's degree (by country/region)." However, the list does not specifically identify degrees

from Belgium. Further, the issue here is not whether the Beneficiary's degree would be accepted at Syracuse University for admission to a graduate program. Rather, the issue is whether the Beneficiary meets the minimum education requirement for the offered position as stated on the labor certification.

In stating that the "industry-wide standard" is to equate the three-year degree to a U.S. bachelor's degree, the Petitioner also does not address the credential advice in EDGE in response to the Director's RFE or on appeal. The Petitioner does not explain how the admissions policies of some universities results in an "industry-wide standard."

While we acknowledge the Petitioner's appellate argument that USCIS may consider a three-year foreign degree to be equivalent to a four-year U.S. bachelor's degree where the education system requires 13 years of primary and secondary education, these determinations are made on a case-by-case basis. Here, we disagree with the Petitioner's analysis of the Belgian education system. While EDGE does state that education is compulsory from ages 6 to 18, contrary to the Petitioner's calculations, this does not total 13 years of education. According to EDGE, the Belgium Education – French Community education system requires six years of primary school and six years of secondary education. This is consistent with Mr. [redacted] evaluation of the Beneficiary's academic credentials, which states that the entrance requirement for the Beneficiary's bachelor of education is "completion of twelve years of primary/secondary education."

The Petitioner asserts that evidence of the Beneficiary's primary and secondary education "establishes the high-quality educational programs Beneficiary attended prior to entering his undergraduate degree program." The Petitioner submits the Beneficiary's Certificat d'Etudes de Base demonstrating that he completed his primary education in 1998. The Petitioner also submits the Beneficiary's Certificat d'Enseignement Secondaire Superieur issued in 2005. According to EDGE, the Certificat d'Enseignement Secondaire Superieur is "awarded upon completion of six years of general secondary school" and "represents attainment of a level of education comparable to completion of senior high school in the United States." The record does not demonstrate that the Beneficiary completed 13 years of primary and secondary education, or that the Belgian education system requires 13 years of education.

The record does not demonstrate that the Beneficiary's three-year degree from Belgium is a U.S. bachelor's or foreign equivalent degree required by the terms of the labor certification and for classification as a professional.

III. CONCLUSION

The Petitioner has not established that the Beneficiary possesses a U.S. bachelor's degree or a foreign equivalent degree, as required by the labor certification and for classification as a professional. We will therefore affirm the petition's denial. In visa petition proceedings it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.