U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF U-H

DATE: MAY 10, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a healthcare management company, seeks to employ the Beneficiary as a web developer consultant. 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 (EB-2) 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 and a subsequent motion to reconsider, concluding that the Petitioner did not establish the Beneficiary's possession of the minimum, post-baccalaureate experience required for the offered position. Specifically, the Director determined that the Beneficiary's bachelor's degree was issued in 2012, and that he did not possess at least five years of post-baccalaureate experience.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary met all of the requirements for his bachelor's degree in 1995, and that he obtained the required post-baccalaureate experience for the offered position thereafter.

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 November 21, 2016. *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 REQUIREMENTS OF THE OFFERED POSITION

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). Here, the labor certification states the minimum requirements of the offered position of web developer consultant as a U.S. bachelor's degree, or a foreign equivalent degree,[2] and five years of related experience. Because the Petitioner requests the Beneficiary's classification as an advanced degree professional, the requisite experience must post-date his bachelor's degree. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" to include a "United States baccalaureate degree or a foreign equivalent degree *followed by* at least five years of progressive experience in the specialty") (emphasis added).

Further, the regulations governing the EB-2 classification require the submission of an "official academic record" showing the Beneficiary's possessions of a foreign equivalent degree. 8 C.F.R. § 204.5(k)(3)(i)(B). When determining whether a document is an official academic record that substantiates the claimed degree, we may consider whether the document was issued by the university in the normal course of business; whether the document was contemporaneously issued with events; and whether the document indicates that all requirements for the degree, in addition to the required coursework, have been completed.

On the labor certification, the Beneficiary attested that, after completing a baccalaureate program at an Indian university in 1995, he gained over 18 years of full-time, related experience. He listed qualifying experience from 1997 to 2015. The Director, however, found the Beneficiary's experience insufficient. The Director measured the Beneficiary's post–baccalaureate experience from the issuance of his diploma in December 2012, concluding that the Beneficiary lacked five years of experience from that date.

On appeal, the Petitioner asserts that the Beneficiary obtained his degree in April 1995, when he passed the final degree examination. The Petitioner therefore contends that all of the Beneficiary's experience is post–baccalaureate in nature. It asserts that the Director failed to follow the decision in *Matter of O-A-, Inc.*, Adopted Decision 2017-03 (AAO Apr. 17, 2017), to determine whether the Beneficiary completed all substantive requirements to earn the degree and the university has approved the degree. 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

[2] The record establishes that the Beneficiary has the foreign equivalent of a U.S. bachelor's degree.

> 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, the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE)[3] 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 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.[4]

In *Matter of O-A-*, although the beneficiary received a bachelor's diploma from an Indian university in 2007, we measured her post-degree experience from the date of a "provisional certificate" the university issued her in 2006. *Id.* at 4-5. Thus, we found that the provisional certificate, together with the beneficiary's marks statements and a letter from a school official explaining the administrative delay in the issuance of her diploma, established her satisfaction of all substantive degree requirements and her school's approval of the degree. *Id.*

In this case, as noted by the Director, the Beneficiary has not provided a provisional certificate. Instead, the Petitioner submitted the following documents:

- Bachelor of Science (Technology) diploma issued to the Beneficiary by the University of . The diploma states that it was conferred at the convocation on December 30, 2012, and that the Beneficiary passed his examination for the degree in April 1995.
- Statement of marks issued by University of indicating that the Beneficiary passed his examination for the B.Sc. (Tech.) degree in April 1995.
- Special certificate issued by the University of on October 30, 2010. It states that the Beneficiary passed his examination for his degree in April 1995, and that he "is eligible for

[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 Apr. 25, 2018). 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 Apr. 25, 2018).

[4] *See India: Provisional Degree Certificate*, AACRAO, http://edge.aacrao.org/country/credential/provisional-degree-certificate (last visited Apr. 25, 2018).

conferment of the B.Sc. (Tech.) degree and the degree will be conferred on him at the Convocation of this University on his applying for the same."

- Letter dated September 26, 2017, from the University of deputy registrar stating that the Beneficiary "passed the degree course examination held in April 1995" and the degree was "awarded to him at the convocation held on 30th December 2012."
- Letter dated October 5, 2017, from the University of deputy registrar stating that the Beneficiary "completed the degree course and passed final examination held by this University in April 1995."

The diploma, statement of marks, special certificate, and other university documentation indicate the Beneficiary's passage of a final examination in 1995. But, unlike in *Matter of O-A-*, the record does not establish that all of the substantive requirements for the Beneficiary's degree were met and the degree was in fact approved by the responsible university body prior to the diploma's issuance in 2012. Specifically, while the diploma and statement of marks were issued in the normal course of school business contemporaneous with the passage of the final exam, they do not indicate that all of the substantive requirements for the Beneficiary's degree were met and the degree was in fact approved by the responsible university body prior to the diploma's issuance in 2012.

Further, the special certificate indicates that the Beneficiary was "eligible for conferment" of the degree in 2010, but it does not state that all of the substantive requirements for the Beneficiary's degree were met and that the degree was approved by the university at that time. Instead, it indicates that the Beneficiary still had to apply for conferment of his diploma, indicating that the degree had not yet been approved by the university. Additionally, the certificate was issued in October 2010, over 15 years after the Beneficiary's completion of the final exam. Thus, the certificate was not issued in the normal course of school business contemporaneous with the passage of his final exam, and it is not an official academic record.[5]

In addition, the letters from the University of were issued in 2017 apparently at the Beneficiary's request, over 22 years after the Beneficiary's completion of the final exam and after conferment of the Beneficiary's actual degree in 2012. Thus, the letters were not issued in the normal course of school business contemporaneous with the passage of his final exam, and thus, they are not official academic records. Moreover, the letters do not establish that all of the substantive requirements for the Beneficiary's degree were met and the degree was in fact approved by the responsible university body prior to the diploma's issuance in 2012.

[5] Even if the special certificate constituted an official academic record confirming the Beneficiary's degree in October 2010, the Beneficiary did not have five years of qualifying post–baccalaureate experience from October 30, 2010, to the priority date on November 21, 2016. Specifically, during that period, the record establishes the Beneficiary's qualifying experience from October 30, 2010, to March 18, 2015, which is less than the required five years. Although the Beneficiary indicates that he had additional experience with the Petitioner from March 19, 2015, through the priority date, his experience was in the offered job of web developer consultant. 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). The record does not support the use of the experience the Beneficiary gained with the Petitioner as qualifying experience for the offered job.

The record also contains two evaluations of the Beneficiary's education. The first evaluation states that the Beneficiary's bachelor of science in technology was "awarded in April 1995" and that the "degree was issued in December 2012." It does not clarify the difference between the awarding and the issuance of the degree, and does not state that all of the substantive requirements for the Beneficiary's degree were met and that the degree was in fact approved by the responsible university body prior to the diploma's issuance in 2012. The second evaluation states that the Beneficiary completed his degree requirements in 1995. It states that the University of did not start issuing provisional certificates until July 2010. Prior to July 2010, the evaluation states that the university issued special certificates similar to the one provided by the Beneficiary.[6] However, in this case, the special certificate issued by the University of is dated October 30, 2010. If the University of started issuing provisional certificates in July 2010, it is unclear why the Beneficiary submitted a special certificate instead of a provisional certificate to establish the issuance of his degree in this case. Also, as noted previously, the special certificate does not state that all of the substantive requirements for the Beneficiary's degree were met and that the degree was approved by the University.

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). The evaluations in this case do not establish the Beneficiary's satisfaction of all substantive degree requirements and his school's approval of the degree before the issuance of his degree diploma in 2012.

In this case, the Petitioner has not demonstrated the Beneficiary's possession, by the petition's priority date, of the requisite five years of post-baccalaureate experience required for the offered position. We will therefore affirm the Director's decision.

[6] The evaluation does not indicate the difference(s) between a provisional certificate and a special certificate, if any.

III. CONCLUSION

The record on appeal does not establish that the Beneficiary met all of the requirements of the offered position set forth on the labor certification by the priority date of the petition.

ORDER: The appeal is dismissed.

Cite as *Matter of U-H-* ID# 1264123 (AAO May 10, 2018)