U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-B-C-

DATE: MAY 16, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a pork and beef processor, seeks to employ the Beneficiary as an IT analyst II. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification.[1] *See* Immigration and Nationality Act (the Act), section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This "EB-3" 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 Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that the Beneficiary possessed the minimum educational requirement of the job offer. Specifically, the Director found that the Beneficiary's submitted provisional certificate was not proof of a final degree, and also concluded that the Beneficiary did not possess any degree in the field of computer science or information systems, as required by the job offer.

The matter is now before us on appeal. The Petitioner asserts that the Director erred in not accepting the Beneficiary's provisional certificate as evidence that he possessed the education required by the job offer and that the Director overstepped his authority and should have deferred to the Department of Labor (DOL) to interpret the educational requirements of the job offer. The Petitioner acknowledges that the job offer specified that the position required a master's degree in computer science or information systems, but notes that it had also listed that a bachelor's degree and five years of experience as an alternative combination of education and experience that would be accepted, and that the alternative bachelor's degree was not required to be in the same field of study as the primary degree listed.

Upon *de novo* review, we will remand the case for further proceedings.

[1] We note that the Petitioner previously filed an employment-based petition under section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), seeking to classify the Beneficiary as an "EB-2" professional with an advanced degree. The Director denied this petition after concluding that the Beneficiary did not possess an advanced degree in computer science or information systems as required by the job offer.

I. THE LABOR CERTIFICATION

Employment-based immigration generally follows a three-step process. First, an employer must obtain an approved labor certification from 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, 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. Section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, 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. Third, if USCIS approves the 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.

As required by statute, the Form I-140, Immigrant Petition for Alien Worker, filed in this matter is accompanied by an approved labor certification certified by the DOL.[2] The priority date of the petition based on the date that the labor certification was filed in this matter is December 18, 2014.[3]

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: Master's degree.
. . .	
H.4-B.	Major field of study: Computer science, information systems.
H.6.	Is experience in the job offered required for the job? Yes.
H.6-A.	If Yes, number of months experience required: 12.
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? Yes.
H.8-A.	If Yes, specify the alternate level of education required: Bachelor's degree.
. . .	
H.8-C.	If applicable, indicate the number of years experience acceptable in question 8: 5.
H.9.	Is a foreign educational equivalent acceptable? Yes.
. . .	
H.14.	Specific skills or other requirements: Employer will accept any suitable combination of education, training, or experience.

[2] *See* Section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); *see also* 8 C.F.R. § 204.5(a)(2).
[3] *See* 8 C.F.R. § 204.5(d). A beneficiary must be eligible as of that date.

On the labor certification, in Part J.11, J.12, and J.13, the Beneficiary listed his education as a master's degree in commerce from [redacted] in India, completed in 2004. The Petitioner submitted copies of the Beneficiary's diploma, provisional certificate, and consolidated memorandum of marks from [redacted] reflecting that the Beneficiary had passed the Bachelor of Commerce examination in April 1999. The Petitioner also submitted copies of the Beneficiary's provisional certificate, dated March 25, 2006, and memorandum of marks from [redacted] for the Beneficiary's Master of Commerce program of study. The Petitioner further submitted a certificate and mark sheet from [redacted] of India, showing the Beneficiary passed the final examination there in March 2005.

The Petitioner submitted a credentials evaluation performed by [redacted] Ph.D., for [redacted] examined the Beneficiary's bachelor's degree and master's degree and concluded that these degrees equated "[s]ixty academic credit hours toward the Bachelor of Science degree in Management Information Systems, at a regionally accredited institution in the United States." [redacted] also examined the Beneficiary's employment experience from March 2006 through the April 15, 2013, date of the evaluation. The professor stated that "[f]ollowing the three-to-one rule of the . . . USCIS . . . formula, [the Beneficiary's] professional work experience, [sic] can be equated to seventy (70) academic credit hours of college level study in Management Information Systems."[4] [redacted] concluded that the Beneficiary "has achieved, through his academic credentials, and his professional work experience, the equivalent of a Bachelor of Science degree in Management Information Systems, at a regionally accredited institution in the United States."

The Director found that the Beneficiary's education in commerce or the evaluation that combined education and experience did not satisfy the requirements of the job offer, which required a master's degree in computer science or information systems plus 12 months of experience in the offered job or, in the alternative, a bachelor's degree plus five years of experience. Therefore, the Director denied the petition.

II. LAW AND ANALYSIS

The Director raised two issues regarding the Beneficiary's educational record: whether a provisional certificate was proof that a university had conferred a degree, and whether the Beneficiary possessed a U.S. bachelor's degree or a foreign equivalent degree in the required field of study. We will examine both issues.

A. The Beneficiary's Degree

The 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). *See Matter of Wing's*

[4] We note that the equivalence cited by the evaluator applies to non-immigrant H-1B petitions, not to immigrant petitions such as this one. *See* 8 CFR § 214.2(h)(4)(iii)(D)(*5*).

Tea House, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In the instant case, the labor certification states that the position requires a master's degree in computer science or information systems and twelve months of experience in the offered job. The Petitioner indicated that a candidate could alternatively qualify for the offered position with a bachelor's degree and five years of experience. As noted above, the record contains copies of the Beneficiary's March 25, 2006, provisional certificate for his master of commerce degree and memorandum of marks from

The Director stated that a provisional certificate is not proof that the university awarded a final degree. However, we must consider evidence submitted of 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, combined with statement of marks, or relevant documentation 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 university body.

Here, the record demonstrates that, by issuance of the provisional certificate on March 25, 2006, the Beneficiary had completed all substantive requirements and the university had in fact approved the degree. The record contains the following university documents contemporaneous with the relevant events: (1) a copy of the Beneficiary's provisional certificate issued on March 25, 2006, which states that the Beneficiary "passed the M. Com. Examination of this University"; and, (2) a copy of the Beneficiary's statement of marks showing that he passed the "M. Com. (COMMERCE) FINAL" exams.

Finally, we have turned to information publicly available from the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE),[5] and note that it accords with the Petitioner's claim and evidence. On the matter of provisional certificates issued by Indian universities, AACRAO EDGE 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

[5] 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 April 25, 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 April 25, 2017).

> 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.[6]

EDGE additionally notes that some students never receive their "final Degree Certificate," but instead rely on the provisional degree certificate as evidence of degree completion. *Id.*

The provisional certificate, together with his statement of marks, demonstrates that the Beneficiary completed all the substantive requirements and that the university approved his degree dated from March 25, 2006. Accordingly, we find that the provisional certificate from conferred on the Beneficiary a master's of commerce degree. EDGE states that a master's of commerce in India is "[a]warded upon completion of two years of study beyond the three year bachelor's degree" and that it represents the "attainment of a level of education comparable to bachelor's degree in the United States."

While the Petitioner has established that the Beneficiary possesses the foreign equivalent of a U.S. bachelor's degree, we must still examine whether the Beneficiary's degree is in the field of study required by the labor certification.

B. The Beneficiary's Field of Study

On appeal, the Petitioner cites the credentials evaluation performed by who relies on the Beneficiary's academic studies combined with his employment experience as being equivalent to a U.S. bachelor's degree in information systems. The Petitioner also submits a new evaluation of the Beneficiary's education, training, and experience, performed by for While concluded that the Beneficiary's two degrees and all of his past work experience combined to form the equivalent of a U.S. bachelor's degree in management information systems, arrived at a different conclusion.[7] found that the Beneficiary's Indian bachelor's and master's degrees are "indicative of his fulfillment of at least a bachelor's-level degree equivalency in Business Administration, Management, or a related field." In addition to the Beneficiary's academic credentials, examined the Beneficiary's employment experience from March 2006 until March 2012, as well as his work experience since March 2012. cited "the equivalency ratio promulgated by the USCIS, pursuant to which not less than five years of work experience in the field of specialty following completion of a

[6] *See India: Provisional Degree Certificate*, AACRAO, http://edge.aacrao.org/country/credential/provisional-degree-certificate (last visited April 25, 2017).

[7] The discrepancy is significant because the labor certification requires 12 months of experience in the offered job in addition to the required master's degree or, in the alternative, five years of experience in the offered job in addition to a bachelor's degree. In this case, since the credentials evaluation from uses all of the Beneficiary's employment experience (up until 2013) to form the equivalent of a bachelor's degree, it is not clear that the Beneficiary would possess the full amount of required employment experience in addition to the equivalent of a master's degree. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

baccalaureate degree is equivalent to an advanced, or master's-level degree" and concluded that the Beneficiary "has attained, in time equivalence, a Master of Science Degree in Computer Information Systems, as well as one additional year of professional experience in the field."

The terms of the labor certification require a master's degree in computer science or information systems plus one year of experience in the offered job, or a bachelor's degree plus five years of experience. We note that the Beneficiary's Indian bachelor's and master's degrees are both in commerce, and his submitted memorandums of marks reveal no coursework in either computer science or information systems. The Petitioner maintains on appeal that while it specified at line 4-B of the labor certification that a candidate must possess a master's degree in computer science or information systems, the Petitioner contends that it listed alternative qualifications at line H.14 of the labor certification and did not place any field of study requirements on the alternative requirements, stating instead that it would accept "any suitable combination of education, experience and/or training for this position."[8] The Petitioner explains that this language "was meant to broaden the pool of U.S. worker applicants who might be eligible for the open position."

As the record does not contain documentation of how the position was advertised to determine whether the Petitioner allowed for "any field," in connection with the alternate education and experience or advertised to allow for "any combination of education, and experience," the matter is being remanded to the Director for examination of the Petitioner's intent concerning the actual minimum requirements of the position as that intent was explicitly and specifically expressed during the labor certification process to the DOL and to potentially qualified U.S. workers.

The Director may request that the Petitioner provide a copy of the signed recruitment report required by 20 C.F.R. § 656.17(g)(1), as well as copies of the prevailing wage determination, all online, print and additional recruitment conducted for the position, the job order, the posted notice of the filing of the labor certification, and all resumes received in response to the recruitment efforts. The Director may also request that the Petitioner submit any other communications with the DOL that may be probative of its intent regarding the minimum requirements of the offered position and showing that the ads allowed U.S. workers with bachelor's degrees in other fields of study to apply for the position, and that the Petitioner actually considered applicants with other fields of study.

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[8] By way of background, the regulation at 20 C.F.R. § 656.17(h)(4)(ii) states:

> If the alien beneficiary already is employed by the employer, and the alien does not meet the primary job requirements and only potentially qualifies for the job by virtue of the employer's alternative requirements, certification will be denied unless the application states that any suitable combination of education, training, or experience is acceptable.

This language is referred to as "*Kellogg* language" based on the Board of Alien Labor Certification Appeals ruling in *Francis Kellogg*, 1994-INA-465 and 544, 1995-INA 68 (Feb. 2, 1998) (en banc). Accordingly, H.14 appears to be "Kellogg" language rather than an expression of any allowed bachelor's equivalency.

III. CONCLUSION

In view of the foregoing, the previous decision of the Director will be withdrawn. The petition is remanded to the Director. The Director may request any additional evidence considered pertinent. Similarly, the Petitioner may provide additional evidence within a reasonable period of time to be determined by the Director. Upon receipt of all the evidence, the Director will review the entire record and enter a new decision.

ORDER: The decision of the Director, Nebraska Service Center, is withdrawn. The matter is remanded to the Director, Nebraska Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of S-B-C-*, ID# 11960 (AAO May 16, 2017)