U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-C-, INC.

DATE: MAY 26, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a jewelry sales and marketing business, seeks to employ the Beneficiary as a marketing director. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. *See* Immigration and Nationality Act (the Act), section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary met the minimum requirements for the proffered job as of the priority date. Specifically, the Director determined that the Beneficiary did not have the education required for the proffered position.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary met the minimum requirements for the proffered job as of the priority date.

Upon *de novo* review, we will withdraw the decision of the Director and remand the matter for further proceedings consistent with this opinion and for the entry of a new decision.

I. LAW AND ANALYSIS

A. Employment-Based Immigration

Employment-based immigration generally follows a three-step process. First, an employer must obtain an approved ETA Form 9089, Application for Permanent Employment Certification (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

[1] The date the labor certification is filed, in cases such as this one, is called the "priority date." *See* 8 C.F.R. § 204.5(d). In this case, the priority date is December 14, 2015.

of domestic workers similarly employed. *See* 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.

B. Beneficiary's Qualifications

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. The labor certification requires a U.S. bachelor's degree in marketing or foreign educational equivalent, and 12 months of experience in the job offered of marketing director. No alternate combination of education or experience is acceptable.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in part:

> If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. 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.

The Beneficiary holds a bachelor of arts degree in hospitality management and marketing issued in December 2011 by in Switzerland. is accredited by the in the United States, although it does not have a physical location in the United States.

The Beneficiary's transcripts from indicate that he earned 122 total credits over seven semesters, with two internships. The Beneficiary's diploma from includes a chart stating that a minimum of 120 credits are necessary for completion of a bachelor's degree. This is consistent with the accreditation requirements of

On appeal, the Petitioner submits an educational evaluation from which equates the Beneficiary's degree from to a "Bachelor's degree in Hospitality Management and Marketing from an institution that is accredited by one of six recognized regional academic accrediting bodies in the United States." The evaluation indicates that admission to requires completion of education equivalent to graduation from senior high school in the United States.

The Director denied the petition, basing its denial on the use of an Electronic Database for Global Education (EDGE) degree equivalency for Switzerland. The Petitioner asserts that the Director erred in using the EDGE standards for Switzerland. Instead, it asserts that should be treated as a U.S. educational institution. The Petitioner notes on appeal that is not accredited by the Swiss educational system.

We agree with the Petitioner that the Director's reliance on the EDGE degree equivalency standards for Switzerland was not appropriate in this case. Instead, we must determine whether the Beneficiary's degree, issued by a U.S.-accredited institution of higher education located outside of the United States, is a foreign equivalent degree for purposes of the professional classification. Accreditation is one of many factors to be considered in determining whether a degree issued by a foreign institution is equivalent to a U.S. degree. Other factors include, but are not limited to: admission and curriculum requirements, education level, type of institution, objective of educational program, courses taken, credits received, grades received, and program length. Based on these factors, the record establishes that the Beneficiary's degree from a U.S.-accredited institution of higher education located outside of the United States, is the foreign equivalent of a U.S. bachelor's degree in marketing.

The evidence submitted with the petition and on appeal establishes that the Beneficiary possesses the required education for the proffered job. The Petitioner has also established that the Beneficiary has the required experience for the proffered job. Thus, the Petitioner has established that the Beneficiary met the minimum requirements for the proffered job as of the priority date. We will therefore withdraw the decision of the Director and remand the matter for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

C. Ability to Pay the Proffered Wage

Although not addressed by the Director, the record does not establish that the Petitioner has the continuing ability to pay the proffered wage from the priority date. The proffered wage is $81,100 per year.

The regulation at 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.

In this case, the record does not contain an annual report, federal tax return, or audited financial statements for the Petitioner for 2015 as required by 8 C.F.R. § 204.5(g)(2).[2] On remand, the

[2] The record contains the Petitioner's federal tax return for 2014; unaudited financial statements for 2015 and part of 2016; and paystubs for the Beneficiary indicating that he had received wages of $35,076.92 year-to-date from the Petitioner as of June 4, 2016. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the Petitioner's ability to pay the proffered wage.

Director should request regulatory-required evidence of the Petitioner's continuing ability to pay the proffered wage from 2015 onward.

II. CONCLUSION

The decision of the Director regarding the Beneficiary's education will be withdrawn. The matter is remanded to the Director for consideration of the Petitioner's ability to pay the proffered wage from 2015 onward. 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 is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of I-C-, Inc.*, ID# 307466 (AAO May 26, 2017)