U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-C-I-, INC.

DATE: MAY 30, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a pre-paid gift card processing company, seeks to employ the Beneficiary as a software engineer. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(B)(3)(A)(i). This employment-based 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 Director of the Texas Service Center denied the petition. The Director found that the Beneficiary did not qualify for the job offered because he did not meet the minimum educational requirement of the labor certification.

On appeal, the Petitioner asserts that the Beneficiary meets the minimum educational (and experience) requirements of the labor certification to qualify for the job offered.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

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, 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. Second, the employer files 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.

[1] The date the labor certification is filed with the DOL, in this case September 23, 2016, is the "priority date" of the succeeding petition. A beneficiary must meet all eligibility requirements as of that date.

The Petitioner requests classification of the Beneficiary as a skilled worker. In order to qualify as a skilled worker, the Beneficiary must possess at least two years of training or experience and meet the "educational, training or experience, and any other requirements of the individual labor certification." 8 C.F.R. § 204.5(l)(3)(ii)(B). *See also Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

II. ANALYSIS

At issue in this case is whether the Beneficiary possesses the minimum education required by the terms of the labor certification. In section H of the labor certification, the Petitioner specifies the following with respect to the education, training, and experience required to qualify for the job of software engineer:

4.	Education: Minimum level required:	Bachelor's degree
4-B.	Major Field of Study:	Computer Science
5.	Is training required for the job?	No
6.	Is experience in the job offered required?	Yes
6-A.	How long?	60 months
7.	Is an alternate field of study acceptable?	Yes
7-A.	What field?	Engineering or related field
8.	Is an alternate combination of education and experience acceptable?	No
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	Yes
10-A.	How long?	60 months
10-B.	Job titles of alternate occupations	Developer, Project Lead, or related

Section H.14 of the labor certification – "Specific skills or other requirements" – reiterates the educational and experience requirements listed above with the following language:

> Requires a Bachelor's degree in Computer Science, Engineering or related field and five years of experience in the job offered or related position.

Section J of the labor certification states that the Beneficiary's highest level of education relevant to the job opportunity is a bachelor's degree in computer science from in India, completed in 2004. The Beneficiary's diploma from states that her bachelor of commerce was a three year degree course. Section K of the labor certification states that the Beneficiary had seven years and eight months of experience as a project lead with in , India, between October 2007 and June 2015, before starting work with the Petitioner. The record includes documentary evidence of this experience. The petition was accompanied by an evaluation of the Beneficiary's education and experience by dated in March 2013, who asserted that the Beneficiary's three-year

bachelor's degree was equivalent to three years of study at a U.S. college or university, that his five years and five months of experience with [redacted] (up to that time) was equivalent to an additional year of college or university study, and that the combination of this education and experience was equivalent to a bachelor of science degree in computer science from an accredited college or university in the United States.

In response to the Director's request for evidence (RFE) the Petitioner submitted a statement explaining that its use of the term "equivalent" in the labor certification meant that the requirement of a bachelor's degree could be met through a combination of education, training, and experience as determined by a qualified credential evaluation service. The Petitioner submitted another evaluation of the Beneficiary's education and work experience by [redacted] Similar to the previous evaluation from [redacted] the [redacted] evaluation asserted that the Beneficiary's three-year degree from [redacted] was equivalent to three years of study at a U.S. college or university, and that this degree in combination with his work experience was equivalent to a U.S. bachelor's degree in computer information systems.

In his decision denying the petition the Director found that the Beneficiary's three-year bachelor of science degree from [redacted] did not meet the minimum educational requirement of the labor certification because a U.S. baccalaureate degree generally requires four years of education, citing *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). The Director also found that the labor certification did not allow experience to be substituted for any part of the educational requirement. In short, the Director found that the Beneficiary's three-year bachelor's degree from [redacted] and subsequent work experience did not meet the labor certification requirement of a U.S. bachelor's degree or a foreign educational equivalent.

On appeal the Petitioner does not claim that the Beneficiary's three-year bachelor's degree from India is the foreign equivalent of a U.S. bachelor's degree. Rather, the Petitioner asserts that the labor certification allows the Beneficiary to qualify for the offered position with a combination of education and experience deemed by a qualified evaluator to be equivalent to a U.S. bachelor's degree. We do not agree.

In order to determine the minimum requirements of a proffered position, we must examine "the language of the labor certification job requirements." *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine the certified job offer exactly as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F.Supp. 829, 833 (D.D.C. 1984). Our interpretation of the job's requirements must involve reading and applying the plain language of the labor certification application form. *Id.* at 834.

In this case, the labor certification states that the minimum educational requirement is a bachelor's degree in computer science, engineering, or a related field of study, or a foreign educational equivalent (sections H.4, H.4-B, H.7, H.7-A, and H.9), and that the minimum experience requirement is 60 months as a software engineer, developer, project lead, or related work (sections H.6, H.6-A, H.10, H.10-A, and H.10-B). Section H.8 is the proper location on the labor certification to identify any acceptable alternate combinations of education and experience; however, the labor

certification in this case does not permit an alternate combination of education and experience. Nor does the labor certification state, in section H.14 or anywhere else, that the minimum educational requirement of a bachelor's degree may be met by a combination of less than baccalaureate level education plus experience. To the contrary, H.14 explicitly reiterates the requirement of a bachelor's degree. Although, section H.9 of the labor certification states that a "foreign *educational* equivalent" (emphasis added) is acceptable, in this case a foreign equivalent degree of a U.S. bachelor's degree, the labor certification does not state that the foreign educational equivalent may be met with a combination of education and experience.

The Petitioner claims that the letter it submitted with the petition, as well as the statement submitted in response to the RFE, made clear that when drafting the labor certification it intended the phrase "baccalaureate or the equivalent" to include degree equivalency based on a combination of education and experience. In the letter submitted with its petition the Petitioner stated that it would "accept any combination of education, training or experience found equivalent by a qualified credential evaluation service." In the statement submitted in response to the RFE the Petitioner declared that "our use of the term 'equivalent' [in the labor certification] means that the requirement for a baccalaureate degree can be satisfied through a combination of education, training and experience. Specifically, our equivalency standard requires that three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks." On appeal the Petitioner restates that its use of the term "equivalent" does not mean a foreign equivalent degree but rather the equivalency standard of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the regulation for H-1B nonimmigrant petitions that allows three years of specialized training and/or work experience to be considered the equivalent of one year of college or university study.

The plain language of the labor certification, however, does not substantiate any of the Petitioner's claims. Section H of the labor certification plainly states that the minimum educational requirement for the job of software engineer is a U.S. bachelor's degree in computer science, engineering, or a related field of study, or the foreign educational equivalent. There is no language in the labor certification indicating that this minimum educational requirement can be met with a combination of less than baccalaureate level education and work experience. The labor certification does not incorporate any of the explanatory language later used by the Petitioner in the letter it submitted with the petition and the statement it submitted in response to the RFE. Our interpretation of the labor certification's minimum educational requirement cannot be based on the Petitioner's after-the-fact assertion that it intended to allow a combination of less than baccalaureate level education plus work experience to be considered equivalent to a U.S. bachelor's degree. That intent is not expressed in the plain language of the labor certification. *See Madany v. Smith*, 696 F.2d at 1015 and *Rosedale Linden Park Company v. Smith, 5 F.Supp. at 834.*

The Petitioner asserts that the Beneficiary qualifies for classification as a "skilled worker" because he has the requisite two years of experience and a bachelor's degree is not always required for software engineering positions. While the Beneficiary appears to have the requisite experience for skilled worker classification, the Beneficiary must also meet any additional requirements on the labor certification to qualify for the requested classification. *See Matter of Wing's Tea House*, 16 I&N Dec. at 159. As discussed above, the labor certification in this case includes a minimum

educational requirement – a bachelor's degree or a foreign degree equivalent – which the Beneficiary does not meet.

III. CONCLUSION

The Petitioner has not established that the Beneficiary meets the minimum educational requirement of the labor certification.

ORDER: The appeal is dismissed.

Cite as *Matter of I-C-I-, Inc.*, ID# 1266987 (AAO May 30, 2018)