U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Y-T-, INC.

DATE: MAY 31, 2017

MOTION TO RECONSIDER DECISION OF ADMINISTRATIVE APPEALS OFFICE

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

The Petitioner, an international technology consulting company, seeks to employ the Beneficiary as a business development manager. 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 Texas Service Center denied the petition. The Director found that the evidence of record did not establish that the Beneficiary has a U.S. baccalaureate degree or a foreign equivalent degree, as required for classification as a professional. We rejected the subsequent late-filed appeal.

The Petitioner filed a motion to reconsider, which we denied on two grounds. We determined that the petition could not be approved under the professional classification because the Beneficiary does not have a bachelor's degree, and the labor certification does not require a bachelor's degree.

The matter is now before us on another motion to reconsider. We will deny the motion.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer must obtain 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. 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

[1] The date the labor certification is filed is called the "priority date." A beneficiary must be eligible for the requested classification as of that date.

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.

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

In addition, the regulation at 8 C.F.R. § 204.5(l)(3)(i) provides that "[t]he job offer portion of an individual labor certification . . . must demonstrate that the job requires the minimum of a baccalaureate degree."

To be eligible for classification as a professional, therefore, a beneficiary must have at least a U.S. baccalaureate degree or a foreign equivalent degree, and the labor certification must require at least a U.S. baccalaureate degree or a foreign equivalent degree.

II. ANALYSIS

The Petitioner's Form I-140, Immigrant Petitioner for Alien Worker, was accompanied by a certified ETA Form 9089, Application for Permanent Employment Certification (labor certification). Section H of the labor certification stated the following with respect to the minimum educational requirement for the job:

4.	Education: Minimum level required:	Other
4-A.	If "Other" – specify the education required	Bachelor or equivalent of Bachelor's degree
4-B.	Major Field of Study:	Computer Science
7.	Is an alternate field of study acceptable?	No
8.	Is an alternate combination of education and experience acceptable?	No
9.	Is a foreign educational equivalent acceptable?	Yes

In section J of the labor certification the Beneficiary claimed that he earned the equivalent of a bachelor's degree in computer science at the [redacted] in [redacted] India, in 2002. As evidence thereof the Petitioner submitted documentation showing that the Beneficiary completed:

1. Two years of coursework in the field of law at the [redacted] in June 1998;
2. Two half-year computer courses at the [redacted] in [redacted] India, in November 1995 and January 1998;

3. Three computer courses totaling four months of study at [redacted] in [redacted] India, in 1998 and 1999; and
4. An '[redacted]'[2] stating that the Beneficiary's two years of academic studies at the [redacted] from 1996 to 1998 were equivalent to two years of study toward a bachelor's degree from an accredited U.S. college or university; that his additional coursework at [redacted] and [redacted] between 1995 and 1999 raised the overall equivalency of his education in India to three years of study toward a bachelor of science degree from an accredited U.S. college or university; and that combining the Beneficiary's education with his three years and seven months of employment and training in the computer field between June 1997 and August 2002 raised the overall equivalency of his education, training, and experience in India to the level of a bachelor of science in computer science from an accredited college or university in the United States.

The Director denied the petition on the ground that the Beneficiary does not have a U.S. baccalaureate degree or a foreign equivalent degree and therefore could not be classified as a professional. We affirmed the Director's conclusion that the Beneficiary does not have a bachelor's degree, and also found that the labor certification does not require such a degree.

In its current motion the Petitioner contests our findings regarding the institutional distinctions between [redacted] in [redacted] and the [redacted] in [redacted] (where the Beneficiary studied), in particular the finding that the [redacted] in [redacted] does not issue academic degrees. The Petitioner asserts that the two institutions are part of the same university system, but has submitted no supporting evidence. Moreover, even if the [redacted] in [redacted] were a degree-granting university-level institution at the time the Beneficiary studied there, he was not awarded any degree.

The Petitioner contends that its willingness to employ an individual with a combination of classroom learning and practical experience which it deems equivalent to a bachelor's level of education (consistent with the [redacted] fulfills the educational requirement of the labor certification. However, this argument is not relevant to the grounds for denial in this case. In our prior decision we concluded that the petition cannot be approved under the professional classification because the Beneficiary does not possess, and the labor certification does not require, a bachelor's degree. We did not state that the Beneficiary does not satisfy the requirements of the labor certification. As discussed in our prior decision, equivalence to a bachelor's degree based on a combination of education and work experience is not the same as a U.S. baccalaureate degree or a foreign equivalent degree issued by a college or university, which is the requirement for classification as a professional. *See* 8 C.F.R. § 204.5(l)(3)(ii)(C).

The Petitioner references various publications and organizations as authoritative sources of information about foreign credentials and the accreditation of foreign academic institutions, but does not explain

[2] The evaluation, dated September 26, 2002, was authored by [redacted] Professor of Computer Information Systems at the [redacted]

how these references relate to this petition or the previous decisions of this office and the Texas Service Center.

Finally, the Petitioner claims that the previous decisions of this office and the Texas Service Center are contrary to the statute, regulations, and Congressional intent, citing *Grace Korean United Methodist Church v. Chertoff*, 437 F.Supp. 2d 1174 (D.C. Oregon 2005). The Petitioner provides no details, however, to support these assertions. Moreover, we discussed that federal court opinion in our previous decision, including its factual and legal distinction from the current proceeding. The Petitioner does not contest our analysis of that opinion.

Thus, the Petitioner has not established that the Beneficiary has a U.S. baccalaureate degree or a foreign equivalent degree, as required under 8 C.F.R. § 204.5(l)(3)(ii)(C) for him to be classified as a professional under section 203(b)(3)(A)(ii) of the Act. Furthermore, the labor certification does not support classification as a professional because it allows an applicant to qualify for the job with less than a U.S. baccalaureate degree or a foreign equivalent degree. For both of these reasons the petition cannot be approved.

III. CONCLUSION

The petition cannot be approved under the requested professional classification because the Beneficiary does not possess, and the labor certification does not require, a U.S. bachelor's degree or a foreign equivalent degree. We will therefore deny the motion to reconsider.

ORDER: The motion to reconsider is denied.

Cite as *Matter of Y-T-, Inc.*, ID# 385541 (AAO May 31, 2017)