U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-A-, INC.

DATE: NOV. 13, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a retailer of electronic cigarettes and accessories, seeks to employ the Beneficiary as a controller. It requests his classification as a professional under the third-preference, immigrant category. *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 category allows a U.S. business to sponsor a foreign national with a bachelor's degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition. The Director concluded that, contrary to the requirements of the offered position and the requested classification, the record did not establish the Beneficiary's possession of a bachelor's degree.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary has a foreign degree equivalent to a U.S. baccalaureate.

Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further proceedings consistent with the following opinion.

I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS

Employment-based immigration generally follows a three-step process. First, an employer files a labor certification application with the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). The DOL must certify that the United States lacks able, willing, qualified, and available workers for an offered position, and that employment of a foreign national will not hurt the wages and working conditions of U.S. workers with similar jobs. *Id.* If the DOL certifies an offered position, the employer must next file an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, if USCIS approves a 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.

II. THE BENEFICIARY'S POSSESSION OF THE REQUIRED DEGREE

As previously indicated, the beneficiary of a professional petition must have either a U.S. bachelor's degree or a foreign equivalent degree. 8 C.F.R. § 204.5(l)(3)(ii)(C). A petitioner must also establish

a beneficiary's possession of all DOL-certified job requirements by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977).[1]

Here, the labor certification states that the offered position of controller requires a U.S. bachelor's degree or a foreign equivalent degree in "commerce," plus five years of experience in the job offered or as a director, associate director, or chief financial officer. On the labor certification, the Beneficiary attested to his receipt of a bachelor's degree in business administration in 1995 from a Bangladeshi university.

The Petitioner submitted copies of academic records from Bangladeshi universities, indicating the Beneficiary's receipt of a two-year bachelor of commerce degree in 1992 and a two-year master of commerce degree in 1995. The Petitioner also submitted two, independent evaluations of the Beneficiary's foreign educational credentials, concluding that his foreign master's degree equates to a U.S. bachelor's degree. Despite the Petitioner's evidence, the Director concluded that the record did not establish the Beneficiary's possession of a bachelor's degree. The Director found that the Beneficiary must have the equivalent of a U.S. bachelor's degree based on a single, four-year foreign degree, rather than on a combination of degrees.

The Director, however, confused a combination of lesser degrees, which cannot equate to a bachelor's degree, with two progressive degrees, which can. When issuing the immigrant visa petition regulations, the former Immigration and Naturalization Service (INS) found that Congress did not intend to allow U.S. baccalaureate equivalencies based on combinations of education and experience, or combinations of lesser degrees. The INS stated that "both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*" Final Rule for Employment-Based, Immigrant Visa Petitions, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

Here, the Beneficiary does not have a combination of lesser degrees, such as two associate's degrees purportedly equating to a bachelor's degree. Rather, the Beneficiary has progressive degrees: a bachelor of commerce followed by a master of commerce. The record indicates that the Beneficiary's bachelor's degree was a prerequisite for his admission to the master's program. Also, the Beneficiary's degrees reflect four years of university studies, the same amount usually required for a U.S. bachelor's degree. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). Thus, the Beneficiary's master of commerce degree constitutes a single degree equating to a U.S. bachelor's degree.[2] We will therefore withdraw the Director's decision.

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[1] The priority date of this petition is February 25, 2015, the date DOL accepted the accompanying labor certification for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

[2] The Director also described the Beneficiary's academic records as "confusing." The Director noted that the Beneficiary's master's diploma states his passage of the "Final M.Com. Examination of 1993." But a university "testimonial," which the Director found to be dated in 1994, indicates the Beneficiary attendance at the final exam in 1995. Contrary to the Director's finding, however, the testimonial is dated in 1995. The Beneficiary's academic records therefore consistently state that the Beneficiary took and passed the "final exam of 1993" in 1995. The record does not

III. THE PETITIONER'S JOB OFFER

Although the record demonstrates the Beneficiary's possession of a bachelor's degree, the record does not establish the Petitioner's intention to employ the Beneficiary in the offered position on a full-time basis.

A business may petition for a foreign national if it is "desiring and intending to employ [him or her] within the United States." Section 204(a)(1)(F) of the Act. A petitioner must intend to employ a beneficiary under the terms of an accompanying labor certification. *See Matter of Izdebska*, 12 I&N Dec. 54, 55 (Reg'l Comm'r 1966) (affirming a petitions' denial where, contrary to the labor certification's specifications, the petitioner did not intend to employ the beneficiary as a domestic worker on a full-time, live-in basis). For labor certification purposes, the term "employment" means "[p]ermanent, full-time work." 20 C.F.R. § 656.3.

As previously indicated, the Petitioner offered permanent, full-time employment to the Beneficiary as a controller. The labor certification states that the position's job duties include: coordinating and directing financial planning, budgeting, and investment activities; establishing cash flow management policies; managing outside lending relationships; and obtaining necessary licenses and insurance.

The record, however, does not establish the Petitioner's intention to employ the Beneficiary in the offered position on a full-time basis. The record indicates that the Petitioner grosses less than $500,000 a year and employs only three people, raising questions about the Petitioner's need for a controller on a full-time basis. Also, while the job duties of the offered position include managing outside lending relationships, copies of the Petitioner's federal income tax returns for 2014 and 2015 indicate that it has no outside lenders and it is unclear what, if any investment activities the Beneficiary would be responsible for directing. The taxes indicate that it has received loans only from shareholders. In addition, the position's annual proffered wage of $85,259 is almost twice the amount of the Petitioner's 2015 payroll of $46,302. For the foregoing reasons, the record does not establish the Petitioner's intention to employ the Beneficiary in the offered position on a full-time basis.

On remand, the Director should notify the Petitioner of the deficiencies discussed above and afford it a reasonable opportunity to respond. The Director should also ask the Petitioner to submit updated evidence of its ability to pay the proffered wage, including copies of its annual report, federal tax returns, or audited financial statements for 2016. *See* 8 C.F.R. § 204.5(g)(2) (requiring a petitioner to demonstrate its continuing ability to pay from a petition's priority date until a beneficiary obtains

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explain the apparent delay in the Beneficiary's exam; but an explanation is not required where the consistency of the academic records indicates their reliability.

lawful permanent residence). Upon receipt of a timely response from the Petitioner, the Director should review the entire record and enter a new decision.

IV. CONCLUSION

Contrary to the Director's decision, the record establishes the Beneficiary's possession of a foreign equivalent of a U.S. bachelor's degree. The record, however, does not establish the Petitioner's intention to employ the Beneficiary in the offered position on a full-time basis.

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 S-A-, Inc.*, ID# 746176 (AAO Nov. 13, 2017)