U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-, LTD

DATE: NOV. 24, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a diesel engines manufacturer, seeks to employ the Beneficiary as a maintenance engineer. 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. The Director found that the labor certification does not require at least a bachelor's degree and the Beneficiary does not have a bachelor's degree. The Director concluded, therefore, that the labor certification does not support the requested classification of professional and that the Beneficiary is not eligible for that classification.

On appeal the Petitioner submits a brief and copies of documents already in the record. The Petitioner asserts that the Director, after determining that the Beneficiary was ineligible for professional classification, should have considered the alternative classification of skilled worker. The Petitioner claims that the Beneficiary's employment experience meets the minimum requirements of the labor certification and qualifies him for classification as a skilled worker.

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. *See* section

[1] The date the labor certification is filed – in this case, December 15, 2015 – is called the "priority date." *See* 8 C.F.R. § 204.5(d). The Petitioner must establish that all eligibility requirements for the petition have been satisfied from the priority date onward.

212(a)(5)(A)(i)(I)-(II) of the Act. 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 applies 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. ANALYSIS

At issue here is whether the labor certification supports the requested classification and whether the Beneficiary qualifies for that classification. In its Form I-140, Immigrant Petition for Alien Worker, the Petitioner checked the box at part 2.1.e. which specifies that the petition is being filed for "[a] professional (at a minimum, possessing a bachelor's degree or a foreign degree equivalent to a U.S. bachelor's degree)."

A. Labor Certification Does Not Support Professional Classification

In order to be eligible for professional classification, the labor certification must require, at a minimum, a U.S. bachelor's degree or a foreign equivalent degree. See 8 C.F.R. § 204.5(l)(3)(ii)(C). In this case, the accompanying labor certification stated the following with respect to the minimum requirements for the proffered job of maintenance engineer:

4.	Education: Minimum level required:	Other
4-A.	If "Other" – Specify the education required:	Bachelor's Degree or Equivalent
4-B.	Major Field of Study:	Mechanical Engineering
5.	Is training required for the job?	No
6.	Is experience in the job offered required?	Yes
6-A.	How long?	96 months
7.	Is an alternate field of study acceptable?	No
8.	Is an alternate combination of education and experience acceptable?	Yes
8-A.	What level of education?	Other
8-B.	If "Other" – What alternate level?	Bachelor's degree equivalent as determined by credentials agency
8-C.	How much experience?	8 years
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	No

In his decision the Director found that the labor certification – in particular parts H.4, H.4-A, H.8, H.8-A, and H.8-B – required "something less" than a U.S. bachelor's degree or a foreign equivalent, and therefore did not support the requested immigrant visa classification of professional. We agree. By allowing for a "bachelor's degree equivalent as determined by a credentials agency" the labor certification allows an applicant to qualify for the job with less than a single U.S bachelor's degree or foreign equivalent degree.[2]

On appeal, the Petitioner does not dispute this finding. Rather, the Petitioner asserts that after determining the petition was not approvable for classification as a professional, the Director should have considered the petition under the requirements for skilled worker classification and approved the petition for that classification. We do not agree. In part 2 of the Form I-140 the Petitioner checked the box at 1.e. stating that the petition was being filed for a professional. The Petitioner did not check the box at 1.f. stating that the petition was being filed for a skilled worker. A Petitioner may not make material changes to a petition already filed to make it conform to USCIS requirements for eligibility and approval. *See Matter of Izummi*, 22 I&N Dec. 169 (Assoc. Comm'r 1998). Therefore, the Director was correct in not considering the alternate classification of skilled worker now claimed by the Petitioner on appeal.

The Petitioner cites a federal district court opinion, *Grace Korean United Methodist Church v. Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), in which the court held that because "option (e)" on the Form I-140 petition at that time allowed a petitioner to request either professional or skilled worker classification, the petition could be approved for skilled worker classification if the accompanying labor certification had an educational requirement of "B.A. or equivalent" which could be met with a combination of education and experience. That case is distinguishable from this petition, however, because a new Form I-140 was introduced in January 2010 which separated the classification selections for professionals and skilled workers in Part 2 (Petition Type). While "professional" remained in box 1.e., "skilled worker" was moved to box 1.f. Since the Petitioner selected box 1.e. on its Form I-140 filed in 2016, it did not allow for USCIS to consider the petition under the skilled worker option as in *Grace Korean*.

The Petitioner also contends that USCIS should have sent a request for evidence (RFE) if it was unsure as to which classification category on the Form I-140 the Petitioner was applying for. According to the Petitioner, option (e) on the Form I-140 (part 2.1.e.) is for a skilled worker or a professional, so an RFE should have been issued to provide the Petitioner an opportunity to clarify whether it meant to file for a skilled worker or a professional. The Petitioner is incorrect. Option (e) on the Form I-140 (part 2.1.e.) is only for a professional, and that is the only box checked by the Petitioner on its Form I-140. Option (f) on the Form I-140 (part 2.1.f) is the box to check if the

[2] In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. *See also Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008)(for professional classification, USCIS regulations require the beneficiary to possess a single four-year U.S. bachelor's degree or foreign equivalent degree).

petition is for a skilled worker. The Petitioner did not check that box. Accordingly, USCIS was not unsure about which classification category the Petitioner was applying for, and there was no issue to clarify with an RFE.

For the reasons discussed above, the Petitioner has not established that the labor certification supports the requested classification.

B. Beneficiary is Not Eligible for Professional Classification

A petition requesting professional classification "must be accompanied by evidence that the beneficiary holds a United States baccalaureate degree or a foreign equivalent degree." 8 C.F.R. § 204.5(l)(3)(ii)(C).

In support of the petition the Petitioner submitted a letter from an official of stating that the Beneficiary had been employed for 16 years as a maintenance engineer, and an evaluation of the Beneficiary's experience by a professor at the who concluded that the Beneficiary's 16 years of experience and professional training in mechanical engineering was equivalent to a bachelor of science degree in mechanical engineering from an accredited college or university in the United States.

The Director found that the Beneficiary does not have a U.S. bachelor's or foreign equivalent degree, citing the evaluation which concluded that the Beneficiary has the equivalent of a bachelor's degree based on his work experience, and therefore did not qualify for classification as a professional.

On appeal the Petitioner does not contest the Director's finding that the Beneficiary does not have a bachelor's degree, as required by the professional classification. Instead, the Petitioner contends that the Director should have considered the Beneficiary's experience as meeting the requirements for skilled worker classification, and approved the petition for that classification. As previously discussed, however, this petition was filed for a professional, not for a skilled worker. Therefore, we have no basis in this proceeding to consider the Beneficiary's eligibility for skilled worker classification.

III. CONCLUSION

The labor certification does not support the classification of professional, as requested in the Form I-140 petition, because the terms of the labor certification permit an individual to qualify for the job with less than a U.S. baccalaureate or foreign equivalent degree. Furthermore, the record indicates that the Beneficiary does not have a bachelor's degree or a foreign equivalent degree, as required to be eligible for classification as a professional.

ORDER: The appeal is dismissed.

Cite as *Matter of D-, Ltd.*, ID# 744969 (AAO Nov. 24, 2017)