U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13316323

Date: OCT. 16, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Professional

The Petitioner, a nonprofit community organization, seeks to employ the Beneficiary as an arts coordinator. It requests classification of the Beneficiary as a professional under the third preference immigrant visa category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based 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 Petitioner did not establish that the Beneficiary's university degree from Ireland was the foreign equivalent of a U.S. bachelor's degree.

The Petitioner bears the burden of establishing eligibility for the requested immigration benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the appeal for the issuance of a new decision.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as a professional usually follows a three-step process. First, the prospective employer must obtain a labor certification approval from the U.S. Department of Labor (DOL) to establish that there are not sufficient U.S. workers who are able, willing, qualified, and available for the offered position. Section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5).

Second, the employer must submit the approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204 of the Act, 8 U.S.C. § 1154. The immigrant visa petition must establish that the foreign worker qualifies for the offered position, that the foreign worker and the offered position are eligible for the requested immigrant classification, and that the employer has the ability to pay the proffered wage. *See* 8 C.F.R. § 204.5. These requirements must be satisfied by the priority date of the immigrant visa petition. *See* 8 C.F.R. § 204.5(g)(2); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg'l Comm'r 1977). For petitions that require a labor certification, the priority date is the date on which the DOL accepted the labor certification application for processing. *See* 8 C.F.R. § 204.5(d). In this case, the priority date is January 23, 2018.

Finally, if USCIS approves the immigrant visa petition, the foreign worker may apply for an immigrant visa abroad or, if eligible, for adjustment of status in the United States. Section 245 of the Act, 8 U.S.C. § 1255.

II. EDUCATIONAL QUALIFICATIONS

At issue on appeal is whether the Beneficiary's Bachelor of Arts (Honours) in Visual Arts from the [redacted] in Ireland is the foreign equivalent of a U.S. bachelor's degree in visual arts to satisfy the educational requirements of the labor certification[1] and the requested professional classification.[2]

The petition contained a copy of the Beneficiary's diploma issued in 2009 and an academic equivalency evaluation, but not the Beneficiary's academic transcripts. The evaluation states that [redacted] is an officially recognized institution of higher education in Ireland, and that the Beneficiary's degree is "equivalent to a bachelor's degree in visual arts from a regionally accredited college or university in the United States." The evaluation calls the Beneficiary's degree a "four-year Bachelor of Arts program" although the evaluation does not mention reviewing any academic transcripts. The evaluation also notes that one of the sources for its conclusion is the Electronic Database for Global Education (EDGE) of the American Association of Collegiate Registrars and Admissions Officers (AACRAO).[3]

According to EDGE, a three-year Bachelor (Honours) from Ireland represents attainment of a level of education comparable to three years of university study in the United States; and a four-year Bachelor (Honours) from Ireland represents attainment of a level of education comparable to a bachelor's degree in the United States.

The Director issued a request for evidence (RFE) instructing the Petitioner to provide official transcripts showing the Beneficiary's degree was a four-year degree instead of a three-year degree.[4] The Petitioner did not submit a response to the RFE and the Director denied the Petition, concluding that the Petitioner did not establish that the Beneficiary's degree from Ireland was the educational equivalent of a U.S. bachelor's degree.

On appeal, the Petitioner submitted the Beneficiary's "Statement of Examination Results" from [redacted] for 2005-2006, 2006-2007, 2007-2008, and 2008-2009. The documents show the names of the classes completed, the credit hours for each class, and the final grade awarded.

---

[1] The labor certification states that the position requires a bachelor's degree in visual arts and 12 months of experience in the job offered.

[2] A petition for a professional must be accompanied by evidence that the beneficiary holds a U.S. bachelor's degree or a foreign equivalent degree. 8 C.F.R. § 204.5(l)(3)(ii)(C).

[3] AACRAO is described on its website as "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries." http://www.aacrao.org/who-we-are.

[4] The RFE also instructed the Petitioner to submit a properly executed Form G-28, Notice of Appearance as Attorney or Accredited Representative, for the attorney who completed the Form I-140.

As the Director has not had an opportunity to review this evidence that was submitted directly to us on appeal, we are remanding this matter to the Director to determine whether or not the submitted transcripts establish that the Beneficiary's degree from Ireland is the foreign equivalent of a U.S. bachelor's degree.

On remand, the Director should also request updated evidence of the Petitioner's ability to pay the proffered wage from the January 23, 2018 priority date until the present,[5] as well as an employment experience letter that confirms whether or not her twelve months of employment experience was in a full time position.

ORDER: The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.

[5] The Petitioner must demonstrate its continuing ability to pay the proffered wage from the priority date and continuing until the Beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). In this case, the petition contains the Petitioner's 2017 IRS Form 990, Return of Organization Exempt from Income Tax. Its 2018 return was not yet due as of the petition filing date.