U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-A-, INC.

DATE: OCT. 27, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an elementary and secondary school, seeks to employ the Beneficiary as director of sports activities. 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 Beneficiary does not have a bachelor's degree or a foreign equivalent degree and therefore was not eligible for classification as a professional and did not meet the minimum educational requirement of the labor certification. The Director also found that the Petitioner could not amend the petition to change the requested employment-based classification to skilled worker.

On appeal the Petitioner submits a brief and supporting documents. The Petitioner asserts that the Director erred in finding that the Beneficiary lacked the requisite education because the Department of Labor (DOL) accepted the Beneficiary's educational qualifications when it approved the labor certification. The Petitioner also asserts that we should accept the amended petition to change the classification request.

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 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 212(a)(5)(A)(i)(I)-(II) of the

[1] The date the labor certification is filed 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.

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.

A petition requesting professional classification "must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree." 8 C.F.R. § 204.5(l)(3)(ii)(C). "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." *Id.* A beneficiary must also meet all of the education, training, experience, and other requirements specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

II. ANALYSIS

In its Form I-140, Immigrant Petition for Alien Worker, the Petitioner checked the box at part 2.1.e. which specified that the petition was 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)." The accompanying labor certification stated that the offered position requires a bachelor's degree in sports management and that no alternate combination of education and experience was acceptable.

In section J of the labor certification the Beneficiary asserted that he achieved a bachelor's level of education in sports management by virtue of 14 years of professional experience which he completed by 2009. The Beneficiary did not claim to have a degree from any college, university, or other post-secondary educational institution.

In denying the petition the Director cited the regulatory requirement of a bachelor's degree or a foreign equivalent degree for an individual to be eligible for classification as a professional, and also referred to the labor certification's minimum educational requirement of a bachelor's degree. The Director did not accept the Petitioner's contention that the Beneficiary's job experience in the field of sports could substitute for a degree because the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) expressly requires a degree for the professional classification. The Petitioner's submission of an "amended" Form I-140 changing the requested classification to skilled worker could not be accepted in this proceeding, the Director determined, because it represented a material change to the petition.

On appeal the Petitioner asserts that the Beneficiary's educational qualifications were accepted by the DOL during the labor certification process, and that USCIS should not reverse DOL determinations that are part of the labor certification. The Petitioner misconstrues the scope of the labor certification, and the respective roles of DOL and USCIS in the employment-based immigrant visa process. It is clear under applicable law that the DOL's responsibility in the labor certification process is to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS, not DOL, to determine if the beneficiary has the

requisite qualifications (education, experience, etc.) to qualify for the offered position, and whether the offered position and the beneficiary are eligible for the requested employment-based immigrant classification. *See* section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656; *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9th Cir. 1983). Thus, the DOL's labor certification did not include any determination as to the Beneficiary's educational qualifications, and the Director's finding that the Beneficiary did not have the requisite educational degree to qualify for classification as a professional and the job offered under the terms of the labor certification did not reverse any DOL determination.

Furthermore, we agree with the Director that experience cannot be substituted for a degree in this case. The Act, in its section on the allocation of immigrant visas, defines the "professional" classification as "[q]ualified immigrants who hold baccalaureate degrees." The regulations applicable to petitions for employment-based immigrants specifically require a bachelor's degree for classification as a professional, and do not allow experience, or a combination of education and experience, to be substituted for a degree. "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 . . . ." 8 C.F.R. § 204.5(l)(3)((ii)(C). Moreover, if a bachelor's degree is statutorily required for the requested classification, as in this case, and the labor certification requires a bachelor's degree or a foreign equivalent, it is proper for USCIS to conclude that the degree requirement cannot be met with a combination of education and experience and that a single U.S. or foreign equivalent degree is required. *See Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 341005 at 11-13, 17, 19 (D.Or. Nov. 30, 2006); *see also Maramjaya v. USCIS*, Civ. Act No. 06-2158 (RCL) (D.C. Cir. March 26, 2008).

The Petitioner also asserts that an "amended" Form I-140 petition requesting skilled worker classification for the Beneficiary, which was submitted with its response to the Director's request for evidence, should be accepted as replacing the original request for professional classification. We cannot accept the amended petition. A petitioner may not make material changes to a petition that has already been filed in an effort to conform a deficient petition to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988). Even if we did accept the amended petition, it would not make the petition approvable because the Beneficiary would still not qualify for the job offered under the terms of the labor certification, which specifies that the minimum educational requirement is a bachelor's degree.

II. CONCLUSION

The Beneficiary does not have a bachelor's degree or a foreign equivalent degree. Therefore, he is not eligible for classification as a professional and does not meet the minimum educational requirement of the labor certification.

ORDER: The appeal is dismissed.

Cite as *Matter of G-A-, Inc.*, ID# 745127 (AAO Oct. 27, 2017)