U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K-P-M-

DATE: SEPT. 1, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a machinery business,[1] seeks to employ the Beneficiary as a mechanical engineer. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. The employment-based immigrant classification for a professional allows a U.S. employer to sponsor a foreign national with a baccalaureate degree for lawful permanent resident status. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii).

The Director of the Nebraska Service Center denied the petition, concluding that the Beneficiary does not possesses a U.S. bachelor's degree or a foreign equivalent degree as required for classification as a professional and to meet the requirements of the labor certification.

On appeal, the Petitioner states that the Beneficiary's post-secondary education represents the equivalent of a U.S. bachelor's degree and, in the alternative, that the Beneficiary is eligible for the position offered based on a combination of his education and employment experience.

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 DOL.[2] *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. Section 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

[1] We note that, as of the date of this decision, the Petitioner's corporate status has been suspended by the California Secretary of State. In any future filings, the Petitioner must provide evidence establishing that it is still operating in California.

[2] The date the labor certification is filed, in cases such as this one, is called the "priority date."

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

A. Professional Classification

Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who are members of the professions holding baccalaureate degrees. Thus, in order to be classified as a professional, the beneficiary must possess at least a U.S. bachelor's degree or a foreign equivalent degree from a college or university. 8 C.F.R. § 204.5(l)(3)(ii)(C).

Here, the Form ETA 9089, Application for Permanent Employment Certification (labor certification), states in Section H that the minimum requirements for the position offered are a bachelor's degree in engineering or mechanical engineering and 18 months of experience.

The record indicates that the Beneficiary possesses two "*Carta de Pasante*" certificates from the [redacted] in [redacted] awarded in 1993 and 1999, reflecting studies leading to the respective careers of "electrical technician" and "engineering in control and automation."

The Director concluded that these certificates do not establish that the Beneficiary possesses the foreign equivalent of a U.S. bachelor's degree. On appeal, the Petitioner maintains that the Beneficiary possesses the foreign equivalent of a U.S. bachelor's degree in engineering.

For the reasons that follow, we affirm the Director's decision that the Beneficiary does not possess the foreign equivalent to a U.S. bachelor's degree as required for the requested professional classification and by the terms of the labor certification.

1. The Educational Requirements of the Professional Classification

The professional classification requires the Beneficiary to possess a single U.S. bachelor's degree or a single foreign equivalent degree, not a combination of lesser degrees.

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (now USCIS or the Service), responded to criticism that the regulation required a foreign national to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service noted that both the Act and the legislative history indicate that a foreign national must have at least a bachelor's degree: "[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification . . . *an alien must have at least a bachelor's degree.*" 56 Fed. Reg. 60897, 60900 (November 29, 1991) (emphasis added).

It is significant that both section 203(b)(3)(A)(ii) of the Act and the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) use the word "degree" in relation to professionals. Accordingly, the statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5th Cir. 1987). Congress' requirement of a single degree for members of the professions is deliberate.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) also requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." Therefore, the plain meaning of the Act and the regulations is that the beneficiary of a petition for a professional must possess a degree from a college or university that is at least a U.S. baccalaureate degree or a foreign equivalent degree. 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).

In determining whether the Beneficiary's *Carta de Pasante* certificates constitutes such a degree, we have turned to information from the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE),[3] which states that *Carta de Pasante* certificates "represent completion of 3 to 5 years of post-secondary coursework for a licenciatura program but does not represent completion of all degree requirements." EDGE further states "regardless of the number of years of study, the Carta de Pasante is insufficient to determine degree completion," such as a "licenciatura or titulo which shows that the degree was awarded." Here, the record does not contain evidence indicating that the Beneficiary was awarded a *licenciatura* or *titulo* showing that a degree was awarded.

The record contains evaluations of the Beneficiary's educational credentials prepared by for and Ph.D, for Both evaluators state that the Beneficiary's *Carta de Pasante* from the that was issued in 1999 represents the equivalent of a U.S. bachelor's degree in engineering. states that "the national accrediting board for engineers in Mexico, accredits the engineering programs of the He cites the website[4]

[3] AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in over 40 countries." http://www4.aacrao.org/centennial/about.htm (last visited Mar. 27, 2017). According to its registration page, EDGE is "a web-based resource for the evaluation of foreign educational credentials." http://edge.aacrao.org/info.php (last visited Aug. 14, 2017).

[4] *See* Licensure as a in Texas, https: (accessed

and indicates that the state of Texas views a Mexican *Ingeniero* (engineer) degree from programs that have [redacted] accreditation as meeting the same standard as a U.S. bachelor's degree in engineering for the licensing of engineers in the United States. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The translation of the Beneficiary's *Carta de Pasante* from 1999 states that the Beneficiary "completed in full the studies corresponding to the career of: Engineer in Control and Automation." However, as stated above, the record does not establish that the Beneficiary possesses a *licenciatura* or *titulo* to demonstrate that the Beneficiary possesses a degree that is the foreign equivalent of a U.S. bachelor's degree.

Therefore, the Petitioner has not established that the Beneficiary possesses a single degree that is the foreign equivalent of a U.S. bachelor's degree in engineering, which is required for classification as a professional under section 203(b)(3)(A)(ii) of the Act.

2. The Educational Requirements of the Labor Certification

The Petitioner must also establish that the Beneficiary meets all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The labor certification states that the offered positon requires an individual with a bachelor's degree in engineering or mechanical engineering. On appeal, the Petitioner asserts that the Beneficiary meets the requirements of the labor certification based on a combination of education and experience. Specifically, section H.14 of the labor certification states that "a suitable combination of education, experience and/or training" is acceptable. However, this regulatory "*Kellogg* language" is not interpreted to change the educational requirements of the offered position as stated in sections H.4 to 13.[5] Further, if the labor certification stated that the offered position could be met by a combination of lesser education and experience equivalent to a U.S. bachelor's degree, the petition would not be eligible for the requested professional classification. *See* 8 C.F.R. § 204.5(l)(3)(i) ("The job offer portion of an individual labor certification . . . for a professional must demonstrate that the job requires the minimum of a baccalaureate degree").

The Petitioner cites cases from the Board of Alien Labor Certification Appeals (BALCA) that equate years of education to experience. *See Donna Ricco-FYC Apparel*, 2010-PER-00359 (BALCA Mar. 23, 2011); *Matter of Globalnet Mgmt. L.C.*, 2009-PER-00110 (BALCA Aug. 6, 2009). Accordingly,

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August 14, 2017).

[5] *See Francis Kellogg*, 1994-INA-465 and 544, 1995-INA 68 (BALCA Feb. 2, 1998) (en banc). The "*Kellogg* language" has been codified in DOL's regulations at 20 C.F.R. § 656.17(h)(4)(ii).

the Petitioner states that the Beneficiary's Carta de Pasante certificates and his 11 years of experience is equivalent to a U.S. bachelor's degree in mechanical engineering. However, these cases refer to Specific Vocational Preparation, which is used by DOL to measure whether alternative requirements stated on the labor certification are "substantially equivalent" to the primary requirements as required by 20 C.F.R. § 656.17(h)(4)(i). In addition, while 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, BALCA decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

The record also contains an evaluation prepared by Ph.D., a professor in the who states that the Beneficiary's program of study from the that resulted in a *Carta de Pasante* certificate in 1999, together with the Beneficiary's approximately 11 years of employment experience, represents the equivalent of a U.S. bachelor's degree in engineering. However, as stated above, the labor certification requires that the Beneficiary possess a U.S. bachelor's degree or a foreign equivalent degree, not a combination of lesser education and experience.

Therefore, the Petitioner has not established that the Beneficiary meets the educational requirements of the offered position as set forth on the labor certification.

B. Skilled Worker Classification

In the alternative, the Petitioner states that the Beneficiary qualifies for skilled worker classification based on his combination of education of education and experience. However, the Petitioner indicated in Part 2, Item 1.e., of the Form I-140 that it was filing for the Beneficiary under the professional classification. We will not consider a petition in a different visa classification once the director has rendered a decision. A petitioner may not make material changes to a petition in an effort to conform a deficient filing to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988). Therefore, we will not consider the instant petition in the skilled worker category.

III. CONCLUSION

The Petitioner has not established that the Beneficiary possesses a U.S. bachelor's degree or a foreign equivalent degree as required by the terms of the labor certification and for classification as a professional under section 203(b)(3)(A)(ii) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of K-P-M-*, ID# 591189 (AAO Sept. 1, 2017)