U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43715824

Date: SEPT. 3, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

Form I-140, Immigrant Petition for Alien Workers (Advanced Degree)

The Petitioner operates a daycare center for preschoolers and seeks to employ the Beneficiary as lead teacher. The company requests her classification under the employment-based, second-preference (EB-2) immigrant visa category as a member of the professions holding an "advanced degree." *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). Businesses may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring at least master's degrees or their equivalents. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree").

U.S. Citizenship and Immigration Services (USCIS) denied the petition. The Acting Associate Director of Service Center Operations concluded that the accompanying certification from the U.S. Department of Labor (DOL) did not demonstrate the offered job's need for an advanced degree professional. On appeal, the Petitioner contends that the Director misinterpreted the job's minimum requirements.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we will dismiss the appeal.

I. LAW

Immigration as an advanced degree professional generally follows a three-step process. First, a prospective employer must obtain DOL certification that: (1) insufficient U.S. workers are able, willing, qualified, and available for an offered job; and (2) an alien's employment in the job would not harm wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

Second, an employer must submit a DOL-approved labor certification with an immigrant visa petition to USCIS. *See* section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). USCIS determines, among other things, whether an alien beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. *See* 8 C.F.R. § 204.5(k)(3).

Finally, if USCIS approves a petition, a beneficiary may apply for an immigrant visa abroad or, if eligible, "adjustment of status" in the United States. *See* section 245(a)(1) of the Act, 8 U.S.C. § 1255(a)(1).

II. ANALYSIS

In the absence of available U.S. workers, prospective U.S. employers may petition for immigrant visas for foreign professionals holding advanced degrees. *See* sections 203(b)(2)(A), 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). Job-offer portions of labor certifications accompanying such petitions must demonstrate that the jobs require advanced degree professionals. 8 C.F.R. § 204.5(k)(4)(i).

The term "advanced degree" means at least a master's degree or a baccalaureate followed by five years' progressive experience in a specialty. 8 C.F.R. § 204.5(k)(2). When determining an offered job's minimum requirements, USCIS may neither ignore labor certification terms nor impose unstated requirements. *See, e.g., Madany v. Smith*, 596 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

For the minimum requirements of the offered lead teacher job, the Petitioner's labor certification refers to the company's previously filed application for prevailing wage determination (PWD).[1] The PWD's minimum requirements section states: "This section must only include a single set of requirements, the employer's minimum requirements for each question. If the employer will accept alternative requirements, the alternative requirements must be entered in Section F.c." DOL, "Form ETA-9141 – General Instructions," Sect. F.b., dol.gov/sites/Dolgov/files/ETA/oflc/pdfs/Form ETA-9141 General Instructions – 508 Compliant.pdf. Section F.b. of the PWD sets forth the job's minimum requirements, including the minimum educational criteria of a master's degree in early childhood education or child education. The form also states in Section F.b.4. that the job requires six months' experience as a lead or head teacher.

Section F.c. allows the Petitioner space to identify any alternate requirements. Form instructions require an employer to "[i]dentify whether an alternative set of requirements is accepted for the job opportunity. If your answer is 'Yes,' you must complete c.2, c.3, and c.4." *Id.* In c.1., the PWD application asked: "Are alternate sets of Education, Training, and/or Experience accepted?" The company checked the box marked "Yes."

At section F.c.2., the PWD instructed the Petitioner to: "Specify the alternate level of education." Boxes followed next to the words "None," "High School/GED," "Associate's," "Bachelor's," "Master's," "Doctorate (Ph.D.)," and "Other degree (J.D., M.D., etc.)." The company marked the box next to "None." At section F.c.3. of the PWD, the company checked the box marked "No" when asked whether "alternate training for the job opportunity [is] accepted?" Form instructions then state: "If the employer accepts alternative employment experience, mark 'Yes.' Otherwise, mark 'No.'" *Id.*

[1] Effective June 1, 2023, DOL required petitioners to electronically file permanent labor certification applications using its Foreign Labor Application Gateway (FLAG) system, which contains a revised Form ETA-9089, Application for Permanent Employment Certification. *See generally* 6 *USCIS Policy Manual* E.6(A)(2), www.uscis.gov/policy-manual. DOL no longer uses Form ETA-9089 to collect information about the minimum requirements of job opportunities. Instead, employers now provide that information on Applications for Prevailing Wage Determination (Forms ETA-9141). *Id.*

The company checked the box marked "Yes" and specified the company's acceptance of six months of alternate experience.

Both the Director and the Petitioner agree that the offered job's primary requirements are a master's degree in early childhood education or child education, plus six months' experience as a lead or head teacher. The Director and the company, however, disagree on the job's alternative requirements, specifically on the alternate educational requirement.

As indicated above, the PWD at section F.c.2. instructed the Petitioner to "[s]pecify the alternate level of education," and the company checked the box marked "None." The Director interpreted this response to mean that the offered job's alternate criteria require no education. Thus, because someone without a master's degree or a bachelor's degree plus five years of experience could perform the offered job's duties, the Director concluded that the position does not require an advanced degree professional.

Without first issuing a request for additional evidence (RFE) or a notice of intent to deny (NOID) the petition, the Director denied the filing. *See* 8 C.F.R. § 103.2(b)(8)(i), (ii), (iii) (allowing USCIS to deny a petition without first issuing a RFE or NOID); *see generally* 1 *USCIS Policy Manual* E.6(F)(1) ("[I]f the benefit request does not have a legal basis for approval, and the officer determines that there is no possibility that additional information or explanation will establish a legal basis for approval, then the officer generally should deny the benefit request without first issuing an RFE or NOID.")[2]

The Petitioner, however, denies that it indicated its acceptance of alternate education. By specifying the offered job's alternate educational level at PWD section F.c.2. as "None," the company states that it indicated that the job has "no alternate level of education." The company states: "[T]he Petitioner did not accept any alternate education level in lieu of the required Master's degree." The Petitioner claims that "[t]he entry 'None' reflected the absence of an alternative educational pathway, not the absence of a degree requirement."

As proof that it did not intend to accept alternate education, the Petitioner points to copies of its recruitment materials for the offered job during the labor certification proceedings. The materials – including the state job order, newspaper advertisements, and the use of an employment firm – all indicate that the job requires at least a master's degree and six months' experience. The company states: "The consistency of the recruitment record confirms the employer's actual requirement and demonstrates that USCIS' reading of [the alternate educational requirement on the PWD] is implausible."

At most, the recruitment materials show that the Petitioner consistently recruited for the primary requirements; they do not explain why the Petitioner indicated on the PWD that alternate requirements were accepted.

The Petitioner's explanation of its PWD response appears to show that the company did not follow the form's instructions. When the PWD application asked: "Are alternate sets of Education, Training,

[2] USCIS records also show that the Agency denied the Petitioner's prior EB-2 petition for the Beneficiary in the offered job for the same reason stated in this petition. *See* [redacted]

and/or Experience accepted?" the company checked the box marked "Yes." But the company has not identified any alternative job requirements differing from the primary job requirements.

Under these circumstances, the Director's interpretation of the offered job's requirements was reasonable. The Petitioner's own responses created an unresolved inconsistency regarding whether the position had alternative job requirements and, if so, what those requirements were. Faced with a PWD indicating alternative job requirements but reflecting the same training and experience criteria, the Director reasonably looked to the alternate education field and concluded that the job must have an alternate educational requirement. The Petitioner cannot indicate the presence of alternative job requirements on its PWD and then claim that USCIS errs by looking for them. *See Rosedale & Linden Park Co. v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) ("The Court – like the [immigration service] – must examine the certified job offer exactly as it is completed by the prospective employer.") Because the Petitioner bears the burden of establishing eligibility and has not explained the job's purported alternative requirements, it has not demonstrated that the position requires an advanced degree professional.[3]

III. CONCLUSION

The Petitioner has not demonstrated that the offered job requires an advanced degree professional. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.

[3] If the Petitioner mistakenly indicated its acceptance of alternate requirements for the offered job, USCIS lacks authority to excuse an error on a DOL application form. *See Madany*, 696 F.2d at 1011-12 ("[D]eterminations vested by statute with one agency are not normally subject to horizontal review by a sister entity, absent congressional authorization to that effect."); *see also Matter of Gen. Elec. Co.*, 2011-PER-01818, *3 (BALCA Apr. 15, 2014) (stating that DOL has discretion to retroactively amend the contents of an approved labor certification application to allow an error's correction) (citation omitted).