U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-E-I-, INC.

DATE: SEPT. 12, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an information technology consulting company, seeks to employ the Beneficiary as a customer service manager. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(B)(3)(A)(i). This employment-based immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires at least two years of training or experience.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Beneficiary held a U.S. bachelor's degree or a foreign equivalent degree required by the terms of the labor certification.

On appeal, the Petitioner submits a brief and additional documentation and asserts that the Beneficiary meets the minimum requirements of the labor certification.

Upon *de novo* review of the record, we will withdraw the Director's decision and remand this matter to the Director for further action consistent with this decision.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer must obtain 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. Second, the employer may file 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 may apply for an

[1] The date the labor certification is filed is called the "priority date." A beneficiary must be eligible for the requested classification as of that date.

immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

The Petitioner requests classification of the Beneficiary as a skilled worker. In order to qualify as a skilled worker, the Beneficiary must possess at least two years of training or experience and meet the "educational, training or experience, and any other requirements of the individual labor certification." 8 C.F.R. § 204.5(l)(3)(ii)(B). In evaluating a beneficiary's qualifications, we must examine the job offer portion of a labor certification to determine the minimum requirements of an offered position. We may neither ignore a term of the labor certification, nor impose additional requirements. *See, e.g., Madany v. Smith,* 696 F.2d 1008, 1012-13 (D.C. Cir. 1983).

II. ANALYSIS

A. Beneficiary's Education

The first issue in this case is whether the Beneficiary possesses the minimum education required by the terms of the labor certification. In section H of the labor certification, the Petitioner specified that a bachelor's degree with a major field of study in business administration was the minimum educational requirement for the proffered position and that a foreign educational equivalent was acceptable.

Section J of the labor certification stated that the Beneficiary's highest level of education was a bachelor of business studies from the [redacted] in [redacted] Bangladesh. The Petitioner submitted copies of the Beneficiary's academic records from [redacted] showing that he was awarded a bachelor of business studies in 2011, after completing a three-year course of study. The Petitioner claimed that this degree is equivalent to a U.S. bachelor's degree in business administration; however, a U.S. bachelor's degree generally reflects the completion of four years of studies. *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977).

In a request for evidence (RFE), the Director informed the Petitioner that he had consulted the Electronic Database for Global Education (EDGE), published by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).[2] Federal courts have found EDGE to be a reliable, peer-reviewed source of foreign educational equivalencies. *See, e.g., Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (holding that USCIS may discount educational evaluations that differ from reports in EDGE, which is "a respected source of information"). The Director advised the Petitioner that according to EDGE, the Beneficiary's degree equated to three years of university study in the United States but not to a U.S. bachelor's degree. As a consequence, the Director explained that the Beneficiary did not meet the minimum educational requirements of the labor certification.

[2] AACRAO is a nonprofit association of more than 11,000 higher education admissions and registration professionals, representing about 2600 institutions worldwide. AACRAO, at http://www.aacrao.org/home/about (last visited June 29, 2017).

In response to the Director's RFE, the Petitioner asserted that the Beneficiary had completed an additional 33 credits from a master's degree program in business administration at [redacted] in [redacted] Bangladesh, and that when coupled with his degree from [redacted] the academic record "should establish that he meets the educational requirements" as listed on the labor certification. The Petitioner submitted a transcript showing that the Beneficiary had completed 33 additional credits from [redacted] as of the priority date of petition.[3] However, the Director denied the petition, finding that the Beneficiary's degree combined with the additional credits did not equate to a bachelor's degree according to EDGE.

On appeal, the Petitioner asserts that the Director erroneously denied the petition because the admission process to university in Bangladesh is comparable to that of a U.S. university and refers to evidence that the Beneficiary completed secondary school in Bangladesh prior to his entry into [redacted] However, this information would only demonstrate that [redacted] in Bangladesh has entry requirements similar to those of a U.S. college or university. This evidence would not demonstrate that the Beneficiary's subsequent graduation from the university's three-year degree program in business studies is comparable to graduation from a four-year bachelor's program in business studies in the United States. For this reason, the Petitioner's evidence that the Beneficiary satisfied the entry requirements for [redacted] in Bangladesh is not evidence that the three-year degree he subsequently attained is the foreign equivalent of a U.S. bachelor's degree.

The Petitioner further contends that the Beneficiary's coursework at [redacted] was challenging and analogous to a U.S. undergraduate program focused on business administration. Specifically, the Petitioner provides a website printout of the undergraduate curriculum for a business major at [redacted] Referring to some of the required courses at the [redacted] program, the Petitioner asserts that "the main coursework . . . makes up three years of the four-year program" and is similar to the coursework that the Beneficiary completed at [redacted] in Bangladesh. Thus, the Petitioner contends, the Beneficiary completed generalized and specialized coursework equivalent to attainment of a bachelor degree in business administration from an accredited institution of higher education in the United States. However, the first sentence on the [redacted] printouts advises that its "undergraduate business major takes four years - eight semesters – to complete," not just three years of "main coursework." As discussed, the Beneficiary's degree is a three-year degree with six semesters of coursework and on the face of it does not appear to meet the requirements for a four-year degree, as described on the [redacted] printouts. The Petitioner did not include a course-by-course comparison of the Beneficiary's studies to show how he completed coursework that is equivalent to all of the coursework required for a U.S. bachelor's degree in business administration at [redacted] or any other institution. Accordingly, the Petitioner's analysis of the [redacted] program lacks sufficient details to demonstrate that the Beneficiary's foreign three-year degree in business studies is the equivalent of a U.S. bachelor's degree.

[3] The Petitioner also completed additional credit hours in pursuit of a master's degree after the priority date of the petition.

The Petitioner also submits a printout of a document written by [redacted] and [redacted] of [redacted] which concludes that "there are extremely strong arguments for granting equivalence between the Indian three-year bachelor's degree and the bachelor's degree as awarded in the United States," and notes that some U.S. universities will consider accepting an Indian three-year degree on a case by case basis. However, the Beneficiary has a three-year degree from Bangladesh rather than India, and the Petitioner has not shown that [redacted] or any U.S. university reviewed the Beneficiary's transcripts, coursework, and credentials and found his degree to be equivalent to a four-year, U.S. bachelor's degree. Consequently, this document does not establish that the Beneficiary holds a foreign degree equivalent to a U.S. bachelor's degree.

Based on the foregoing, we agree with the Director that the Beneficiary's bachelor's degree alone cannot be considered the foreign equivalent of a U.S. bachelor's degree. However, on appeal the Petitioner also contends that it intended to accept a "foreign educational equivalent" and that the combination of the Beneficiary's bachelor's degree and master's degree coursework satisfies the requirement for a degree equivalency. The Petitioner cites to *Snapnames.com, Inc. v. Chertoff*, 2006 WL 3491005 *5 (D. Or. Nov. 30, 2006), a case in which the labor certification application specified an educational requirement of four years of college and a "B.S. or foreign equivalent." In *Snapnames*, the beneficiary held a three-year degree and membership in the Institute of Chartered Accountants of India. Although the court upheld USCIS' determinations that the beneficiary's academic qualifications did not allow his classification as an advanced degree professional under section 203(b)(2) of the Act or as a professional under section 203(b)(3)(A)(ii) of the Act, it reversed USCIS' decision regarding the beneficiary's eligibility for the skilled worker classification under section 203(b)(3)(A)(i) of the Act. The court noted that the word 'equivalent' in the petitioner's educational requirements was ambiguous and concluded that in the context of skilled worker petitions, where there was no statutory educational requirement, deference should be given to an employer's intent. *Id.* at *14. Although we are not bound by the decision in *Snapnames.com, Inc.*, we may consider a petitioner's intent when the labor certification contains terms that are subject to more than one interpretation.

In the present matter, the Director found that the Beneficiary did not hold the bachelor's degree or foreign equivalent degree required by the labor certification and denied the visa petition on this basis. However, the Petitioner checked Part 2.1.f. on the Form I-140, indicating that it seeks classification of the Beneficiary as a skilled worker, where there is no statutory degree requirement. As such, we may consider the Petitioner's intent as it was expressed throughout the labor certification process. Although the Petitioner claims for the first time on appeal that it intended to accept an equivalent to a bachelor's degree for purposes of this classification, the record does not contain evidence from the Petitioner regarding its intent.

Accordingly, we will remand this skilled worker petition to the Director for his consideration of the Petitioner's intent regarding the requirements for the degree equivalency, as it claims on appeal (i.e., whether the Petitioner intended to accept a degree equivalency based on a combination of academic

degrees and completed coursework)[4] and for a determination on whether the Beneficiary's education meets the minimum requirements claimed by the Petitioner.

Evidence of intent would include documentation concerning the minimum requirements of the position as that intent was expressed during the labor certification process to the DOL and to potentially qualified U.S. workers. This includes copies of the signed recruitment report, the prevailing wage determination, all recruitment conducted for the position, the job order, the posted notice of the filing of the labor certification, copies of resumes received for U.S. applicants, and any other communications with the DOL that may be probative of intent, such as correspondence or documents generated in response to an audit.

The Director should also review this documentation to see if the Petitioner stated that it would accept lesser U.S. educational credentials that are equivalent to a U.S. bachelor's degree. If the Petitioner would only accept lesser foreign educational credentials that were equivalent to a U.S. bachelor's degree, then it would be impermissibly favoring foreign workers over U.S. workers in the labor certification process. This evidence may help establish intent regarding the minimum requirements of the offered position and show that U.S. workers without four-year bachelor's degrees were in fact put on notice that they were eligible to apply for the position.

B. Beneficiary's Experience

Also on remand, the Director should consider whether or not the Petitioner has established that the Beneficiary has the required experience for the proffered position. At section H of the labor certification, the Petitioner stated that the proffered position requires six months of experience in the job offered or, in the alternate, six months experience as an advisor/coordinator. At section K of the labor certification, the Petitioner asserted that the Beneficiary has three years of work experience as a speaking test supervisor at the [redacted] in Bangladesh from January 2012 to January 2015 and the Beneficiary signed the labor certification, attesting that the work experience claim was accurate. The Petitioner included the Beneficiary's resume, on which the Beneficiary stated that he had been working as a speaking test supervisor at the [redacted] since January 2012.

In response to the Director's RFE, the Petitioner provided a letter dated November 24, 2016, from an exams manager at the [redacted] in Bangladesh, who attested that the Beneficiary had worked there as a speaking test day supervisor from January 2011 to May 2016, and as an examinations services officer since June 2016. The beginning date of employment listed the [redacted] letter is not consistent with the Petitioner's claim and the information on the Beneficiary's resume

[4] Section H.9 of the labor certification asks a petitioning employer the following question: "Is a foreign educational equivalent acceptable?" However, the foreign educational equivalent referenced in Section H.9 reflects only a petitioner's willingness to accept a degree determined to be the foreign equivalent of a U.S. bachelor's degree, which requires the completion of one program of study for which a foreign degree equivalent to a U.S. bachelor's degree is issued by an accredited college or university. It does not reflect a willingness to accept a combination of educational programs determined to be the equivalent of a U.S. bachelor's degree, which should have been identified in Section H.8 of the labor certification.

indicating that the Beneficiary began his employment in January 2012. Based on the contradictory information regarding the Beneficiary's employment, the Petitioner has not established when the Beneficiary began his qualifying employment and how much experience he has. For this reason, the Petitioner does not appear to have established that Beneficiary possesses the minimum experience required for the offered position, and the Director must consider this on remand.

III. CONCLUSION

We will remand the matter to the Director to determine whether the Petitioner expressed intent for the terms of the labor certification to permit a combination academic work equivalent to a U.S. bachelor's degree and whether the Beneficiary's combination of education meets the intended minimum requirements. The Director should also consider whether the Petitioner has established that the Beneficiary possesses the minimum experience required for the offered position.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision

Cite as *Matter of I-E-I-, Inc.*, ID# 532635 (AAO Sept. 12, 2017)