MATTER OF D-&H- LLC

DATE: SEPT. 21, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a produce distributor, seeks to permanently employ the Beneficiary in the United States as a mango division manager. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigration classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1152(b)(2). This "EB-2" classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center found that the Beneficiary's degree was not, as required, equivalent to a U.S. bachelor's degree in the field specified on the labor certification.

On appeal, the Petitioner asserts that the Beneficiary does have a foreign degree that is equivalent to a U.S. bachelor's degree in the field specified on the labor certification.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Employment-based immigration is generally a three-step process. First, an employer obtains an approved ETA Form 9089, Application for Permanent Employment Certification (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. 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

[1] The date the labor certification is filed, in cases such as this one, is called the "priority date." A beneficiary must be eligible as of that date, and so in this case, the Beneficiary must have had the six years of requisite post-baccalaureate experience by the date the labor certification was filed.

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 petitioner must establish that a 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).

II. ANALYSIS

The Petitioner stated on the labor certification that the offered job requires candidates to possess a bachelor's degree in "Business Administration or a related field," or a foreign educational equivalent.

The Beneficiary has a bachelor's degree in computer science from the [redacted] in Brazil, which the record establishes is the foreign equivalent degree of a U.S. bachelor's degree. At issue is whether or not this foreign degree is the equivalent of a bachelor's degree in business administration or a related field of study, as specified on the labor certification.[2]

The Petitioner claims that the Beneficiary's foreign bachelor's degree is in computer information systems and is equivalent to a U.S. bachelor's degree in business administration or a related field. In support of its claim, the Petitioner included the following evidence:

- The Beneficiary's diploma, with English translation, for a bachelor's degree in Computer Science issued by [redacted] in Brazil on January 27, 2000;
- The Beneficiary's academic transcripts dated July 26, 2000, with English translation, showing his coursework at [redacted]
- A Certificate of Course Conclusion and Graduation after completion of the course of computer science, dated August 8, 2000, from the Directorship of Admission and Records at [redacted]
- A credentials evaluation prepared by [redacted] for [redacted] After examining the Beneficiary's academic credentials, [redacted] concluded that the Beneficiary completed a bachelor's level program that is the "foreign equivalent of a four-year Bachelor of Science Degree in Computer Information Systems;"

[2] We note that the Director's decision contains a confusing typographical error in which he omitted the word "not" and instead wrote that "the USCIS does find that the Beneficiary has the required bachelor's degree in Business Administration or a related field." However, the remainder of the Director's decision reflects his conclusion that the Beneficiary's baccalaureate degree was not in a major field related to business administration and is supported by a deeper analysis of the evidence. Consequently, the Director's decision to deny the petition does not concede that the Beneficiary's degree is in a field related to Business Administration, nor would we agree with such a conclusion.

- An opinion letter from [redacted] of [redacted] discussing the field of computer information systems and business administration with supporting internet materials;
- An opinion letter from [redacted] a professor of computer information sciences at [redacted] discussing the relationship between computer information systems and business administration; and
- Web materials from several university systems describing their combination degree programs in computer science and business administration.

The Petitioner contends that the Beneficiary has a bachelor's degree in computer information systems, that this is an academic field of study related to business administration, and that the Beneficiary thereby satisfies the educational requirement of the labor certification. We do not agree with the Petitioner's assertions for the following reasons.

First, the translations of the Beneficiary's diploma, certificate of course completion, and transcripts reflect that he has a bachelor's degree in computer science, but the Petitioner's argument hinges on finding that the Beneficiary's degree is equivalent to a degree in computer information systems, rather than computer science. In support of its claim, the Petitioner submitted two evaluations, one from [redacted] and one from [redacted] finding that the Beneficiary's has the foreign equivalent of a degree in computer information systems. The evaluation from [redacted] reflects her conclusion that the Beneficiary's degree in "Computer Science and Information Systems" is equivalent to a U.S. bachelor's degree in computer information systems. [redacted] misidentification of the Beneficiary's field of study raises questions about her review of the Beneficiary's academic credentials. Moreover, her evaluation does not contain a course-by-course comparison of the Beneficiary's courses in the computer science degree program to those required for a degree in computer information systems. As such, this evaluation does not explain why the degree is not in fact a degree in computer science, since that is the title reflected in the plain language on the Beneficiary's diploma, transcripts, and certificate of course completion.

In his letter, [redacted] also misidentifies the Beneficiary's field of study as "Computer Information Systems" rather than "computer science" as is stated the Beneficiary's diploma, transcripts, and certificate of course completion. [redacted] then goes on to state that he examined the computer information systems coursework in the Beneficiary's bachelor's degree program and concluded that the Beneficiary completed the requirements for a bachelor's degree in computer information systems at an accredited U.S. university. Moreover, [redacted] advised that the study of computers, particularly in the United States, has changed significantly since the Beneficiary earned his degree, and that the Beneficiary's coursework, rather than the title of his degree, should be compared with the current requirements for a U.S. degree in computer information systems. Citing to [redacted] letter, the Petitioner contends that the Beneficiary has a bachelor's degree in computer information systems, that this is an academic field of study related to business administration, and that the Beneficiary thereby satisfies the educational requirement of the labor certification.

However, despite the claims of [redacted] and [redacted] the administrative record contains prior petitions that the Petitioner submitted on behalf of the Beneficiary that contain contradictory claims from the Petitioner. In an earlier immigrant petition, the Petitioner submitted an evaluation of the Beneficiary's education and employment by [redacted] Professor of Marketing at [redacted] concluded that based on a review of the Beneficiary's diploma and transcripts, the Beneficiary had attained the equivalent of a bachelor of science degree in computer science.[3] The Petitioner also submitted an H-1B nonimmigrant worker petition that included an evaluation from [redacted] of [redacted] stated that the Beneficiary completed a bachelor's level program in computer science in Brazil and, consequently, possesses the foreign equivalent of a four-year bachelor of science degree in computer science from an accredited U.S. college or university. Thus, the academic evaluations from [redacted] and [redacted] are not consistent with the evaluations from [redacted] and [redacted] that the Petitioner had provided in support of its other petitions. Given the contradictions in the record concerning the Beneficiary's degree field, the evidence is insufficient to establish that the Beneficiary's degree in computer science is in fact equivalent to a degree in computer information systems. USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988).

The Petitioner also submitted a letter from [redacted] who highlights the differences between the distinct academic fields of computer information systems and computer science. He asserted that the field of computer science is focused on developing new computing technologies while the field of computer information systems "is about the application of existing computer technologies within commercial environments," and the internet materials provided with this evaluation support this general view. [redacted] did not discuss or appear to have considered the Beneficiary's degree program and specific course of studies at [redacted] in Brazil. Moreover, [redacted] letter carefully distinguished the academic field of computer science from computer information systems, before concluding that a course of study in computer information systems shares common underpinnings with degree programs in business administration. For these reasons, [redacted] letter provides his opinion on the fields of computer information systems and business administration, as those academic fields are organized and taught, but it is does not establish that the Beneficiary's degree in computer science from [redacted] in Brazil is equivalent to a degree in computer information systems or based on a course of studies such that it can be considered a field of study related to business administration. In fact, the letter from [redacted] is careful to distinguish the field of computer science from the field of computer information systems, undermining the Petitioner's assertion that the Beneficiary's

[3] [redacted] concluded that the Beneficiary's had the equivalent of a dual major in business administration and computer science; however, he based his conclusion about the additional major in business administration on his review of the Beneficiary's professional work experience. [redacted] evaluation of the Beneficiary's single academic degree was limited to the conclusion that it was a bachelor's in computer science.

computer science degree should be considered the equivalent of a degree in computer information systems.

Although the Petitioner claims that the Beneficiary's bachelor's degree in computer science is the equivalent of a bachelor's degree in computer information systems, the evidence does not support this claim. As the Petitioner has not established that the Beneficiary has a degree in computer information systems, we need not examine the Petitioner's assertion that computer information systems is a field related to business administration.

The Petitioner alternatively contends that even if the Beneficiary's degree is in computer science rather than computer information systems, computer science should be considered a field related to business administration. However, the Petitioner has not provided sufficient evidence to support this this contention. The submitted printouts from universities reflect that these schools offer joint or dual degree programs in computer science and business administration, but these materials do not establish that the two areas of study are related. Although the materials establish that universities offers joint programs in two areas of study, they do not demonstrate that the separate fields of study are otherwise considered to be related, particularly for purposes of this petition. As the Petitioner has not provided any other evidence to demonstrate that computer science is a field related to business administration, the Petitioner has not established that the Beneficiary's degree meets the terms of the labor certification.

Had the Petitioner intended to accept a degree in a field as distinct as computer science, it could have recorded such intent on the labor certification, but did not. On appeal, the Petitioner submits its advertisements for the position; however, the educational requirements listed in the advertisements mirrors the language on the labor certification. The record lacks evidence that the Petitioner's advertisements for the position indicated that education other than a bachelor's degree in business administration or a related field, such as degree in computer science, would be acceptable. As a consequence, U.S. workers with degrees in other fields may have been discouraged from applying. The record does not show how many applications the Petitioner received for the job of mango division manager, what fields of study the applicants had, or how the Petitioner handled their applications. Consequently, the record does not establish that the Petitioner's recruitment of U.S. workers extended to individuals with the same degree that the Beneficiary holds.

Finally, the Petitioner asserts on appeal that the Director referred to but did not explain alleged contradictory evidence. However, the Director explained in his request for evidence that the Beneficiary's diploma and transcripts showed his degree was in computer science whereas [redacted] letter concluded that the degree was in computer information systems. As we have discussed above, the record contains additional contradictory evidence regarding whether or not the Beneficiary's degree is in computer science or computer information systems. Based in part on this contradictory information, the Petitioner has not provided sufficient evidence to establish that the Beneficiary's degree is in a field of study related to business administration.

III. CONCLUSION

The Petitioner has not submitted sufficient evidence to establish that the Beneficiary's foreign degree is in business administration or a related field of study, as required on the approved labor certification. Accordingly, the Petitioner has not established the Beneficiary's eligibility for the immigration benefit sought.

ORDER: The appeal is dismissed.

Cite as *Matter of D-&H- LLC*, ID# 626677 (AAO Sept. 21, 2017)