U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-I-S- (USA), INC.

DATE: SEPT. 22, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a company that provides customized engineering solutions, seeks to employ the Beneficiary as an electrical automation engineer. It requests his classification as a professional under the third preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This category allows a U.S. business to sponsor a foreign worker with a bachelor's degree or its foreign equivalent for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition. The Director concluded that the record did not establish (1) that the position qualifies as a professional position, and (2) that the Beneficiary possesses the minimum education required for the requested classification.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary has the required educational qualifications. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Employment-based immigration generally constitutes a three-step process. First, a prospective U.S. employer must obtain an approved ETA Form 9089, Application for Permanent Employment Certification (labor certification), from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). Next, the employer files a Form I-140, Immigrant Petition for Alien Worker, with U.S. Immigration and Citizenship Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, if USCIS approves the petition, a foreign national may apply 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.

II. ANALYSIS

A. Labor Certification Does Not Support Requested Classification

For professional classification, the Petitioner must establish that the job offer portion of the labor certification requires at least a bachelor's degree or a foreign equivalent degree. 8 C.F.R. § 204.5(l)(3)(i). The regulation uses a singular description of degree. Thus, the plain meaning of the

regulatory language concerning the professional classification sets forth the requirement that the position must require one degree that is a U.S. bachelor's degree or determined to be the foreign equivalent of a U.S. baccalaureate degree in order to qualify as a professional position.

In this case, the labor certification states that the minimum educational requirements of the offered position of electrical engineer are a bachelor's degree in electrical engineering or a "directly related" major field of study. The labor certification also states the Petitioner's alternate acceptance of "any suitable combination of education, work experience or training as determined by a professional credentials evaluation service to be equivalent to a U.S. Bachelor's Degree in Electrical Engineering or a directly related field."

USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc v. Landon.*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by "examin[ing] the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS' interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification]" even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

Here, the plain language of the labor certification allows an applicant to qualify for the job with less than a U.S. bachelor's degree or a foreign equivalent degree because it permits an applicant to qualify for the proffered job with a combination of education, work, and experience in lieu of a bachelor's degree. Because the labor certification does not require at least a U.S. bachelor's degree or a foreign equivalent degree, the petition cannot be approved under the professional classification. *See* 8 C.F.R. § 204.5(l)(3)(i) (the labor certification underlying a petition for a professional must require at least a U.S. bachelor's degree or a foreign equivalent degree).

On appeal, the Petitioner maintains that its alternate language on the labor certification is a restatement of the bachelor's degree requirement and that the Director erroneously found that the Petitioner would accept less than a bachelor's degree from an applicant for the proffered position. However, the Petitioner does not explain how its acceptance of any "combination of education, work experience, or training" in lieu of a bachelor's degree can simultaneously establish that the proffered position requires a bachelor's degree. Based on the plain language on the labor certification, the Petitioner has not established that it requires at least a bachelor's degree for the proffered position.

The evidence submitted does not establish that the offered position requires at least a U.S. bachelor's degree or a foreign equivalent degree. As such, the labor certification does not support the requested professional classification and, therefore, the petition cannot be approved under the professional classification.

B. Beneficiary's Education

The second issue is whether the Beneficiary meets the education requirements of the requested classification. A petition for a professional must document that a beneficiary holds a U.S. bachelor's degree or a foreign equivalent degree. 8 C.F.R. § 204.5(l)(3)(ii)(C).

On the labor certification, the Beneficiary attested to his receipt of an "other" degree in electrical engineering from the in Germany in 2000. The Petitioner submitted a copy of a 2000 certificate from the school, awarding the Beneficiary the professional title of state-certified technician based on his completion of a two-year course of study in electrical engineering and passage of the final examination; 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). The Petitioner also provided certificates of individualized, special training from the the and

The Petitioner submitted a credentials evaluation prepared by an associate professor of computer applications and information systems at the Connecticut. noted that the Beneficiary has a 15-year work history of progressively increasing responsibility and stated that after reviewing the Beneficiary's certificates and professional training, the Beneficiary had attained the equivalent of a bachelor's degree in electronics engineering technology from an accredited institution of higher education in the United States. did not suggest or conclude that any one of the Beneficiary's training or educational certificates was equivalent to a U.S. bachelor's degree. As such, the Director found that the evidence did not demonstrate that the Beneficiary has a U.S. bachelor's degree or foreign equivalent degree. The Beneficiary therefore does not qualify for professional classification.

On appeal, the Petitioner contends that the Director did not adequately explain why the Beneficiary's education and experience are not equivalent to a U.S. bachelor's degree and suggests that the Director erroneously concluded that the education and experience formula for H-1B nonimmigrant workers does not apply in the immigrant worker context; however, the Petitioner does not explain how the formula for H-1B worker petitions applies to this, or any other, immigrant classification. The H-1B classification permits the alternate equation of three years of relevant experience for one year of education. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*). Consequently, the agency may approve an H-1B petition based on a review of a beneficiary's relevant experience in a certain occupation in addition to their education, but that equivalence applies solely to the adjudication of H-1B nonimmigrant worker petitions and not to immigrant worker petitions such as this. Although the Petitioner suggests that the regulation "does not specify that this formula is limited to the nonimmigrant context," in fact the regulation specifies that this formula is for purposes of establishing the H-1B beneficiary qualifications listed at 8 C.F.R. § 214.2(h)(iii)(C)(*4*).

Moreover, the Petitioner cannot establish that the Beneficiary satisfies the requirements of the professional classification with a combination of education, work experience, and training. The

regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) uses a singular description of the degree required for classification as a professional. In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the former Immigration and Naturalization Service (now USCIS or the Service), responded to criticism that the regulation required an alien 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 specifically noted that both the Act and the legislative history indicate that an alien 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 or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*" 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

Moreover, 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).

Therefore, the Beneficiary's combination of education and work experience cannot qualify him for classification as a professional, which requires a minimum of a single U.S. bachelor's degree or foreign equivalent degree.

III. CONCLUSION

The record does not establish that the proffered position is eligible for professional classification, nor does it demonstrate that the Beneficiary possesses the minimum education required for the requested classification.

ORDER: The appeal is dismissed.

Cite as *Matter of T-I-S- (USA), Inc.*, ID# 704030 (AAO Sept. 22, 2017)