U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-[redacted]

DATE: SEPT. 24, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a [redacted] business, seeks to employ the Beneficiary as a business integrity specialist. It requests his classification as a skilled worker under the third-preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This category allows a U.S. business to sponsor a foreign national with at least two years of training or experience for lawful permanent resident status.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary met the minimum educational requirements of the labor certification. Thus, he determined that the Beneficiary was not qualified for the offered position.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary is qualified for the offered position based on his three-year Indian bachelor's degree in a related field of study.

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

I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS

Employment-based immigration generally follows a three-step process. First, an employer obtains 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, the 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. *See* 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 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.

[1] The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is January 17, 2018. *See* 8 C.F.R. § 204.5(d).

II. THE REQUIREMENTS OF THE OFFERED POSITION

In this case, the labor certification states the minimum requirements of the offered position of business integrity specialist as a U.S. bachelor's degree or a foreign equivalent degree in computer science, engineering, information systems, business, advertising, statistics, math, or a related field, plus 24 months of experience in the job offered or in an analyst-related occupation. An alternate combination of education and experience is not acceptable. The labor certification also states, in pertinent part at Part H.14., that:

> Employer will accept a *Bachelor's degree in Computer Science, Engineering, Information Systems, Business, Advertising, Statistics, Math, or a related field, and 2 years of work experience in job offered or in an Analyst-related occupation. *Employer will accept a 3 or 4 year Bachelor's degree.

The Petitioner submitted an evaluation of the Beneficiary's education from [redacted] Corporation, which concluded that the Beneficiary's three-year bachelor of science degree in hospitality and catering management from [redacted] University of Health, Medical and Technological Sciences in India is equivalent to three years of studies toward a bachelor of science degree in hospitality management. The evaluation of the Beneficiary's education does not assert that the Beneficiary's three-year degree is equivalent to a U.S. bachelor's degree, but instead concludes that the Beneficiary's degree equates to three years of U.S. college education.

The Petitioner also submitted an evaluation of the Beneficiary's education from [redacted] which compares the Beneficiary's courses in hospitality and catering management to courses that would be found in a U.S. business degree curriculum and concludes that the Beneficiary's "academic credentials are directly related to a degree in business."

The Director determined that the Beneficiary does not have a degree that is related to one of the fields of study listed on the labor certification. On appeal, the Petitioner asserts that the Director ignored the [redacted] evaluation. In his decision, the Director did not mention or analyze the [redacted] evaluation, or indicate why the Beneficiary's courses in finance, accounting, statistics, management, human resources, information systems, and marketing were not related to courses in a U.S. business degree curriculum. Based on our review of the [redacted] evaluation, the Beneficiary's degree, and his transcripts, we find that the Petitioner has established by a preponderance of the evidence that the Beneficiary's three-year foreign degree is related to a permitted field of study. We will therefore withdraw that portion of the Director's decision. However, for the reason set forth below, the petition cannot be approved.

Based on language in Part H.14 of the labor certification, the Director also concluded that the Beneficiary does not meet the minimum requirements of the labor certification because Beneficiary has a three-year foreign degree that does not equate to a U.S. bachelor's degree. In assessing a job's requirements, we must examine the job offer portion of an accompanying 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 K.R.K. Irvine, Inc.* v. *Landon,* 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany* v. *Smith,* 696 F.2d 1008, 1012-13 (D.C. Cir. 1983); *Stewart Infra-*

Red Commissary of Mass., Inc. v. *Coomey,* 661 F.2d 1, 3 (1st Cir. 1981). Our interpretation of the job's requirements must involve reading and applying the plain language of the labor certification. *See Rosedale Linden Park Co. v. Smith*, 595 F. Supp. 829, 834 (D.D.C. 1984).

On appeal, the Petitioner asserts that the plain language of the labor certification shows that the Petitioner would accept a candidate for the position with a three-year bachelor's degree, regardless of whether or not it is equivalent to a U.S. bachelor's degree. We disagree with the Petitioner's assertion. The plain language of the labor certification indicates that the Petitioner will only accept a three- or four-year bachelor's degree that is equivalent to a U.S. bachelor's degree. There is no indication on the labor certification that the Petitioner would accept a foreign degree that does not equate to a U.S. bachelor's degree, such as the three-year Indian degree held by the Beneficiary.[2]

We note that it is possible for a three-year foreign degree to equate to a U.S. bachelor's degree. In our experience, there are some three-year foreign bachelor's degrees that may be deemed equivalent to a U.S. bachelor's degree. For example, bachelor's degrees in the United Kingdom generally reflect three years of university studies. But, because U.K. university students typically complete a year or more of pre-university preparatory courses and examinations, we routinely find three-year, U.K. bachelor's degrees equivalent to U.S. bachelor's degrees. However, in this case, the Beneficiary's three-year Indian degree does not equate to a U.S. bachelor's degree.

The Petitioner points to its recruitment which restates that the Petitioner "will accept a 3 or 4 year Bachelor's degree." However, this statement does not alert applicants that the Petitioner will accept a foreign degree that is equivalent to something other than a U.S. bachelor's degree, such as the three-year Indian degree held by the Beneficiary. Instead, the recruitment supports our interpretation of the labor certification. We find that the plain language of the labor certification indicates that the Petitioner will only accept a three- or four-year bachelor's degree that is equivalent to a U.S. bachelor's degree. Because the Beneficiary's degree is not equivalent to a U.S. bachelor's degree, he does not meet the educational requirements for the offered position.

In sum, we find that the Beneficiary's degree is related to a permitted field of study. We will therefore withdraw that portion of the Director's decision. However, we find that the labor certification requires a three- or four-year bachelor's degree that is equivalent to a U.S. bachelor's degree. The Beneficiary does not have the required degree and, therefore, he is not qualified for the offered job. We will therefore affirm that portion of the Director's decision.

III. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

[2] We note that the Petitioner required a bachelor's degree in Part H.4. of the labor certification and did not allow for an alternate level of education. Thus, the labor certification requires a U.S. bachelor's degree or its foreign equivalent. If the Petitioner meant to accept something less than a U.S. bachelor's degree or its foreign equivalent, it could have indicated "other" on the labor certification and indicated the acceptable alternate level of education.

Matter of F-[redacted]

ORDER: The appeal is dismissed.

Cite as *Matter of F-*[redacted] ID# 5962484 (AAO Sept. 24, 2019)