U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-F-O-O-, LLC

DATE: SEPT. 24, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a hog farm, seeks to employ the Beneficiary as a finisher complex manager. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. Immigration and Nationality Act (the Act), section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree 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 position supports the requested professional classification. He also determined that that the Beneficiary "does not meet the definition of a member of the professions or of a professional." On appeal, the Petitioner asserts that the offered position supports the requested professional classification, and that the Beneficiary is a professional who holds a bachelor's degree and is a member of the professions.

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 October 23, 2017. *See* 8 C.F.R. § 204.5(d).

II. PROFESSIONAL CLASSIFICATION

At Part 2 of the Form I-140, Immigrant Petition for Alien Worker, the Petitioner checked the box at 1.e. requesting classification as a professional. The regulation at 8 C.F.R. § 204.5(l)(2) defines "professional" as "a qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree." A petition seeking professional classification, therefore, must be accompanied by a labor certification that requires a minimum of a baccalaureate degree. 8 C.F.R. § 204.5(l)(3)(i).

In this case, Section H of the labor certification submitted with the petition states that the offered position of finisher complex manager has the following minimum requirements:

H.4. Education: Bachelor's degree in "Agriculture, Veterinary Science, Animal Science, Animal."
H.5. Training: None required.
H.6. Experience in the job offered: None required.
H.7. Alternate field of study: None accepted.
H.8. Alternate combination of education and experience accepted? Yes.
H.8-A If yes, specify the alternate level of education required: Other
H.8-B If other is indicated in 8-A, indicate the alternate level of education required: "The employer accepts an experiential equivalency of any combination of SEE H.14."[2]
H.8-C Number of years experience acceptable in question 8: 12
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: None accepted.
H.14. Specific skills or other requirements: "The employer accepts an experiential equivalency of any combination of education, experience and diploma/certificates for the required BS degree, provided such experience equates to a Univ BS degree using the generally accepted equivalency of 3 years of experience per year of academic study."

The labor certification permits an applicant to qualify for the offered job with a combination of education and experience. Since an individual can qualify for the offered position with less than a baccalaureate, the petition does not qualify for the professional classification. *See* 8 C.F.R. § 204.5(l)(3)(ii)(C).[3] Therefore, the petition cannot be approved for a member of the professions under section 203(b)(3)(A)(ii) of the Act. Thus, the Director correctly concluded that this petition cannot be approved under the requested professional classification.

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[2] Some of the language was cut off at Part H.8. of the labor certification submitted with the petition, but it appears to be set forth in full at Part H.14.

[3] The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) and section 203(b)(3)(A)(ii) of the Act use a singular description of the degree required for classification as a professional. 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).

On appeal, the Petitioner asserts that a petition under the professional classification can require a combination of education and experience, and that the statute, regulations, and case law do not prohibit such a combination. We disagree. The Act and its regulations indicate that the professional classification requires a single degree equating to a U.S. baccalaureate. [4] As previously noted, the statute requires professionals to hold baccalaureate degrees. Section 203(b)(3)(A)(ii) of the Act. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) specifies that a professional must have a U.S. baccalaureate degree or a foreign equivalent degree, and the regulation at 8 C.F.R. § 204.5(l)(3)(i) makes clear that an immigrant petition for professional classification must be supported by a labor certification that requires a minimum of a baccalaureate degree for the job offered. Neither training nor experience may be substituted for any part of the degree requirement.

Here, the labor certification refers to the "generally accepted equivalency of 3 years of experience per year of academic study" which relates to the regulations applicable to H-1B petitions for nonimmigrant workers. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The regulations for H-1B nonimmigrant petitions do not govern the classification requested in this case. As the labor certification in this case allows candidates to qualify for the job based on a combination of education and experience, it cannot support the requested classification.

III. BENEFICIARY'S QUALIFICATION AS A PROFESSIONAL

The Director cited *Matter of Asuncion*, 11 I&N Dec. 660 (R.C. 1966), and *Matter of Kim*, 13 I&N Dec. 16 (Reg'l Comm. 1968), in support of his determination that the Beneficiary "does not meet the definition of a member of the professions or of a professional." Because the issue of the petition's approval under the professional classification is dispositive in this case, we need not reach the issue of the Beneficiary's qualification as a professional and therefore reserve it.

IV. 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.

ORDER: The appeal is dismissed.

Cite as *Matter of P-F-O-O-, LLC*, ID# 6642475 (AAO Sept. 24, 2019)

[4] Where combinations of education or experience may equate to baccalaureate degrees, the Act and regulations state so explicitly. *See* section 214(i)(2)(C) of the Act, 8 U.S.C. § 1184(i)(2)(C) (allowing foreign workers in H-1B nonimmigrant visa status to have "experience in the specialty equivalent to the completion of such [bachelor's] degree"); *see also* 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) (stating that H-1B workers may have "education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate . . . degree").