U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-S-& [redacted] DATE: SEPT. 26, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a [redacted] company, seeks to employ the Beneficiary as a vice president, banking. It requests classification of the Beneficiary as a professional under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based "EB-3" immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition on the ground that the labor certification requires less than a U.S. bachelor's degree and therefore does not support the requested visa classification of professional.

On appeal the Petitioner asserts that it meant to seek skilled worker rather than professional classification for the Beneficiary, that the Director should have requested additional evidence to clarify the Petitioner's intent, and that the Beneficiary is eligible for both visa classifications in any event.

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

I. LAW

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). *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 U.S. 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 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

At issue in this case is whether the labor certification supports the requested visa classification and whether the Beneficiary qualifies for that classification.

In its Form I-140, Immigrant Petition for Alien Worker, the Petitioner checked the box at part 2.1.e. which specifies that the petition is being filed for "[a] professional (at a minimum, possessing a bachelor's degree or a foreign degree equivalent to a U.S. bachelor's degree)." 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 the minimum of a baccalaureate degree to qualify for the proffered position. 8 C.F.R. § 204.5(l)(3)(i). A beneficiary must meet all of the education, training, experience, and other requirements of the labor certification as of the petition's priority date,[1] which in this case is October 5, 2017. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

A. Requirements of the Labor Certification

In order to determine what a job opportunity requires, we must examine "the language of the labor certification job requirements." *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine the certified job offer exactly as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). Our interpretation of the job's requirements must involve reading and applying the plain language of the alien employment certification application form. *Id.* at 834. Moreover, we read the labor certification as a whole to determine its requirements. "The Form ETA 9089 is a legal document and as such the document must be considered in its entirety." *Matter of Symbioun Techs., Inc.*, 2010-PER-10422, 2011 WL 5126284 (BALCA Oct. 24, 2011) (finding that a "comprehensive reading of all of Section H" of the labor certification clarified an employer's minimum job requirements).

In this case, section H of the labor certification states the following with respect to the requirements for the proffered position of vice president, banking:

H.4.	Education: Minimum level required:	Bachelor's Degree
H.4-B	Major Field of Study:	Business Administration
H.5	Is training required for the job?	No
H.6	Is experience in the job offered required?	Yes
H.6-A	How long?	72 months
H.7	Is an alternate field of study acceptable?	Yes
H.7-A	What field(s)	Finance or related

[1] The priority date of a petition is ordinarily the date the underlying labor certification is filed with the DOL. *See* 8 C.F.R. § 204.5(d).

H.8	Is an alternate combination of education and experience acceptable?	Yes
H.8-A	What alternate level of education?	Other
H.8-B	If "Other" – specify alternate level required	3- or 4-year bachelor's degree
H.8-C	Alternate experience requirement, in years	6 years
H.9	Is a foreign educational equivalent acceptable?	Yes
H.10	Is experience in an alternate occupation acceptable?	Yes
H.10-A	How long?	72 months
H.10-B	Job Title(s) of alternate occupation(s)	Investment Banking Associate, Investment Banking Analyst, or related job in Investm't Banking

According to its plain language, therefore, the labor certification's minimum educational requirement is a three- or four-year bachelor's degree in business administration, finance, or a related field of study, and its minimum experience requirement is 72 months (six years) in the job offered or as an investment banking associate, an investment banking analyst, or in a related job in the investment banking field.

B. Labor Certification Does Not Support Professional Classification

In denying the petition the Director found that the alternate educational requirement of "other" and acceptance of a three- or four-year bachelor's degree is less than a U.S. bachelor's degree, which meant that the proffered position did not qualify as a profession and the labor certification did not support the requested visa classification of professional. On appeal the Petitioner does not contest the Director's finding that the labor certification's minimum educational requirement does not support a petition seeking professional classification.

C. Skilled Worker Classification Cannot be Considered for this Petition

On appeal the Petitioner claims that it actually intended to seek skilled worker classification for the Beneficiary, and committed a clerical error on the Form I-140 petition by indicating that it was seeking professional classification. According to the Petitioner, this clerical error was "readily apparent" in the labor certification that accompanied the petition – specifically, in its alternate educational requirement of a three- or four-year bachelor's degree – as well as in other materials showing that the Beneficiary qualifies for skilled worker classification. The Petitioner contends that the Director should have issued a request for evidence to clarify which visa classification was being sought for the Beneficiary. The Petitioner's contention, however, presupposes that there was ambiguity on the face of petition and the labor certification regarding which visa classification the Petitioner intended to request. We find no such ambiguity in those documents.

In part 2 of the Form I-140 the Petitioner checked the box at 1.e. stating that the petition was being filed for a professional. The Petitioner did not check the box at 1.f. stating that the petition was being filed for a skilled worker. While the Petitioner asserts that it was "readily apparent" that it

intended to file for a skilled worker based on the requirements in the labor certification, no such intent is manifested in that document considering the fact that its combination of educational and experience requirements, including a three- or four-year bachelor's degree and six years of experience, far exceed the basic requirement for skilled worker classification, which is two years of qualifying experience. Moreover, the Petitioner's initial evidence included an academic equivalency evaluation of the Beneficiary's educational degree, which asserted that this degree was equivalent to a bachelor of business administration in the United States. Contrary to the Petitioner's claim on appeal, therefore, we find that the materials submitted with the petition indicate a clear intent to file for professional, not skilled worker, classification.

The USCIS website advises petitioners that "[a]lthough you may request that we change the visa classification to correct a clerical error in Part 2 of the form, we will make the final determination about whether to change the visa classification based on everything in your case." *Petition Filing and Processing Procedures for Form I-140, Immigrant Petition for Alien Worker*, https://www.uscis.gov/forms/petition-filing-and-processing-procedures-form-i-140-immigrant-petition-alien-worker (last visited Sept. 23, 2019). The website goes on to state that "[w]e cannot change the visa category if we have already made a decision on your Form I-140." *Id.* In this case the Petitioner did not request a change of visa classification until filing the appeal.

D. Beneficiary Does Not Qualify for Professional Classification

Finally, the Petitioner claims that the Beneficiary meets the requirements for professional classification if USCIS proceeds in adjudicating the petition as a request for that visa classification. A petition for professional classification "must be accompanied by evidence that the [beneficiary] holds a United States baccalaureate degree or a foreign equivalent degree." 8 C.F.R. § 204.5(l)(3)(ii)(C). With its initial evidence the Petitioner submitted copies of the Beneficiary's academic record which shows that he earned a three-year bachelor of science in international business administration from [redacted] University in [redacted] The Netherlands, awarded in August 2009.[2] Along with this academic record the Petitioner submitted an academic equivalency evaluation from The Trustforte Corporation (Trustforte), dated March 3, 2016, which concluded that the Beneficiary's three-year degree from [redacted] University was equivalent to a bachelor's degree in business administration from an accredited U.S. college or university. On appeal, however, the Petitioner submits another evaluation from Trustforte, dated July 25, 2016, which concludes that the very same degree is not equivalent to a U.S. bachelor's degree, but rather to three years of academic studies toward a U.S. bachelor's degree. The second Trustforte evaluation states that the Educational Database for Global Education (EDGE),[3] created by the American Association of

[2] The record also shows that the Beneficiary had six and a half years of experience as an investment banking analyst and investment banking associate with the Petitioner and affiliated companies between July 2010 and December 2016, which satisfied the experience requirement of the labor certification.

[3] EDGE is described on its information page as "a valuable resource for evaluating educational credentials earned in foreign systems, whether the purpose is ultimately for admission into an institution of higher learning in the United States, to obtain employment, to establish visa eligibility, or to qualify for additional professional qualifications." https://www.aacrao.org/resources/AACRAO-International/about-edge (last visited Aug. 13, 2019).

Collegiate Registrars and Admissions Officers (AACRAO),[4] also rates a three-year bachelor of science degree in The Netherlands as comparable to three years of university study in the United States. The Petitioner offers no explanation for Trustforte's conflicting evaluations, or how the second evaluation supports its claim on appeal that the Beneficiary's degree meets the requirements for professional classification. In any event, we find the second evaluation to be more credible, particularly since it is consistent with the credential advice of EDGE, which we consider to be a reliable, peer-reviewed source of information about foreign degree equivalencies. Furthermore, consistent with the EDGE credential advice and the second Trustforte evaluation indicating that three-year bachelor of science degrees in The Netherlands generally, and the Beneficiary's three-year degree in particular, are equivalent to three years of university study in the United States, we note that a U.S. bachelor's degree generally requires four years of academic study. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977).

Thus, the evidence submitted on appeal, including the second Trustforte evaluation and the credential advice from EDGE, refutes the Petitioner's claim that the Beneficiary's three-year bachelor of science degree from [redacted] University is equivalent to a U.S. bachelor's degree. Since the record does not show that the Beneficiary has a foreign equivalent degree to a U.S. baccalaureate degree, as required by 8 C.F.R. § 204.5(l)(3)(ii)(C), the Petitioner has not established that the Beneficiary qualifies for classification as a professional.

III. CONCLUSION

The educational requirements of the labor certification do not support the requested visa classification of professional. Even if they did so, the Beneficiary does not have the requisite educational credential to qualify for professional classification. The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. 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 M-S-&* [redacted] ID# 5834031 (AAO Sept. 26, 2019)

[4] AACRAO is described on its website as "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries." http://www.aacrao.org/who-we-are (last visited Aug. 13, 2019).