U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-E-F-, INC.

DATE: SEPT. 29, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a nonprofit operator of public charter schools, seeks to employ the Beneficiary as a principal. It requests his classification as a member of the professions holding an advanced degree under the second-preference, immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, "EB-2" category allows U.S. employers to sponsor foreign nationals for lawful permanent resident status if they have master's degrees, or bachelor's degrees followed by at least five years of experience.

The Director of the Texas Service Center denied the petition. The Director concluded that the record did not establish the Beneficiary's possession of a bachelor's degree in the field of study required for the offered position. Because the record did not contain the Petitioner's response to our request for additional evidence (RFE), we dismissed the Petitioner's appeal as abandoned.

The matter is now before us on the Petitioner's motion to reopen.[1] The Petitioner submits additional evidence and asserts that it timely responded to our RFE. Upon review, we will grant the motion to reopen and sustain the appeal.

The Director interpreted the alternate educational requirement of the offered position as a bachelor's degree in education, the field of study stated in the primary requirements of the labor certification. Because the record indicates the Beneficiary's possession of a bachelor's degree in a different field of study, the Director found that the Beneficiary does not meet the alternate educational requirement.

On motion, the Petitioner asserts that the alternate requirement allows a bachelor's degree in any field. The Petitioner notes that it did not specify a field of study for the bachelor's degree on the labor application form and that the form does not instruct employers to do so. The Petitioner further submitted copies of its advertisements for the offered position, which stated its acceptance of a bachelor's degree in any field. Advertisements on the Petitioner's website stated: "In lieu of a Master's Degree, we will accept Bachelor's Degree *in any field*, plus five years of progressively

[1] The Petitioner describes its filing as an "appeal." We will treat the filing, however, as a motion to reopen. *See* 8 C.F.R. § 103.5(a)(8) (allowing U.S. Citizenship and Immigration Services (USCIS) to treat an appeal as a motion for the purpose of granting the motion).

responsible experience in education." (emphasis added). Also, the labor application's notice of filing stated: "Alternatively will accept Bachelor's Degree *in any field*, plus five years of progressively responsible experience in education." (emphasis added).

The record establishes the Petitioner's acceptance a bachelor's degree in any field and the Beneficiary's possession of a bachelor's degree. Thus the Beneficiary satisfies the position's alternate educational requirement.

ORDER: The motion to reopen is granted and the appeal is sustained.

Cite as *Matter of R-E-F-, Inc.*, ID# 90703 (AAO Sept. 29, 2017)