U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15942181

Date: SEPT. 30, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner is a defense and aerospace business that seeks to employ the Beneficiary as a product line market manager – digital services. It requests classification of the Beneficiary as a skilled worker under the third preference employment-based immigrant visa category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This immigrant visa category allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires at least two years of education, training, or experience.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary possessed the required education for the offered position. The matter is now before us on appeal.

The Petitioner bears the burden of establishing eligibility for the requested immigration benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as a skilled worker usually follows a three-step process. First, the prospective employer must obtain a labor certification approval from the U.S. Department of Labor (DOL) to demonstrate that there are not sufficient U.S. workers who are able, willing, qualified, and available for the offered position. Section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5).

Second, the employer must submit the approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204 of the Act, 8 U.S.C. § 1154. The immigrant visa petition must establish, among other things, that the foreign worker qualifies for the offered position, that the foreign worker and the offered position are eligible for the requested immigrant visa category, and that the employer has the ability to pay the proffered wage. *See* 8 C.F.R. § 204.5. These requirements must be satisfied by the priority date of the immigrant visa petition. *See* 8 C.F.R. § 204.5(g)(2); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg'l Comm'r 1977).[1]

[1] For petitions that require a labor certification, the priority date is the date on which the DOL accepted the labor certification application for processing. *See* 8 C.F.R. § 204.5(d).

Finally, if USCIS approves the immigrant visa petition, the foreign worker may apply for an immigrant visa abroad or, if eligible, for adjustment of status in the United States. Section 245 of the Act, 8 U.S.C. § 1255.

II. REQUIRED EDUCATION

At issue in this case is whether the Beneficiary possesses the required education for the offered position. The Beneficiary must possess all of the required education, training, and experience for the offered position as set forth on the labor certification by the priority date of the petition. *See Matter of Wing's Tea House,* 16 I&N Dec. at 160. In this case, the priority date is October 28, 2019. USCIS examines the job offer portion of the labor certification to determine a position's minimum requirements. We may neither ignore a term on the labor certification nor impose additional requirements. *See Madany* v. *Smith,* 696 F.2d 1008, 1015 (D.C. Cir. 1983).

The requirements of the offered position are set forth at section H of the labor certification:

H.4. Education: Bachelor's degree in aeronautical engineering or similar field.
H.5. Training: None.
H.6. Experience in the job offered: 36 months.
H.7. Alternate field of study: None accepted.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: Accepted (36 months of experience as a commodity manager, procurement engineer, or similar position).
H.14. Requires a bachelor's degree in Aeronautical Engineering or similar field plus 3 years of experience. 3 years of experience in aerospace industry negotiating, establishing and implementing contracts with domestic and foreign suppliers on the aerospace market. 3 years of experience managing complex project[s] within the highly regulated aerospace industry. 2 years of experience working with different internal departments within a large corporation to fulfill business needs. 2 years of experience in market research in technology/market players and stakeholders within [the] aerospace industry. 2 years of experience working with other corporate divisions, 3rd parties, service providers and suppliers [and] managing relationship[s] with strategic partners within the Inflight Entertainment industry. 2 years of experience analyzing financial investment models and operational costs/processes in order to create business plans and measure their performance and effectiveness. 2 years of experience working in the Inflight Entertainment industry including experience with Inflight Entertainment and connectivity (IFEC) systems (hardware and software) as well as [a] strong understanding of the hardware and software development process within the highly regulated aerospace industry. Employer will accept educational equivalency evaluation prepared by qualified evaluation service or in accordance with 8 CFR § 214.2(h)(4)(iii)(D).

Part J of the labor certification states that the beneficiary possesses a bachelor's degree in aeronautical engineering from [redacted] Spain in 2012. The record contains a copy of the Beneficiary's diploma and transcripts.

The Petitioner submitted a single-page credentials evaluation from World Education Services stating that the Beneficiary's three-year degree is equivalent to a U.S bachelor's degree. The Director issued a request for evidence which instructed the Petitioner to provide, in part, a detailed explanation for the evaluation's conclusion and information about the qualifications of the evaluator. In response to the RFE, the Petitioner submitted a new, more detailed evaluation of the Beneficiary's educational credentials prepared by [redacted] of [redacted] stating that the Beneficiary's foreign degree is the equivalent of three years of study towards a U.S. bachelor's degree in aeronautical engineering technology. This second evaluation is based on the Electronic Database for Global Education (EDGE), which is a web-based resource for the evaluation of foreign educational credentials created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).[2] *See* https://www.aacrao.org/resources/AACRAO-International/about-edge. USCIS considers EDGE to be a reliable source of information about foreign credentials equivalencies.

Section K of the labor certification states the Beneficiary's claimed qualifying experience as follows: in the position offered as product line market manager – digital services with the Petitioner from August 7, 2016 until the filing of the labor certification on October 28, 2019; commodity manager with the Petitioner from December 16, 2013 until August 7, 2016; and as a procurement engineer trainee with [redacted] from October 1, 2008 until January 31, 2010 (for 25 hours a week as part of his college studies, according to the accompanying experience letter).

The Director's decision states that the Petitioner did not establish that the Beneficiary possessed the foreign equivalent of a U.S. bachelor's degree in aeronautical engineering or similar field as required by the terms of the labor certification. On appeal, the Petitioner states that the requested skilled worker classification does not require a four-year degree, and a three-year degree bachelor's degree satisfies the requirements of the labor certification.

We disagree. Section H.4 of the labor certification states that the minimum educational requirement of the offered position is a bachelor's degree. The labor certification does not permit an alternate combination of education and experience in section H.8. The labor certification also states that the Beneficiary has a bachelor's degree in section J.11. It does not state that the Beneficiary possesses a lesser degree.[3]

Since it is not disputed that the Beneficiary's three-year bachelor's degree in aeronautical engineering from [redacted] Spain in 2012 is not the foreign equivalent of a U.S.

[2] AACRAO is a nonprofit professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries. *See* http://www.aacrao.org/who-we-are.

[3] The Petitioner does not claim on appeal that the Beneficiary qualifies for the offered position based on a combination of education and experience that is equivalent to a U.S. bachelor's degree under 8 C.F.R. § 214.2(h)(4)(iii)(D) (the H-1B regulatory provision referenced at section H.14). Instead, counsel's brief claims that the labor certification in this case permits any bachelor's degree, including a foreign bachelor's degree that is not the equivalent of a U.S. bachelor's degree. The Petitioner has not supported this interpretation of the labor certification with evidence such as documents generated during the recruitment process that informed U.S. workers that they could qualify for the offered position with less than a U.S. bachelor's degree. Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). We do not agree with the Petitioner's assertion regarding the requirements of the offered position stated on the labor certification.

bachelor's degree, we must dismiss the appeal.[4] The fact that the Petitioner requested classification in the skilled worker category does not change the requirement that the Beneficiary must possess all of the education, training, and experience for the offered position set forth on the labor certification.

III. CONCLUSION

The Beneficiary's three-year foreign degree is not the equivalent of a U.S. bachelor's degree. Since the Petitioner did not establish that the labor certification in this case could be satisfied by a foreign degree that is less than a U.S. bachelor's degree, the Director correctly denied the petition.

ORDER: The appeal is dismissed.

[4] Although not the basis of this decision, we also note that the evidence in the record does not establish that the Beneficiary possessed 36 months of qualifying employment experience and special skills prior to working for the Petitioner. First, experience and skills gained with the Petitioning employer in a substantially comparable position may not be used to qualify for the offered position without additional justification. *See* 20 C.F.R. § 656.17(i)(3). Second, the Beneficiary's prior employment as a trainee with [redacted] was part-time for only one year and four months, and it was part of his university studies and completed prior to the issuance of his degree.