U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20291108

Date: JUL. 19, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Professional

The Petitioner, an automotive glass repair and replacement company, seeks to employ the Beneficiary as a quality assurance leader. It requests classification of the Beneficiary under the third-preference, immigrant visa category for professionals. *See* 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 Nebraska Service Center denied the petition, concluding that the minimum education requirements for the position, as described on the labor certification, do not meet the requirements of the requested classification.[1]

The Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See* section 291 of the Act, 8 U.S.C. § 1361 (discussing the burden of proof); *see also Matter of Chawathe*, 25 I&N Dec. 169, 175 (AAO 2010) (discussing the standard of proof). Upon *de novo* review, we will dismiss the appeal.

I. LAW

A. Employment-Based Immigrant Petition Process

Immigration as a professional generally follows a three-step process. First, a prospective employer must apply to the U.S. Department of Labor (DOL) for certification that: (1) there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and (2) the employment of a noncitizen in the position won't harm wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). Second, an employer must submit an approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, if USCIS approves a petition, a designated noncitizen 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.

[1] The Director's decision did not address the Beneficiary's qualifications. The sole issue on appeal is whether the minimum education requirements indicated on the labor certification supports the requested classification.

II. ANALYSIS

To be eligible for professional classification, the labor certification must require, at a minimum, a U.S. bachelor's degree or a foreign equivalent degree. *See* 8 C.F.R. § 204.5(l)(3)(i). For the reasons discussed below, we agree with the Director that the labor certification does not support the requested classification.[2]

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 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 labor certification form. *Id.* at 834. Moreover, we read the labor certification as a whole to determine its requirements. "The [labor certification] 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).[3]

The education, training, experience, and other requirements for the proffered position are set forth at Part H of the labor certification. In this case, Part H states that the position of quality assurance leader has the following minimum requirements:

4.	Education: Minimum level required:	Bachelor's degree
4-B.	Major field of study:	Computer Science
5.	Is training required for the job opportunity?	No
6.	Is experience in the job offered required for the job?	Yes
6-A.	If Yes, number of months experience required	60 months
7.	Is there an alternate field of study that is acceptable?	Yes
7-A.	If Yes, specify the major field of study	Computer related degree
8.	Is there an alternate combination of education and experience that is acceptable?	No
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	Yes
10-A.	If Yes, number of months experience in alternate Occupation required	60 months
10-B.	Identify the job title of the acceptable alternate occupation	Any computer related occupation

[2] On the 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)."

[3] Although we are not bound by Board of Alien Labor Certification Appeals decisions, we may nevertheless take note of the reasoning in such decisions when considering issues that arise in the employment-based immigrant visa process.

At Part H, Box 14, the Petitioner provided the following additional language regarding the "[s]pecific skills or other requirements:"

> [M]ust have a Bachelor's degree in computer science or computer related degree and 5 years of overall progressive IT experience, which includes 2 years of experience in the skill set listed in the job description. *Bachelor's equivalency may be met by a combination of degrees* (emphasis added).

On appeal, the Petitioner requests that we "examine the language exactly as it appears on the labor certification," indicating that we "need not 'divine the employer's intentions' as [its] intentions are clear." The Petitioner further explains that "[b]achelor's equivalency may be achieved by a combination of foreign degrees, if necessary, but only formal education will be considered for bachelor's equivalency."

In *Snapnames.com, Inc. v. Michael Chertoff*, No. 06-65-MO, 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, 2008 WL 9398947 (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). Thus, for purposes of the requested immigrant visa category, a foreign equivalent of a U.S. bachelor's degree must constitute a single degree.

Because a plain reading of the language in Part H, Box 14 and the Petitioner's own statements on appeal clearly indicates it would accept a combination of unspecified degrees to meet a bachelor's degree equivalency, the labor certification does not support the requested classification. The allowance of "a combination of degrees" to satisfy the bachelor's degree requirement results in the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree." *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D) (defining "equivalence to completion of a United States baccalaureate or higher degree" for purposes of H-1B classification.) 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 H-1B workers 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) (H-1B workers may have "education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate ... degree"). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

Neither the Act nor USCIS regulations allow a position to be classified as a professional position if the minimum educational requirement can be met with anything other than a single academic degree. Therefore, the provided labor certification does not support the requested classification of professional under section 203(b)(3) of the Act.

III. CONCLUSION

The Petitioner's allowance of a combination of unspecified degrees to meet the bachelor's degree equivalency prohibits us from concluding that the labor certification supports a request for professional classification under section 203(b)(3) of the Act.

ORDER: The appeal is dismissed.