U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19626146

Date: JUL. 29, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner, an information technology services company, seeks to employ the Beneficiary as a programmer analyst. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based, "EB-3" category allows a U.S. business to sponsor a noncitizen for lawful permanent resident status based on a job offer requiring at least two years of training or experience.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary meets the minimum education requirements for the offered position as set forth in the labor certification. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc*., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. EMPLOYMENT BASED IMMIGRATION

Employment-based immigration generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position. *Id*. Labor certification also indicates that the employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id*.

If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a beneficiary meets the requirements of a certified position and a requested immigrant visa classification. If USCIS approves the petition, a foreign national may finally 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

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) states that to qualify for skilled worker classification the petition "must be accompanied by evidence that the [beneficiary] meets the educational, training or experience, and any other requirements of the individual labor certification." The minimum requirements for this classification are at least two years of training or experience.

To be eligible for skilled worker classification, therefore, a beneficiary must have at least two years of relevant experience (or training) *and* must possess all the required education, training, and experience for the offered position as set forth on the labor certification. All requirements must be met by the petition's priority date, which in this case is October 15, 2019.[1] *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

At issue in this case is whether the Beneficiary possesses the required education for the offered position. 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 of programmer analyst are set forth at section H of the labor certification:

H.4. Minimum Education: Bachelor's degree
H.4-B Major field of study: Any Tech/Bus/Math/Sci/Eng or foreign equivalent
H.5. Training: None.
H.6. Experience in the job offered: 12 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 (12 months in any information technology occupation)
H-14 Specific skills or other requirements: Any suitable combination of education, training or experience is accepted.

Section J of the labor certification states that the Beneficiary earned a bachelor's degree in "electronics and telecommunication" from [redacted] in 2006.

As evidence of the Beneficiary's qualifications, the Petitioner provided a certificate issued by the [redacted] in May 2007, which states that she "passed Section A&B of [redacted] (Graduateship) Examination" in December 2006.[2] This certificate was accompanied by an "[redacted] Examination Marks Card"

[1] The priority date of a petition is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).
[2] In response to the Director's February 2021 request for evidence, the Petitioner provided a second certificate issued by the [redacted] in March 2021. That certificate indicates that the Beneficiary "has passed section A & B of [redacted] (4 Years Engineering Graduateship) Examination in Electronics & Telecommunication engineering held in December 2006." It provides a date of March 12, 2007, as "date of completion of degree." This certificate was accompanied by an [redacted] Examination Grade Sheet listing subject exams taken, letter grades achieved, and a cumulative grade point average.

which lists the Section A and Section B subject examinations the Beneficiary took, the month and year of passing, and the marks she obtained. The Beneficiary earned passing marks on examinations in 19 subjects taken between 1998 and 2006 in the "Electronics and Telecommunication Stream."

The Petitioner submitted two evaluations of the [redacted] credentials described above. Morningside Evaluations describes [redacted] as a "a professional Engineering society recognized by the Government of India's Ministry of Education." The evaluation indicates that, based on her [redacted] credential, the Beneficiary "satisfied requirements equivalent to those required for the attainment of a university degree from an accredited institution of higher education in the United States," specifically the equivalent of a bachelor of science in electronics engineering. In addition, a Credential Evaluation and Authentication Report from World Education Services indicates that the Beneficiary's [redacted] Section A and Section B examination results are equivalent to a bachelor's degree in Electronics and Telecommunication Engineering from an accredited U.S. institution.

The Petitioner also provided excerpts from a 1997 Special Report on India's higher education system published by two U.S. education associations. This report indicates that [redacted] "facilitates the acquiring of engineering degree/diploma equivalent qualifications under a well-recognized system of exams." It states that the Associate Membership/[redacted] is recognized for admission to master's studies in Engineering and Technology in at least 10 Indian universities as well as recognized by the Government of India for employment purposes." Finally, the record includes a "Certificate of Equivalency and Recognition" issued by [redacted] in February 2021, which confirms that the Beneficiary passed the [redacted] examination in December 2006. The certificate indicates that [redacted] "is recognized for recruitment to superior posts and services under the central Government by Ministry of Scientific Research & Cultural Affairs, and notes that the Association of Indian Universities (AIU) has recognized [redacted] for the purpose of employment where bachelor degree in engineering (BE/BTech) is a prescribed qualification."[3]

The Director denied the petition, concluding that the Petitioner did not establish that the Beneficiary meets the minimum education requirement stated on the labor certification, which is a U.S. bachelor's degree or foreign equivalent. The Director acknowledged that the record indicates that the [redacted] credential may be accepted in lieu of a bachelor's degree for certain purposes in India, and that the submitted credential evaluations indicate that associate membership in [redacted] is equivalent to a U.S. bachelor's degree. However, the Director determined that this "equivalence" to a U.S. bachelor's degree "is not the same as a full U.S. baccalaureate or foreign equivalent degree," which is what the Petitioner set forth as the minimum educational requirement on the labor certification for the offered job.

In reaching this conclusion, the Director emphasized that [redacted] membership is not a baccalaureate degree from a college or university and therefore cannot be considered a "foreign equivalent degree." Specifically, the Director stated:

> The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states that, "Evidence of a baccalaureate degree shall be in the form of an official college or university record." You have not

[3] This certificate from [redacted] was supported by documentation from the All India Council for Technical Education, the Association of Indian Universities, and the Indian Ministry of Scientific Research & Cultural Affairs.

provided any evidence to establish that [redacted] is an academic institution that can confer an actual degree with an official college or university record.

On appeal, the Petitioner contends that the Director erred by applying the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C). The Petitioner, citing to *Grace Korean United Methodist Church v. Chertoff*, 437 F.Supp.2d 1174 (D. Or. 2005), asserts that this provision does not apply to immigrant petitions seeking to classify a beneficiary as a "skilled worker" and that USCIS cannot require that the Beneficiary satisfy requirements applicable to another employment-based classification. We agree with the Petitioner that the Director's citation to a regulation applicable to immigrant petitions for "professionals," was not appropriate given its request to classify the Beneficiary as a skilled worker. However, for the reasons discussed below, we agree with the Director's conclusion that the Beneficiary does not possess the minimum educational qualifications for the job offered as stated on the labor certification.

Pursuant to the applicable regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B), the Petitioner must provide evidence that the Beneficiary "meets the educational, training or experience, and any other requirements of the individual labor certification." While the skilled worker classification does not require attainment of a specific minimum level of education or degree, a beneficiary must still meet all educational requirements stated on the labor certification at section H.4, which in this case is a "bachelor's degree or foreign equivalent" plus one year of experience in the job offer or in a related occupation. The fact that the Petitioner requested classification in the skilled worker category does not change the requirement that the Beneficiary must possess any required education set forth on the labor certification.[4]

To determine the minimum requirements of a proffered position, we must review "the language of the labor certification job requirements." *Madany* 696 F.2d at 1015. USCIS must examine the certified job offer exactly as it is completed by the prospective employer. *See Rosedale Linden Park Co. 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 application form. *Id.* at 834. Here, as noted, the Petitioner states on the labor certification that the job offered has a minimum educational requirement of a "Bachelor's degree or foreign equivalent."

On appeal, the Petitioner cites to *Snapnames.com, Inc. v. Chertoff*, 2006 WL 3961005 (D. Or., Nov. 30, 2006) in support of its assertion that the submitted professional evaluations of the Beneficiary's [redacted] credential are sufficient to establish that she meets the "Bachelor's degree or foreign equivalent" requirement stated on the labor certification. In *Snapnames*, the U.S. District Court reviewed USCIS' interpretation of a "B.S. or foreign equivalent" requirement stated on the plaintiff's labor certification. The court agreed with USCIS' interpretation that there was no indication that something other than an equivalent educational background would suffice to meet this requirement. The Court determined that an individual could not satisfy this minimum educational requirement through a combination of education and experience, even if such combination was deemed to be equivalent to a U.S. bachelor's degree.[5]

[4] The record establishes that the Beneficiary exceeds the required one year of experience in a related occupation.

[5] The court, however, rejected USCIS' determination that a "foreign equivalent" degree, for purposes of a skilled worker petition, must be a single source foreign degree and could not include a combination of educational experiences.

Here, the Petitioner, like the employer in *SnapNames*, stated that the job offered requires a bachelor's degree or foreign equivalent. Based on *SnapNames*, a foreign equivalent would be an educational background resulting in a foreign degree (or a combination of foreign degrees) that are equivalent to a U.S. bachelor's degree. The record does not establish that the Beneficiary enrolled in or attended any college, university, or other post-secondary educational institution. Rather, she earned her associate membership in [redacted] by passing a series of subject examinations offered by a professional association. While the [redacted] certificate is deemed to be equivalent to a bachelor's degree for certain purposes, it is not a foreign equivalent degree and does not represent an equivalent educational background, as required by the language in section H.4 of the Petitioner's labor certification.

Further, the labor certification does not permit an alternate combination of education and experience in section H.8, or otherwise indicate that anything other than a bachelor's degree (U.S. or foreign equivalent) would be accepted as satisfying the stated educational requirement. In fact, the labor certification states in section J.11 that the Beneficiary has a bachelor's degree from [redacted] As noted, however, the record reflects that [redacted] is a professional association that granted her an associate membership, rather than a degree-granting educational institution that can confer a foreign bachelor's degree.[6]

Finally, the Petitioner asserts that the Beneficiary clearly qualifies for the proffered position based on the alternative educational and experience requirements of the labor certification located at Part H.14, where the Petitioner indicated that "[a]ny suitable combination of education, training and experience is acceptable." The Petitioner maintains that the Beneficiary possesses the equivalent of a bachelor's degree "based on a combination of education and training through [redacted] and therefore satisfied "the very essence of Section H-14."

In *Matter of Kellogg*, 94-INA-465 (BALCA Feb. 2, 1998) (*en banc*), the Board of Alien Labor Certification Appeals held that a labor certification application must contain a specific statement where a foreign national already works for the employer, does not meet the position's primary requirements, and only potentially qualifies for the job based on its alternative requirements.[7] Such statement is referred to as "*Kellogg* language."

Here, while the Petitioner included *Kellogg* language in Section H.14 of the labor certification, this language does not change the minimum education and experience required by the labor certification.[8] The minimum requirements are still a bachelor's degree or foreign equivalent, plus 12 months of experience. The plain language of the labor certification does not support the Petitioner's claimed

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[6] Further, we observe that the Petitioner has not provided supporting evidence, such as documents generated during the recruitment process, indicating that U.S. workers were informed that applicants could meet the educational requirements for the offered position through membership in a foreign professional association in lieu of possessing a U.S. bachelor's degree or a foreign equivalent degree.

[7] The DOL codified *Kellogg*'s holdings at 20 C.F.R. § 656.17(h)(4). The regulation at 20 C.F.R. § 656.17(h)(4)(ii) states:

> If the alien beneficiary already is employed by the employer, and the alien does not meet the primary job requirements and only potentially qualifies for the job by virtue of the employer's alternative requirements, certification will be denied unless the application states that any suitable combination of education, training, or experience is acceptable.

[8] We generally do not interpret the insertion of *Kellogg* language in part H.14 as altering the minimum requirements stated in the labor certification.

intent to accept a membership in a professional association or any qualification other than a bachelor's degree or foreign equivalent degree to meet the minimum educational requirement for the proffered position. The Petitioner had an opportunity to identify acceptable alternate combinations of education and experience in section H.8 and did not do so.

Therefore, although not addressed by the Director, we conclude that the *Kellogg* language in Part H.14 of the labor certification does not change the minimum educational and experience requirements stated in Parts H.4 to H.10 of the labor certification. The labor certification requires an educational background resulting in a U.S. bachelor's or foreign equivalent degree in technology, business, science, mathematics, or engineering. The Beneficiary's associate membership in [redacted] does not meet the stated requirements.

For the reasons discussed, we affirm the Director's decision to deny the petition. We will dismiss the appeal because the Petitioner has not established that the Beneficiary meets the minimum educational requirements of the labor certification.

ORDER: The appeal is dismissed.