U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21581413

Date: JUL. 8, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree 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 as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based "EB-2" immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

After the filing's initial grant, the Director of the Nebraska Service Center revoked the petition's approval, concluding that the education requirements for the position, as described on the labor certification, do not meet the requirements of the requested classification.

In revocation proceedings, the Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988) (citation omitted) (discussing the burden of proof); *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). Upon *de novo* review, we will dismiss the appeal.

I. LAW

A. Employment-Based Immigrant Petition Process

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.

Also, "at any time" before a beneficiary obtains lawful permanent residence, USCIS may revoke a petition's approval for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. If supported by a record, the erroneous nature of a petition's approval justifies its revocation. *Matter of Ho*, 19 I&N Dec. at 590.

USCIS properly issues a notice of intent to revoke (NOIR) a petition's approval if the unexplained and unrebutted record at the time of the NOIR's issuance would have warranted the petition's denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). If a petitioner's NOIR response doesn't resolve or rebut alleged revocation grounds, USCIS properly revokes a petition's approval. *Id.* at 451-52.

B. Advanced Degree Professional Classification

A petition for an advanced degree professional must generally be accompanied by a valid, individual labor certification. 8 C.F.R. § 204.5(k)(4)(1). The regulations state that to be eligible for the requested classification, *the job offer portion of the labor certification must demonstrate that the job requires a professional holding an advanced degree or the equivalent* (emphasis added). 8 C.F.R. § 204.5(k)(4)(i). The regulation at 8 C.F.R. § 204.5(k)(2) defines "advanced degree" as follows:

> [a]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

If the labor certification allows for less than an advanced degree, the position will not qualify for advanced degree professional classification.

II. ANALYSIS

For the reasons discussed below, we agree with the Director that the labor certification does not support the requested classification of advanced degree professional.[1]

In determining whether the position offered qualifies for advanced degree professional classification, we look to the terms of the labor certification. 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

[1] As stated by the Director, "[t]he matter at hand is not whether the beneficiary has met the necessary education and experience qualifications required by the ETA 9089 and the immigrant classification, but rather that the education requirements for the position are less than the requirements for an advanced degree (see 8 C.F.R. [§] 204.5(k)(2) above)."

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

At Part H, Box 14 (H.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).

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).[2]

As defined above, the equivalent of an advanced degree, if followed by at least five years of progressive experience, is "[*a*] United States baccalaureate degree or *a* foreign equivalent degree." 8 C.F.R. § 204.5(k)(2) (emphasis added); *see also* Final Rule for Immigrant Visa Petitions, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (stating that "both the Act and its legislative history make clear that, in order to . . . have experience equating to an advanced degree under the second [preference immigrant category], *an alien must have at least a bachelor's degree*") (emphasis added). Federal courts have upheld our ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS,* Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Thus, for purposes of the requested immigrant visa category, a foreign equivalent of a U.S. bachelor's

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

degree must constitute a single degree.

The Director concluded that the labor certification did not support the requested classification for advanced degree professional because of the language the Petitioner added to section H.14, which clearly states that it would accept a combination of unspecified degrees to meet a bachelor's degree equivalency. A plain reading of this additional language creates a different minimum requirement that does not, in fact, require a single degree. Instead, it allows for a combination of degrees, which as written, could be less than the required single bachelor's degree.

Because the Petitioner's own requirements allow "a combination of degrees" to satisfy the bachelor's degree requirement, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."[3] By adding this language in H.14, the Petitioner no longer restricts the requirements to those specified in boxes H.4 through H.10 and creates a different minimum education requirement.

Neither the Act nor USCIS regulations allow a position to be classified as an advanced degree professional position if the minimum educational requirement can be met with anything other than a single academic degree. Since the minimum requirements of the labor certification in this case can be satisfied with less than a single U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience, the labor certification does not support the requested classification of advanced degree professional under section 203(b)(2) of the Act.

III. CONCLUSION

The Petitioner's allowance of a combination of degrees to meet the bachelor's degree equivalency prohibits us from concluding that the labor certification supports a request for advanced degree professional classification under section 203(b)(2) of the Act. We, therefore, affirm the Director's revocation of the approved petition on this basis.

ORDER: The appeal is dismissed.

[3] *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.