U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23548521

Date: NOV. 22, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner seeks to employ the Beneficiary as a quality control chemist under the second-preference (EB-2), immigrant classification for members of the professions holding advanced degrees or equivalents. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). 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.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary has the requisite educational credential to qualify for classification as an advanced degree professional. On appeal, the Petitioner provides a brief and additional evidence, asserting that the Director erred in denying the petition.

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

I. LAW

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 noncitizen 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 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.

The term "advanced degree" is defined in the regulation at 8 C.F.R. § 204.5(k)(2) as follows:

> *Advanced degree* means any 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.

The regulations at 8 C.F.R. § 204.5(k)(3)(i) state that a petition for an advanced degree professional must be accompanied by either:

> (A) An official academic record showing that the [noncitizen] has a United States advanced degree or a foreign equivalent degree; or
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> (B) An official academic record showing that the [noncitizen] has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the [noncitizen] has at least five years of progressive post-baccalaureate experience in the specialty.

II. ANALYSIS

The issue raised on appeal is whether the Petitioner has established that the Beneficiary possesses a U.S. master's degree or foreign equivalent degree in order to qualify for the EB-2 classification and the terms of the labor certification. For the following reasons, we conclude that the Petitioner has not done so here.[1]

As a preliminary matter, we acknowledge that on appeal the Petitioner asserts that the Director erred by failing to address this issue in a request for evidence (RFE) prior to denying the petition. The regulation at 8 C.F.R. § 103.2(b)(8) permits the Director to deny a petition for failure to establish eligibility without having to request evidence regarding the ground or grounds of ineligibility identified by the Director. Further, even if the Director had erred as a procedural matter, it is not clear what remedy would be appropriate beyond the appeal process itself, which provided the Petitioner an opportunity to supplement the record and establish the Beneficiary's eligibility for the immigration benefits sought in the petition. Therefore, it would serve no useful purpose to remand the case simply to afford the Petitioner another opportunity to supplement the record with new evidence.

A. Advanced Degree Professional

The Petitioner requests classification of the Beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Act.[2] As required by statute, the petition is supported by an ETA Form 750, Application for [] Employment Certification ("labor certification"), which was filed with the DOL on January 3, 2005 and certified in February 2007.[3] To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's

[1] While we may not discuss every document submitted, we have reviewed and considered each one.
[2] The Petitioner does not assert, nor does the record establish that the Beneficiary qualifies for the EB-2 classification as an individual of exceptional ability. *See* section 203(b)(2)(A) of the Act.
[3] After March 28, 2005, the correct form to apply for labor certification is the Form ETA 9089.

priority date (January 3, 2005, in this case).[4] *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In assessing a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine a position's minimum requirements. The key to determining the job qualifications is found in Part A, Items 14 and 15 of ETA Form 750, where the Petitioner specified the following education, training, and experience requirements:

> 14. Education:
> Minimum level required: Master's (or foreign equivalent)
> Major Field of Study: Chemistry or closely related field
> Experience: 3 years in the job offered or a closely related occupation: Quality Control Lab. Experience as Chemist in GMP environment.
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> 15. Other Special Requirements:
> (1) 2 years' experience monitoring the shelf life of 20+ drug products to identify impurities and developing and validating assays;
> (2) 1 year of experience operating, maintaining and calibrating High Performance Liquid Chromatography (HPLC), Gas Chromatography (GC), Total Carbon Analyzer, Walk-in Stability Chambers, and Datalogger; and,
> (3) experience can be concurrent.

Thus, the labor certification specifies that a master's degree in chemistry or a related field, or a foreign education equivalent, is required for the job. No alternate combination of education and experience is acceptable.

Part B, Item 11 of the labor certification states that the Beneficiary's education related to the offered position is a bachelor's degree in math, physics, and chemistry from [redacted] University, India - completed in 1994, and a master's degree in applied chemistry from the same university - completed in 1996. The Petitioner provided a copy of the Beneficiary's college diplomas and course transcripts as evidence of his foreign education credentials.

The record contains an evaluation of the Beneficiary's credentials prepared by International Credentials Evaluation and Translation Services (I-) in October 2000, in which the evaluator determined that the Beneficiary's bachelor's degree is equivalent to the completion of three years of study towards a bachelor's degree in the United States, and that this degree when combined with his master's degree is equivalent to a bachelor's degree obtained in the United States.

The Petitioner also submitted an August 2004 credential evaluation prepared by Trustforte Corporation (T-), which similarly concludes that the Beneficiary's bachelor's degree is equivalent to three years of academic studies towards a bachelor's degree from an accredited university in the United States. The T- evaluator further opines that the Beneficiary's master's degree when considered together with his bachelor's degree is equivalent to a U.S. master's degree.

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[4] The priority date of the immigrant petition is the date the underlying labor certification application was accepted for processing by DOL. *See* 8 C.F.R. § 204.5(d).

On appeal, the Petitioner provides a February 2009 credential evaluation from Morningside Evaluations and Consulting (M-) which also concludes that the Beneficiary's bachelor's degree is equivalent to three years of undergraduate coursework in the United States. The Morningside evaluator further asserts that on its own, the Beneficiary's master's degree is equivalent to a master's degree from an accredited institution of higher learning in the United States.

To qualify as an advanced degree professional, a beneficiary relying on foreign education must have a single, foreign degree that equates to at least a U.S. baccalaureate degree. The regulations do not allow baccalaureate equivalents based on combinations of lesser educational credentials or of education and experience. *See Employment-Based Immigrant 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 category], a [noncitizen] must have *at least* a bachelor's degree") (emphasis added).

Collectively considering the education credential evaluations in the record, we note that all three evaluators agree with the Director's ultimate conclusion that the Beneficiary's bachelor's degree - by itself, *is not* the foreign degree equivalent of a bachelor's degree obtained at an accredited institution of higher learning in the United States. Based on the evidence of record, we also agree that the Beneficiary does not possess a singular foreign degree equivalent to a U.S. Bachelor's degree.

Moreover, the regulation at 8 C.F.R. § 204.5(k)(2) defines an *advanced degree* as "any United States academic or professional degree or a foreign equivalent degree *above that* of baccalaureate." (emphasis added.) Since the record does not show that the Beneficiary possesses the requisite singular foreign degree equivalent of a U.S. bachelor's degree, we conclude that the Petitioner has not established that the Beneficiary's foreign master's degree is "above that of a [U.S.] baccalaureate degree" and thus his master's degree does not meet the regulatory definition of an advanced degree for EB-2 classification purposes.

Further, the Petitioner has submitted education credential evaluations that put forth contradictory opinions regarding what the Beneficiary's foreign master's degree is equivalent to in the United States. I- concluded that the combination of the Beneficiary's two foreign degrees is equivalent to a U.S. bachelor's degree, while T- opined that the Beneficiary's master's degree when considered together with his bachelor's degree is equivalent to a U.S. master's degree. Lastly, M- indicates that on its own, the Beneficiary's master's degree is equivalent to a U.S. master's degree. While M- asserts that the Beneficiary's enrollment in the master's degree program was "based on the completion of a bachelor of science degree and a competitive entrance examination," it does not reconcile this assertion with its contradictory determination that the Beneficiary's bachelor's degree is only equivalent to three years of undergraduate coursework in the United States. The Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the Petitioner's [evidence] may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

In cases involving foreign degrees, USCIS may favorably consider a credentials evaluation performed by an independent credentials evaluator who provides a credible, logical, and well-documented case for an equivalency determination that is based solely on the individual's foreign degree(s). Opinions

rendered that are merely conclusory and do not provide a credible roadmap that clearly lays out the basis for the opinions are not persuasive. *See 9 USCIS Policy Manual* F.5, https://www.uscis.gov/policy-manual/volume-6-part-e-chapter-9.

On appeal, the Petitioner asserts that "the [submitted] independent credential evaluations [provide] ample evidence supporting [the Beneficiary's] EB-2 petition," but it has not acknowledged or provided an explanation to address the contradictory opinions presented within the evaluations. Notably, the evaluation from M- which was submitted on appeal, also does not discuss the inconsistent conclusions offered in the previously submitted evaluations, nor does it address its own contradictory determinations regarding what the Beneficiary's foreign degrees are equivalent to in terms of education obtained in the United States.

When considered together, these evaluations do not credibly offer an analytical roadmap that persuasively lays out the basis for the evaluators' opinions. It is important to understand that any educational equivalency evaluation performed by a credentials evaluator or school official is solely advisory in nature and that the final determination continues to rest solely with USCIS. *Id. (See also Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988), *Matter of Sea, Inc.* 19 I&N Dec. 817 (Comm 1988), and *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).) Thus, we conclude that the evaluations are of little probative value to the matter here. *Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner also provided several of our non-precedent decisions in which we made foreign equivalent degree determinations to support his assertions regarding the Beneficiary's qualifications. The Petitioner has not furnished evidence sufficient to establish that the facts of the instant petition are analogous to those in the unpublished decisions.[5] These decisions were not published as precedents and therefore do not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

On appeal, the Petitioner submits a copy of a January 2003 letter from Efren Hernandez III, of the INS Office of Adjudications, expressing his opinion about the possible means to satisfy the requirement of a foreign equivalent of a U.S. advanced degree for purposes of 8 C.F.R. 204.5(k)(2). It is noted that private discussions and correspondence solicited to obtain advice from USCIS, such as Mr. Hernandez' letter, are not binding on the AAO or other USCIS adjudicators and do not have the force of law. *Matter of Izummi*, 22 I&N 169, 196-197 (Comm. 1968); *see also*, Memorandum from Thomas Cook, Acting Associate Commissioner; Office of Programs, U.S Immigration & Naturalization Service, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000). Moreover, the regulation at 8 C.F.R. § 204.5(k)(3)(i) is clear in allowing only for the equivalency of one foreign degree to a U.S. baccalaureate, not a combination of degrees, diplomas or employment experience.

[5] Any suggestion that USCIS must review unpublished decisions and possibly request and review each case file relevant to those decisions, while being impractical and inefficient, would also be a shift in the evidentiary burden in these proceedings from the Petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361.

In summary, the regulations state that a beneficiary must have either (A) "a United States advanced *degree* or a foreign equivalent *degree*," or (B) "a United States baccalaureate *degree* or a foreign equivalent *degree*" plus "at least five years of progressive post-baccalaureate experience in the specialty" to be eligible for classification as an advanced degree professional. 8 C.F.R. § 204.5(k)(3)(i)(A) and (B) (emphasis added). No U.S. or foreign equivalent education is acceptable, under either alternative, unless it includes the specified degree. As discussed above, the Beneficiary does not possess the foreign equivalent of a U.S. master's degree and is therefore not eligible for classification as an advanced degree professional under 8 C.F.R. § 204.5(k)(3)(i)(A).

Additionally, the evidence in the record does not establish that the Beneficiary has a single, foreign degree that equates to at least a U.S. baccalaureate degree. The August 2007 work experience letter from the Beneficiary's employer only documents 3 years and 7 months of work experience at the time of filing of the petition, and the Petitioner has not shown that this experience qualifies as "progressive post-baccalaureate experience in the specialty." Therefore, even if the labor certification allowed for such a combination of education and experience, the record does not demonstrate that the Beneficiary would be eligible for classification as an advanced degree professional under 8 C.F.R. § 204.5(k)(3)(i)(B).

Based on the evidence of record, we agree with the Director's conclusion that the Beneficiary is not eligible for classification as an advanced degree professional under section 203(b)(2) of the Act. Accordingly, the petition cannot be approved.

B. Qualifications Under the Terms of the Labor Certification

To be eligible for approval as an advanced degree professional a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N at 158. On appeal, the Petitioner provides a letter from the vice president of human resources. He explains:

> We had a number of Indian nationals on our payroll who had master's degrees from Indian universities that had been evaluated by recognized U.S. credential evaluators as the equivalent of master's degrees from American universities. Most of these already were in the positions so it was clear in our minds that they had the minimum educational requirements for these positions.
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> Under these circumstances, we intended to confirm that we would accept this type of education credential when we indicated in Part A, Item 14 of [the Beneficiary's labor certification] that we would accept a [m]aster's degree or foreign equivalent. At the time we assumed that this meant that [we] would agree to accept any [b]achelor and [m]aster degree combination from India that had been evaluated by a recognized credential evaluation service as the foreign equivalent to a master's degree in [c]hemistry, from an accredited university in the United States.

While this letter offers insight into the Petitioner's intentions regarding the minimum requirements of the proffered position, we conclude that the plain language put forth in the instant labor certification does not reflect these asserted intentions. Here, the Petitioner indicated that a master's degree or

foreign equivalent degree was required for entry into the position in Part A, Item 14 of the labor certification and did not provide clarifying language therein to reflect these nuanced intentions. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Madany* v. *Smith,* 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears authority for setting the *content* of the labor certification") (emphasis added). The key to determining the job qualifications is found in Part A of the ETA Form 750 as outlined above.

In this case, the labor certification states that the position requires a master's degree in chemistry or a closely related field, or a foreign equivalent degree. For the reasons previously discussed, the Beneficiary does not have a U.S. master's degree or an equivalent foreign degree in chemistry or a closely related field. While we acknowledge that the labor certification also requires three years of specialized experience, which the Beneficiary possessed at the time of filing, the Petitioner has not established that the Beneficiary satisfies the minimum educational requirement of the labor certification to qualify for the job offered.

III. CONCLUSION

The Beneficiary does not possess a U.S. master's degree or a foreign equivalent degree, as required to be eligible for classification as an advanced degree professional under section 203(b)(2) of the Act and to qualify for the job offered under the terms of the labor certification. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.