U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28407187

Date: AUG. 30. 2023

Motions on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Professional)

The Petitioner, a provider of home healthcare services, seeks to permanently employ the Beneficiary as a health services manager. The company requests his classification under the employment-based, third-preference (EB-3) immigrant visa category as a professional. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). U.S. businesses may sponsor noncitizens for permanent residence in this category to work in jobs requiring at least bachelor's degrees. *Id.*

The Director of the Nebraska Service Center denied the petition, and we dismissed the Petitioner's following appeal. *See In Re: 25516556* (AAO Apr. 4, 2023). We affirmed the Director's decision, concluding that - contrary to the requirements of the offered job and the requested immigrant visa category - the company did not demonstrate the Beneficiary's possession of a bachelor's degree. *Id.*

The matter returns to us on the Petitioner's combined motions to reopen and reconsider. The company contends that, because a nonimmigrant visa regulation equates three years of employment experience to one year of U.S. college or university, the Beneficiary has the equivalent of a U.S. bachelor's degree.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we conclude that the Petitioner's motion to reopen does not comply with applicable requirements. Also, its motion to reconsider misapplies the nonimmigrant regulation to the company's immigrant petition and does not establish the Beneficiary's educational qualifications for the offered job. We will therefore dismiss the motions.

I. LAW

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must demonstrate that our prior decision misapplied law or U.S. Citizenship and Immigration Services (USCIS) policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant motions that meet these requirements and demonstrate eligibility for the requested benefit.

II. ANALYSIS

A. Motion to Reopen

The Petitioner's motion to reopen contains evidence already of record. Thus, contrary to 8 C.F.R. § 103.5(a)(2), the filing does not state new facts. We will therefore dismiss the motion. *See* 8 C.F.R. § 103.5(a)(4) (requiring USCIS to dismiss a motion that does not meet applicable requirements).

B. Motion to Reconsider

The Petitioner's motion to reconsider contends that the Beneficiary's experience equates to a U.S. bachelor's degree in business administration. The company therefore asserts his qualifications for the offered position and the requested immigrant visa category.

1. The Requested Immigrant Visa Category

A professional must have - and their offered position must require - at least a U.S. bachelor's degree or a foreign equivalent degree. 8 C.F.R. § 204.5(l)(2), (3)(i). The Petitioner submitted evidence that the Beneficiary attended a Filipino university. But the documents contain inconsistencies and do not demonstrate his receipt of a degree. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring petitioners to resolve discrepancies with independent, objective evidence pointing to where the truth lies). The company also submitted an independent, professional evaluation of the Beneficiary's employment experience and letters from his former employers, documenting his work from August 2005 to October 2017. The evaluation concludes that his experience equates to a U.S. baccalaureate in business administration.

On motion, the Petitioner notes that the evaluation bases its conclusion on a regulation equating three years of employment experience to one year of U.S. college or university. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*). Thus, the company contends that the Beneficiary's 12-plus years of experience equate to at least four years of U.S. college/university, providing him with a U.S. baccalaureate equivalent. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977) (finding that a U.S. baccalaureate usually requires four years of college or university studies). The Petitioner states: "For years, . . . USCIS has held that three years of work experience are equivalent to one year of university education."

As explained in our appellate decision, however, the regulation cited by the Petitioner applies only to H-1B nonimmigrant visa petitions.[1] *See* 8 C.F.R. § 214.2(h)(4)(iii)(D) (listing evidence that would demonstrate an H-1B beneficiary's possession of a U.S. bachelor's degree equivalency). There is no similar provision allowing experience - or even a combination of education and experience - to equate to a U.S. bachelor's degree for immigration as a professional. Rather, a professional must have "at least a United States baccalaureate degree or a foreign equivalent degree." 8 C.F.R. § 204.5(l)(2) (defining the term "professional"). Indeed, the former Immigration and Naturalization Service (INS) received public complaints about the exclusion of baccalaureate equivalencies based on experience.

[1] H-1B nonimmigrant visas allow noncitizens to temporarily work in the United States in specialty occupations requiring at least baccalaureates or their equivalents as minimum entry criteria for the occupations. 8 C.F.R. 214.2(h)(4)(i)(A)(*1*).

Final Rules for Employment-Based Immigrants, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991). When issuing the final rules, however, INS refused to amend the regulations to accept experience-based equivalencies. *Id.* INS stated:

> [B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification . . ., an alien must have at least a bachelor's degree. Therefore, the Service believes that, to carry out Congress' intent, it must require a bachelor's degree . . . and cannot permit an alien to meet this minimum requirement through experience alone. . . . Persons formerly qualifying for third preference by virtue of education and experience equating to a bachelor's degree will qualify for the third employment category as skilled workers with more than two years of training and experience.

Id. (referring to section 203(b)(3)(A)(i) of the Act). Thus, a professional must have at least a U.S. bachelor's degree or a foreign equivalent degree; a noncitizen cannot qualify as a professional based on equivalent experience alone or an equivalent combination of education and experience.

The Petitioner's motion to reconsider misapplies the *nonimmigrant* visa regulation to the company's *immigrant* visa petition. The Petitioner therefore has not demonstrated the Beneficiary's educational qualifications for the requested immigrant visa category.

2. The Offered Position

A petitioner must also demonstrate a beneficiary's possession of all job requirements of an offered position as listed on an accompanying certification from the U.S. Department of Labor. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). The Petitioner's labor certification states the minimum requirements of the offered position of health services manager as a U.S. baccalaureate or "a foreign educational equivalent" in commerce or accounting. The labor certification states that the job requires neither training nor experience.

The Petitioner contends that the Beneficiary has the equivalent of a U.S. bachelor's degree in business administration based solely on experience. But, as the labor certification states, the job requires a U.S. baccalaureate or "a foreign *educational* equivalent." (emphasis added). The Beneficiary's baccalaureate equivalency based on *experience* does not constitute "a foreign *educational* equivalent." Thus, the Petitioner's motion to reconsider also does not establish the Beneficiary's educational qualifications for the offered job.

III. CONCLUSION

The motion to reopen does not meet applicable requirements. The motion to reconsider does not demonstrate the Beneficiary's educational qualifications for the offered position or the requested immigrant visa category.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.