U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-US, INC.

DATE: APR. 22, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a professional consulting company, seeks to permanently employ the Beneficiary as a senior software developer under the immigrant classification of advanced degree professional. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director, Nebraska Service Center, denied the petition. The Director found that the Beneficiary does not qualify for the proffered position because he does not have a bachelor's degree or a master's degree in a field of study specified in the labor certification.

The matter is now before us on appeal. The Petitioner submits a brief and additional documentation, and asserts that the Beneficiary has a foreign equivalent degree to a U.S. master's degree in applied computer science which qualifies the Beneficiary for classification as an advanced degree professional under the terms of the labor certification. Upon *de novo* review, we will dismiss the appeal.

I. PROCEDURAL HISTORY

The instant petition, Form I-140, was filed on March 6, 2015. As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed with the U.S. Department of Labor (DOL) on July 9, 2014, and certified by the DOL (labor certification) on December 4, 2014. In Section H of the ETA Form 9089 the Petitioner set forth the following requirements for the proffered position of senior software developer:

4.	Education: Minimum level required:	Master's degree
4-B.	Major Field of Study:	Computer Science, Engineering, MIS, or Mathematics
5.	Is training required in the job opportunity?	No
6.	Is experience in the job offered required?	Yes
6-A.	How long?	24 months
7.	Is there an alternate field of study that is acceptable?	No

8.	Is an alternate combination of education and experience acceptable?	Yes
8-A.	Alternate level of education required:	Bachelor's degree
8-C	Number of years experience acceptable:	Five years
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	No

As evidence of the Beneficiary's education and experience the Petitioner submitted copies of the following documentation with the Form I-140 petition and in response to the Director's request for evidence (RFE):

- A diploma and transcripts from [redacted] India, showing that the Beneficiary was awarded a bachelor of computer applications (BCA) on January 6, 2006, following the completion of a three-year degree program in the years 2001-2004;
- A diploma and transcripts from [redacted] India, showing that the Beneficiary was awarded a master of computer application (MCA) on August 19, 2008, following the completion of a three-year degree program in the years 2005-2008;
- A letter from an HR manager at [redacted] Illinois, dated February 3, 2015, stating that the Beneficiary had been employed as a senior systems analyst from September 1, 2005 to July 26, 2013, on various projects in the United States and India, and describing the job duties he performed.
- An "Evaluation of Education, Training, and Experience" from [redacted] dated January 25, 2011, claiming that the Beneficiary's three-year BCA from [redacted] plus his nearly five and one-half years of experience at Accenture (at that time) was equivalent to a bachelor of science in computer information systems from an accredited U.S. college or university.
- An "Academic Equivalency Evaluation" from [redacted] dated April 6, 2015, claiming that the Beneficiary's MCA from [redacted] was equivalent to a bachelor of science in computer science from an accredited U.S. college or university.

On May 8, 2015, the Director denied the petition on the ground that the evidence of record did not establish that the Beneficiary has the minimum educational credentials for the proffered position under the terms of the labor certification. With respect to the Beneficiary's three-year bachelor of computer applications from [redacted] the Director found that it was not in a field of study specified on the labor certification and, in addition, was not equivalent to a U.S. baccalaureate degree which generally requires four years of study, citing *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). The [redacted] evaluation was not helpful, the Director explained, because it concluded that the BCA was equivalent to a U.S. bachelor's degree in computer information systems, which is not an acceptable field of study on the labor certification. As for the [redacted] evaluation, the Director indicated that it had little evidentiary weight because it provided no rationale for its conclusion that the Beneficiary's master of computer application, following his three-year BCA, was equivalent to a U.S. bachelor's degree in a different field of study – computer science. The Director also cited information in the Educational Database for Global Education (EDGE), created by the

American Association of Collegiate Registrars and Admissions Officers (AACRAO), advising that a three-year BCA in India is comparable to three years of university study in the United States, not a U.S. bachelors' degree, and that an MCA in India is comparable to a master's degree in the United States – but in the field of computer applications, not computer science. Finally, the Director stated that the evidence of record did not establish that during the recruitment and labor certification process the Petitioner allowed applicants with foreign degrees in computer applications to be considered for the proffered position. Thus, the Petitioner did not establish that U.S. workers were put on notice that they could apply for the proffered position with a bachelor's degree or a master's degree in computer applications.

The Petitioner filed an appeal with a brief and supporting documentation on June 2, 2015. The Petitioner asserts that a master of computer applications cannot be evaluated as equivalent to a U.S. master of computer applications because no such degree exists in the United States. According to the Petitioner, the U.S. equivalent of an MCA from India is a master's degree in applied computer science or computer science (applied). The Petitioner claims that the Beneficiary's MCA is equivalent to a U.S. master's degree in applied computer science, and that this field of study accords with the requirements of the labor certification.

On December 21, 2015, we sent an RFE to the Petitioner requesting specific documentation from the recruitment and labor certification process to assist us in determining the actual minimum educational requirement for the proffered position of senior software developer. The Petitioner responded on March 10, 2016, with a letter from counsel and additional documentation in accord with the RFE.

The issue on appeal is whether the Beneficiary's educational credentials meet the minimum educational requirement on the labor certification to qualify for the proffered position.

II. LAW AND ANALYSIS

A. The Roles of the DOL and USCIS in the Immigrant Visa Process

A United States employer may sponsor a foreign national for lawful permanent residence, which is a three-part process. First, the U.S. employer must obtain a labor certification, which the DOL processes. *See* 20 C.F.R. § 656 *et seq.* The labor certification states the position's job duties and the position's education, experience and other special requirements along with the required proffered wage and work location(s). The beneficiary states and attests to his or her education and experience. The DOL's role in certifying the labor certification is set forth at section 212(a)(5)(i) of the Act. The DOL's certification affirms that, "there are not sufficient [U.S.] workers who are able, willing, qualified" to perform the position offered where the beneficiary will be employed, and that the employment of such beneficiary will not "adversely affect the wages and working conditions of workers in the United States similarly employed." *See* Section 212(a)(5)(A)(i) of the Act.

Following labor certification approval, a petitioner files a Form I-140, Immigrant Petition for Alien Worker, with U.S. Citizenship and Immigration Services (USCIS) within the required 180 day labor

certification validity period. *See* 20 C.F.R. § 656.30(b)(1); 8.C.F.R. § 204.5. USCIS then examines whether: the petitioner can establish its ability to pay the proffered wage, the petition meets the requirements for the requested classification, and the beneficiary has the required education, training, and experience for the position offered. *See* Section 203(b)(3)(A)(ii) of the Act; 8 C.F.R. § 204.5.[1]

Thus, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the job offered, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the beneficiary qualifies for the job offered under the terms of the labor certification, and whether the job offered and the beneficiary are eligible for the requested employment-based immigrant visa classification.

As previously noted, the I-140 petition in this case is accompanied by a labor certification, approved by the DOL, with a priority date of July 9, 2014.

B. Eligibility for the Classification of Advanced Degree Professional

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification, *inter alia*, to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

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

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
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> (B) An official academic record showing that the alien 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 alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

As previously discussed, the Beneficiary has two degrees from Indian universities – a three-year bachelor of computer applications and a three-year master of computer applications. The AACRAO database, EDGE, advises that these degrees are comparable to three years of university study in the United States and a master's degree in the United States, respectively.[2]

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[1] In the final step, the beneficiary would file a Form I-485, Application to Register Permanent Residence or Adjust Status, either concurrently with the I-140 petition based on a current priority date, or following approval of an I-140 petition and a current priority date. *See*.8 C.F.R. § 245.

[2] According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United

Based on the evidence of record, we conclude that the Beneficiary's master of computer applications is a foreign equivalent degree to a U.S. master's degree in that field of study. Therefore, the Beneficiary's MCA meets the definition of an "advanced degree" in 8 C.F.R. § 204.5(k)(2). Accordingly, the Beneficiary is eligible for classification as an advanced degree professional under section 203(b)(2) of the Act.

However, the Beneficiary cannot be approved for classification as an advanced degree professional because his degree is not in a field of study specified on the labor certification.

C. Minimum Requirements of the Labor Certification

To be eligible for approval under the immigrant visa petition, the Beneficiary must have all the education, training, and experience specified on the underlying labor certification as of the petition's priority date, which is the date the labor certification application was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg'l Comm'r 1977). The priority date of the instant petition is July 9, 2014.

The key to determining the qualifications for the proffered position is found in Part H of the ETA Form 9089, which describes the terms and conditions of the job offered. It is important that the labor certification be read as a whole. In this case, Part H of the labor certification establishes alternative minimum requirements for the proffered position of senior software developer, which are either:

- A master's degree in computer science, engineering, MIS (management information systems), or mathematics, or a foreign educational equivalent, plus two years of experience as a software developer (ETA Form 9089, boxes H.4, 4-B, 6, 6-A, 7, and 9); or,
- A bachelor's degree in one of the indicated fields of study, or a foreign educational equivalent, plus two years of experience as a software developer (ETA Form 9089, boxes H.8, 8-A, 8-C, and 9).

The Beneficiary does not have either a master's degree or a bachelor's degree in computer science, engineering, MIS, or mathematics. Rather, he has a three-year bachelor of computer applications from [redacted] which is comparable to three years of university study in the United States, not a full U.S. bachelor's degree. He also has a three-year master of computer application from [redacted] which is comparable to a U.S. master's degree. While the latter credential is a foreign equivalent degree to a U.S. master's degree, it is not in one of the four fields of study – computer science, engineering, MIS, and mathematics – specified in box H.4-B of the

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States and in more than 40 countries." AACRAO, http://www.aacrao.org/home/about (last accessed March 31, 2016). "Its mission is to provide professional development, guidelines, and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology, and student services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." AACRAO EDGE, http://edge.aacrao.org/ info.php (last accessed March 31, 2016). USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.

labor certification. Moreover, in box H.7 of the labor certification the Petitioner answered "No" to the question of whether an alternate field of study is acceptable.

On appeal the Petitioner claims that the Director erred in finding that the Beneficiary's master of computer applications is comparable to a U.S. master's degree in that field of study because no such degree exists in the United States. While agreeing with EDGE's credential advice that an Indian MCA is "comparable to a master's degree in the United States," the Petitioner disagrees with the qualification in EDGE's "credential author notes" that the MCA is "[c]omparable to a degree in computer application, not computer science." The Petitioner asserts that an Indian MCA is equivalent to a U.S. master's degree in applied computer science, or computer science (applied). According to the Petitioner, therefore, the Beneficiary's MCA is equivalent to a U.S. master's degree in applied computer science and, as such, falls within one of the fields of study – computer science – specified on the labor certification.

In support of these contentions the Petitioner submits an evaluation of the Beneficiary's educational credentials from of dated May 21, 2015 evaluation) and a supplemental letter from dated May 27, 2015, to which are appended various website extracts from U.S. universities that offer master of science degrees in applied computer science. According to the evaluation, the Beneficiary's three-year MCA, in conjunction with his three-year BCA, is equivalent to a master's degree in computer science (applied) from a regionally accredited university in the United States. In her supplemental letter states that applied computer science, or computer science (applied), is the equivalent field of study in the United States to computer application(s) in India. The website extracts from six U.S. universities offering master of science degrees in applied computer science show substantial overlap in their course offerings with the coursework completed by the Beneficiary for his MCA in India.

Regardless of whether a master of computer applications in India may be considered comparable to a master of applied computer science, or computer science (applied), in the United States, the fact remains that this field was not listed on the labor certification as an acceptable field of study to qualify for the proffered position of senior software developer. Even if we accept the Petitioner's claims, *arguendo*, that a master's degree in computer applications does not exist in the United States and that the Beneficiary's MCA from India is comparable to a U.S. master's degree in applied computer science, that field of study is not one of the four disciplines specified in box H.4-B of the ETA Form 9089 ("Major field of study"), which includes computer science, engineering, MIS, and mathematics. While applied computer science is certainly related to computer science, it is not the same field. If the Petitioner meant to include applied computer science as an acceptable field of study, that intention could have been expressed in boxes H.7 and H.7-A of the labor certification, which asked whether an alternate field of study was acceptable and, if so, what field. However, the Petitioner answered "No" in box H.7, thus indicating that no alternate field of study was acceptable. The Petitioner might also have indicated that another field of study was acceptable in box H.14 of the ETA Form 9089, which asked about "[s]pecific skills or other requirements" for the job. The Petitioner's response to the question did not include any statement that a degree in applied computer science would be acceptable in lieu of one of the four fields of study identified in box H.4-B.

In response to our RFE the Petitioner submitted copies of its Application for Prevailing Wage Determination (ETA Form 941) submitted to the DOL, internal and external job postings, the recruitment report, and a resume from an applicant. None of these materials indicates that a degree in the field of computer applications (or applied computer science), was an acceptable alternative to a degree in computer science, engineering, MIS, or mathematics. Thus, the evidence of record does not show that the actual minimum educational requirement for the proffered position allowed for a degree in the field of computer applications (or applied computer science). In accord with the Director, therefore, we conclude that U.S. workers were not put on notice during the recruitment and labor certification process that they could apply for the job of senior software developer with a degree in computer applications (or applied computer science).

For all of the reasons discussed above the Petitioner has not established that the Beneficiary meets the minimum educational requirement of the labor certification – which requires either a bachelor's degree or a master's degree in the field of computer science, engineering, MIS, or mathematics, or a foreign equivalent degree. The Beneficiary does not have a degree in one of those fields of study. Therefore, he does not qualify for the job of senior software developer under the terms of the labor certification.

D. Standard of Proof

In its appeal brief, dated June 1, 2015, the Petitioner asserts the Director's denial decision did not accord with the preponderance of the evidence standard applicable in this USCIS proceeding, citing *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The Petitioner cites a decision by our predecessor office, the Immigration and Naturalization Service (INS), that the preponderance of the evidence standard requires a petitioner to show that its claim is "more likely than not" or "probably true" (*Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989), as well as a federal appeals court decision stating that "an agency abuses its discretion when it fails to issue opinions with rational explanations and adequate analysis of the record." *Siddiqui v. Holder*, No. 09-3912 (7th Cir. January 12, 2012).

We identify no indication in the record that the Director applied an erroneous standard of proof or failed to present rational explanations and adequate analysis of the record in his decision denying the petition. Nor have we done so in our adjudication of the appeal.

The Petitioner must establish that it meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *See Chawathe* at 375-376. In other words, the Petitioner must show that what it claims is "more likely than not" or "probably" true. To determine whether the Petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *see also Matter of E-M-*. We consider the evidence both individually and in its totality. *See Chawathe* at 376.

III. CONCLUSION

We affirm the Director's finding that the Petitioner's request to classify the Beneficiary as a second preference employment-based advanced degree professional must be denied because the Beneficiary does not qualify for the proffered position under the terms of the labor certification.

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of E-US, Inc.*, ID# 15613 (AAO Apr. 22, 2016)