U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-, INC.

DATE: SEPT. 28, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a wholesaler of men's suits, seeks to employ the Beneficiary as a computer and information systems specialist. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *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 of the Nebraska Service Center denied the petition on the ground that the record does not establish that the Beneficiary has a U.S. master's or bachelor's degree, as required by the labor certification, and therefore does not meet the minimum educational requirement for the job offered.

On appeal the Petitioner asserts that the Beneficiary has the requisite education to satisfy the terms of the labor certification.

Upon *de novo* review, we will dismiss the appeal.

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).[1] *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 domestic 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.

[1] The date the labor certification is filed is called the "priority date." *See* 8 C.F.R. § 204.5(d). The Petitioner must establish that all eligibility requirements for the petition have been satisfied from the priority date onward.

An "advanced degree" is defined at 8 C.F.R. § 204.5(k)(2) as "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate" or "a United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty."

To be eligible for approval a beneficiary must meet all of the education, training, and experience requirements of the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg'l Comm'r 1977).

The Petitioner's Form I-140, Immigrant Petition for Alien Worker, was accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), with a priority date of December 29, 2015. Section H of the labor certification specifies the following with respect to the education, training, and experience required to qualify for the job offered:

4.	Education: Minimum level required:	Bachelor's degree
4-B.	Major Field of Study:	Electronics & Computer Engineering or Computer Science
5.	Is training required in the job opportunity?	No
6.	Is experience in the job offered required?	Yes
6-A.	How long?	60 months
7.	Is an alternate field of study acceptable?	No
8.	Is an alternate combination of education and experience acceptable?	No
9.	Is a foreign educational equivalent acceptable?	No
10.	Is experience in an alternate occupation acceptable?	No

In section J of the labor certification the Petitioner states that the Beneficiary's highest level of education relevant to the job offered is a bachelor's degree in electronics and communications engineering from the [redacted] in [redacted] Philippines, completed in 2004.

The record includes documentary evidence that the [redacted] awarded the Beneficiary a bachelor of science in electronics and communications engineering in March 2004 after his completion of a four-year degree program. The Director found that this degree does not meet the minimum educational requirement of the labor certification because it is not a U.S. degree and box H.9 of the labor certification specifically states a foreign educational equivalent is not acceptable.

The Director noted the Petitioner's claim that its answer of "No" at box H.9 was a clerical error and that "Yes" was the correct answer to the question of whether a foreign educational equivalent was acceptable. The Director did not accept the Petitioner's request to correct its answer to H.9, concluding that USCIS may not change the terms of the labor certification.

On appeal the Petitioner does not renew its claim that it made a clerical error on the labor certification by indicating in box H.9 that a foreign educational equivalent was not acceptable. Instead, it contends that the Beneficiary's bachelor of science in electronics and communications engineering from the [redacted] meets the minimum educational requirement on the labor certification, which is a bachelor's degree in electronics and communications engineering or in computer science. The Petitioner submits an evaluation of the Beneficiary's Philippine degree from [redacted] which concluded that the bachelor's degree from the [redacted] is academically equivalent to a bachelor's degree in electronics and communications engineering from a college or university in the United States.

However, whether or not the Beneficiary's Philippine degree is equivalent to a U.S. bachelor's degree is not the issue on appeal. The issue is whether a foreign equivalent degree is acceptable under the terms of the labor certification, which was prepared by the Petitioner, signed by both the Petitioner and the Beneficiary, and approved by the DOL.

In determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). Our interpretation of the job's requirements, as stated on the labor certification, must involve reading and applying *the plain language* of the alien employment certification application form. *Id.* at 834.

In this case, the labor certification states at H.4 and H.4-B that the minimum education required for the job offered is a bachelor's degree in electronics and computer engineering or in computer science. At box H.9 of the labor certification, in response to the question of whether a foreign educational equivalent is acceptable, the choice of "No" was selected. Thus, the plain language of the labor certification states that a foreign equivalent degree to a U.S. bachelor's degree does not satisfy the minimum educational requirement for the job offered.

The Beneficiary does not meet the minimum educational requirements of the labor certification because he does not have a U.S. bachelor's degree and the labor certification does not allow for foreign equivalent degrees. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of M-, Inc.*, ID# 644857 (AAO Sept. 28, 2017)