



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 03 2015** OFFICE: NEBRASKA SERVICE CENTER

FILE:



IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Skilled Worker Pursuant to Section 203(b)(3)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is again before us with a motion to reconsider. The motion to reconsider will be granted. The previous decision will be affirmed. The appeal is dismissed and the petition remains denied.

The petitioner describes itself as a low income housing tax credit – residential housing limited partnership. It seeks to permanently employ the beneficiary in the United States as a tax credit administrator. The petitioner requests classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).

The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is July 31, 2002. See 8 C.F.R. § 204.5(d).

The director's July 29, 2013 decision denying the petition concludes that the beneficiary did not possess a U.S. master's degree or foreign equivalent as required by the terms of the labor certification. We affirmed the director's decision and dismissed the appeal on December 12, 2014.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal and motion.¹

The procedural history in this case is documented by the record and incorporated into the director's decision and our decision of the appeal. Further elaboration of the procedural history will be made only as necessary.

The motion to reconsider qualifies for consideration under 8 C.F.R. § 103.5(a)(3) because the petitioner asserts that we made an erroneous decision through misapplication of law or policy. Specifically, on motion the petitioner asserts that we failed to address two arguments set forth in the appeal: 1) that the specific language of the labor certification does not require a U.S. or foreign equivalent Master's degree, and; 2) that a combination of education and experience, as permitted by agency guidance, establishes that the beneficiary possesses the minimum requirement of a Master's degree.

The determination of whether a petition may be approved for a skilled worker is based on the requirements of the job offered as set forth on the labor certification. See 8 C.F.R. § 204.5(1)(4). The labor certification must require at least two years of training and/or experience. Relevant post-secondary education may be considered as training. See 8 C.F.R. § 204.5(1)(2).

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

Accordingly, a petition for a skilled worker must establish that the job offer portion of the labor certification requires at least two years of training and/or experience, and the beneficiary meets all of the requirements of the offered position set forth on the labor certification.

In the instant case, the labor certification states that the offered position has the following minimum requirements:

EDUCATION

Grade School: N/A.

High School: N/A.

College: 6 years.

College Degree Required: Master's or equivalent.

Major Field of Study: Business Administration or relevant field.

TRAINING: None Required.

EXPERIENCE: None Required.

OTHER SPECIAL REQUIREMENTS: None.

The beneficiary must also meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). In evaluating the beneficiary's qualifications, U.S. Citizenship and Immigration Services (USCIS) must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by "examin[ing] the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification]" even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

In the instant case, the record demonstrates that the beneficiary possesses a Master's degree in Personnel Management and Industrial Relations from [REDACTED] India, completed in 1991, and a Master's Degree in Economics from [REDACTED] India, completed in 1988.

Our previous decision discussed our review of the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers

(AACRAO).² EDGE's credential advice provides that the beneficiary's Master's Degree in Personnel Management and Industrial Relations and his Master of Arts in Economic, represent the attainment of a level of education comparable to obtaining two bachelor's degrees in the United States. A printout of the information from EDGE was provided to the petitioner in our September 15, 2014 Notice of Intent to Dismiss (NOID) the appeal. Based on the conclusions of EDGE and the evidence in the record, we concluded that the beneficiary possesses the foreign equivalent of two bachelor's degrees earned from an accredited U.S. college or university.

The petitioner does not dispute this conclusion. Rather, on motion the petitioner asserts that the specific language of the labor certification does not require a U.S. or foreign equivalent master's degree, and that the beneficiary's two master's degrees from India, even if not determined to be equivalent to a U.S. master's degree, meet the terms of the labor certification requiring six years of college education and a master's degree in a relevant field. The petitioner asserts that we should look only at the Form ETA 750 to determine the minimum requirements for the proffered position, rather than to any document outside the form itself.

The petitioner does not cite any authority that establishes that the DOL intended Section 14, "Education, College Degree Required," of the Form ETA 750 Part A to mean anything less than a U.S. or foreign equivalent degree. The labor certification itself requires a "Master's or equivalent" college degree, and as strictly read from the Form ETA 750 Part A, this is interpreted as a U.S. master's or foreign equivalent degree. The terms of the labor certification are not ambiguous and it does not permit a lesser degree (such as that possessed by the beneficiary), a combination of lesser degrees, and/or a quantifiable amount of work experience.

In limited circumstances, USCIS may consider a petitioner's intent to determine the meaning of an unclear or ambiguous term in the labor certification. An employer's subjective intent, however, may not be dispositive of the meaning of the actual minimum requirements of the offered position. See *Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008). In our NOID, we noted that: 1) the petitioner did not specify on the Form ETA 750 that the minimum academic requirements of six years of college and a master's degree or equivalent might be met through a combination of lesser degrees, and 2) the labor certification application, as certified, does not demonstrate that the petitioner would accept a combination of degrees and/or experience that are individually all less than a U.S.

² According to the login page, EDGE is "a web-based resource for the evaluation of foreign educational credentials" that is continually updated and revised by staff and members of AACRAO. Dale E. Gough, Director of International Education Services, "AACRAO EDGE Login," <http://aacraoedge.aacrao.org/index.php> (accessed July 2, 2012 and incorporated into the record of proceeding). In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), a federal district court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), a federal district court upheld a USCIS conclusion that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience. The reasoning in these decisions is persuasive.

master's degree or its foreign equivalent when it oversaw the labor market test. In our NOID, we permitted the petitioner to submit any evidence that it intended the labor certification to require an alternative to a U.S. master's degree or a single foreign equivalent degree, as that intent was explicitly and specifically expressed during the labor certification process to the DOL and to potentially qualified U.S. workers. In our decision dismissing the appeal, we fully discussed the evidence submitted in response to the NOID, including the petitioner's newspaper advertisements and recruitment report. We noted that neither the recruitment report nor advertisements indicate that U.S. workers were put on notice that they might qualify for the proffered position with anything less than a U.S. master's degree or its foreign equivalent.

Thus, the petitioner failed to establish that the terms of the labor certification are ambiguous and that it intended the labor certification to require less than a U.S. master's degree or foreign equivalent degree, as that intent was expressed during the labor certification process to the DOL and potentially qualified U.S. workers.

On appeal, the petitioner asserted that the use of the term "or equivalent" on the labor certification was intended to allow a combination of education and experience, and that a U.S. baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty should be considered the equivalent of a master's degree.

On motion, the petitioner asserts that we should follow the guidance in letters drafted by [REDACTED], Chief, Business and Trade Services Branch. Specifically, the petitioner suggests that we should accept that a combination of education and/or education/experience warrants approval in the EB3 skilled worker category.

The petitioner references two letters dated January 7, 2003 and July 23, 2003, respectively, from [REDACTED] of the INS Office of Adjudications to counsel in other cases, 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). Within the July 2003 letter, Mr. [REDACTED] states that he believes that the combination of a post-graduate diploma and a three-year baccalaureate degree may be considered to be the equivalent of a U.S. bachelor's degree.

At the outset, it is noted that private discussions and correspondence solicited to obtain advice from USCIS are not binding on us or other USCIS adjudicators and do not have the force of law. *Matter of Izummi*, 22 I&N 169, 196-197 (Comm'r 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, 8 C.F.R. § 204.5(k)(2), as referenced by the petitioner and in Mr. [REDACTED] correspondence, permits a certain combination of progressive work experience and a bachelor's degree to be considered the equivalent of an advanced degree for classification as an advanced degree professional. There is no comparable provision to substitute a combination of degrees, work

experience, or certificates which, when taken together, equals the same amount of coursework required for a U.S. master's degree in the skilled worker classification.

In our decision dismissing the appeal, we noted that, even if the petitioner had established its intent to accept a combination of education and experience in lieu of a U.S. master's degree or foreign equivalent degree, the record does not establish that the beneficiary possesses the equivalent of an advanced degree (Master's degree) pursuant to 8 C.F.R. § 204.5(k)(2), as claimed by the petitioner. Our decision discussed the beneficiary's claimed work experience and determined that the total post-baccalaureate experience is less than five years. The petitioner does not dispute this on motion, nor does it provide any additional evidence to support that the beneficiary possesses a U.S. baccalaureate or a foreign equivalent degree followed by five years of post-baccalaureate experience pursuant to 8 C.F.R. § 204.5(k)(2).

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

ORDER: The motion to reconsider is granted. The previous decision is affirmed. The appeal is dismissed and the petition remains denied.