



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF J-E-, INC.

DATE: NOV. 30, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, which describes itself as a garment manufacturer, seeks to employ the Beneficiary permanently in the United States as a senior technical designer. The Petitioner requests classification of the Beneficiary as a professional. Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

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 priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the ETA Form 9089 was accepted for processing on June 16, 2014. The Immigrant Petition for Alien Worker (Form I-140) was filed on January 20, 2015. The Director denied the petition on March 12, 2015, determining that the Petitioner had not established that the Beneficiary possessed the experience required by the labor certification.

The proffered position's requirements are found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole. The instructions for the ETA Form 9089, Part H, provide:

Minimum Education, Training, and Experience Required to Perform the Job Duties. Do not duplicate the time requirements. For example, time required in training should not also be listed in education or experience. Indicate whether months or years are required. Do not include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.

Regarding the minimum level of education and experience required on the ETA Form 9089 for the proffered position in this matter, Part H of the labor certification reflects the following requirements:

H.4. Education: Minimum level required: Bachelor's degree.

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H.4-B. Major Field Study: Fashion design/fashion technology.

H.6. Is experience in the job offered required for the job? Yes.

H.6A. If Yes, number of months experience required: 48.

H.7. Is there an alternate field of study that is acceptable? No.

H.8. Is there an alternate combination of education and experience that is acceptable? No.

H.9. Is a foreign educational equivalent acceptable? Yes.

H.10. Is experience in an alternate occupation acceptable? No.

H.11 Job duties: Conduct fit evaluation; confer with sales executives and client to discuss design requirements; establish quality standards; coordinate with suppliers and product development; supervise supplier conformance to production requirements; approve samples; input fit comments and measure specs in reports to vendors and factories; document fit results; track status of styles and set up WIP reports; ensure smooth process flow from development through production; work in different silhouettes; work across internal manufacturing accounts; use knowledge of knitwear design and construction and knowledge of fabric qualities and strength; use knowledge of fashion design, marketing and production.

H.14. Specific skills or other requirements: None listed.

To determine whether a beneficiary is eligible for a preference immigrant visa, U.S. Citizenship and Immigration Services (USCIS) must ascertain whether the alien is, in fact, qualified for the certified job. In evaluating the beneficiary's qualifications, 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 v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc.*, 699 F.2d at 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

On the ETA Form 9089, the Beneficiary represented that the highest level of achieved education related to the requested occupation was a bachelor's degree in fashion design and information technology from the [REDACTED] in [REDACTED] India, awarded in 2006. The Beneficiary also claimed the following employment experience:

- Work as a senior technical designer for the Petitioner from August 23, 2012, through June 16, 2014;
- Work as a senior technical designer for [REDACTED] NY, from October 1, 2009, through August 23, 2012; and,
- Work as a production supervisor for [REDACTED] India, from January 1, 2006, through December 1, 2008.

In support of the Beneficiary's educational qualifications, the Petitioner submitted copies of the Beneficiary's diploma and transcripts from [REDACTED] indicating that the Beneficiary completed a four-year diploma program in fashion and information technology in 2006. The Petitioner additionally submitted a credentials evaluation, dated July 8, 2008, conducted by [REDACTED] for [REDACTED]. The evaluation describes the Beneficiary's

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diploma from [REDACTED] as being the equivalent to a bachelor's degree in computer information systems in the United States.

In support of the Beneficiary's claimed work experience, the Petitioner submitted the following:

- An employment letter dated December 10, 2014, from [REDACTED], Director of Technical Design and Production for [REDACTED] attesting to the Beneficiary's work as a senior technical designer from October 1, 2009, through August 12, 2012; and,
- An undated employment letter on [REDACTED] letterhead, signed by [REDACTED] who was identified as a company partner and who attested to the Beneficiary's work there as a production supervisor from May 1, 2005, through January 1, 2007.

On January 29, 2015, the Director issued a request for evidence (RFE) advising the Petitioner that the information contained in the employment verification letter from [REDACTED] did not correspond to the work experience claimed by the Beneficiary on the labor certification. Specifically, the Director noted that the employment dates listed on the letter do not match the employment dates claimed by the Beneficiary. In addition, the Director stated that the job duties detailed in the letter from [REDACTED] did not conform to the job duties of the offered position. The Director offered the Petitioner an opportunity to submit evidence to overcome the noted deficiencies.

In response to the RFE the Petitioner, through counsel, explained that the employment dates were listed incorrectly on the labor certification "due to miscommunication." The Petitioner submitted a new employment letter on [REDACTED] letterhead dated February 23, 2015. This letter was signed by [REDACTED] who was again identified as a company partner and who again attested to the Beneficiary's work there as a production supervisor from May 1, 2005, through January 1, 2007. This new letter provides an expanded description of the Beneficiary's duties there as a production supervisor.

The Director determined that the Petitioner had not established that the Beneficiary possessed the employment experience required by the labor certification and denied the petition on March 12, 2015. On appeal, the Petitioner, through counsel, asserts that the discrepancies noted by the Director are minor and that the burden of proof has been satisfied.

I. THE BENEFICIARY'S EXPERIENCE

As stated above, the Director denied the petition after concluding that the Beneficiary did not possess 48 months of work experience in the offered job of senior technical designer, as required by the labor certification. Specifically, the Director concluded that the Beneficiary's experience as a production supervisor did not satisfy the labor certification's requirement that a candidate possess 48 months of experience in the offered job of senior technical designer. The Director also concluded that the Petitioner did not submit affirmative evidence to resolve noted discrepancies between the submitted employment verification letters.

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Line H.11 of the labor certification describes the duties of the proffered job as:

Conduct fit evaluation; confer with sales executives and client to discuss design requirements; establish quality standards; coordinate with suppliers and product development; supervise supplier conformance to production requirements; approve samples; input fit comments and measure specs in reports to vendors and factories; document fit results; track status of styles and set up WIP reports; ensure smooth process flow from development through production; work in different silhouettes; work across internal manufacturing accounts; use knowledge of knitwear design and construction and knowledge of fabric qualities and strength; use knowledge of fashion design, marketing and production.

The employment letters from [REDACTED] describe the Beneficiary's duties there as including:

- Development and execution of merchandise assortment;
- Procurement analyzed pricing proposals;
- Negotiated contract with suppliers;
- Developed women's contemporary collection;
- Developed design sketches;
- Create tech pack sheet for production samples;
- Verifying samples as per the requirements;
- Prepared costing;
- Placed orders for fabric and trim;
- Follow up with vendors;
- Approve sample prior to production;
- Created theme based collection; and,
- Coordinated with event managers for new collection set up.

While these duties do not exactly match all of the listed duties of the offered job, there is a significant overlap between the duties of the two jobs. Therefore, we withdraw the portion of the Director's decision that determined that the capacity of the Beneficiary's employment for [REDACTED] did not match the duties of the offered job.

However, aside from simply stating that it was a "miscommunication" the Petitioner has not resolved the discrepancy between the employment verification letters and the labor certification. The employment letters are not accompanied by pay-stubs, time sheets, or any other corroborating evidence. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

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The evidence submitted in support of the Beneficiary's claimed employment for [REDACTED] is not sufficient to substantiate this claim. Absent this claimed employment, the Petitioner has established that the Beneficiary possesses only 34 months of experience in the qualifying job of senior technical designer. As detailed above, the labor certification requires that applicants possess 48 months of experience in the offered job. The Beneficiary does not meet the terms of the labor certification, and the petition will be denied. *See* 8 C.F.R. § 204.5(l)(3)(ii)(B).

We further note that in response to our notice of intent to dismiss (NOID) issued on September 25, 2015, the Petitioner provided a letter from [REDACTED] stating that the Beneficiary "worked with [REDACTED] as part of her internship work." A review of the "Institute Record" issued to the Beneficiary indicates that she completed a "Diploma Project," described as "4 months in Industry" during her eighth semester, from January 2006 through June 2006. A "Semester Wise Course Description" also states that, "As part of her academic diploma project [the Beneficiary] worked on many live projects for [REDACTED]"

Based on the above, it appears that the Beneficiary's employment with [REDACTED] was, at least in part, an internship required for her diploma. An internship for which the Beneficiary gained academic credit cannot be counted as qualifying experience for the proffered position, while also considered a requirement for completion of her diploma. Therefore, it cannot be determined that the Beneficiary possessed the required 48 months of experience required for the proffered position as of the priority date.

II. THE BENEFICIARY'S EDUCATION

Beyond the decision of the director, the Petitioner has also not established that the Beneficiary possesses the educational credentials required for the offered position. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. *See also* 8 C.F.R. § 204.5(l)(2).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in part:

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.

Section 101(a)(32) of the Act defines the term "profession" to include, but is not limited to, "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." If the offered position is not statutorily defined as a profession, "the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation." 8 C.F.R. § 204.5(l)(3)(ii)(C).

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In addition, the job offer portion of the labor certification underlying a petition for a professional “must demonstrate that the job requires the minimum of a baccalaureate degree.” 8 C.F.R. § 204.5(l)(3)(i)

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).

Therefore, a petition for a professional must establish that the occupation of the offered position is listed as a profession at section 101(a)(32) of the Act or requires a bachelor’s degree as a minimum for entry; the beneficiary possesses a U.S. bachelor’s degree or foreign equivalent degree from a college or university; the job offer portion of the labor certification requires at least a bachelor’s degree or foreign equivalent degree; and the beneficiary meets all of the requirements of the labor certification.

In the instant case, the labor certification states that the Beneficiary possesses a diploma in Fashion & Information Technology from [REDACTED], awarded in 2006. The record contains a copy of a certificate from [REDACTED] stating that the Beneficiary “has successfully completed the four years Diploma programme in Fashion & Information Technology.” The record also contains a copy of the Beneficiary’s “Institute Record” from [REDACTED] issued on May 1, 2007.

The record contains an evaluation of the Beneficiary’s educational credentials prepared by [REDACTED], for [REDACTED] on July 8, 2008. The evaluation states that the Beneficiary’s degree “is equivalent to a Bachelor’s Degree in Computer Information Systems from an accredited college or University in the United States of America” based on “the reputation of [REDACTED] the nature and duration of the coursework.”

Our September 25, 2015, NOID informed the Petitioner that we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, www.aacrao.org, 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 States and in over 40 countries around the world.” <http://www.aacrao.org/About-AACRAO.aspx> (accessed September 24, 2015). Its mission “is to serve and advance higher education by providing leadership in academic and enrollment services.” *Id.* According to the registration page for EDGE, EDGE is “a web-based resource for the evaluation of foreign educational credentials.” *Id.*

EDGE provides a great deal of information about the educational system in India. It discusses both Post Secondary Diplomas, for which the entrance requirement is completion of secondary education, and Post Graduate Diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate. EDGE provides that a Post Secondary Diploma following one or two years of

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study after the Higher Secondary Certificate is comparable to one year of university study in the United States. EDGE further asserts that a Postgraduate Diploma following a three-year bachelor's degree "represents attainment of a level of education comparable to a bachelor's degree in the United States." *Id.* The "Advice to Author Notes," however, provides:

Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree. Rarely you may find a full time 2 year post graduate diploma.

Our NOID requested that the Petitioner provide evidence of the requirements that were in place for entrance into the Beneficiary's program of study at [REDACTED] at the time the Beneficiary began studies there in 2001. In response, the Petitioner submitted copies of two pages of "FAQs." However, the Petitioner did not identify the source of this information. Furthermore, the printout only provides information regarding the admission requirements for the Bachelor of Fashion Design (B.Des.) program and does not provide any information regarding the requirements for admission into the Fashion Technology program, which the printout identifies as a separate program at [REDACTED]. Finally, the record contains no evidence that the admission requirements listed on this printout were in effect at [REDACTED] when the Beneficiary entered the institution on July 15, 2001. The Petitioner also submits an "Eligibility Certificate" signed by the Joint Director of [REDACTED] on October 9, 2015, certifying "that the eligibility criteria for [REDACTED] admission was 10+2 (Higher Secondary) certificate with entrance exam and campus interview." However, this document does not identify the Beneficiary, nor does it specify that these stated entrance requirements were in place on July 15, 2001.

Our NOID also requested that the Petitioner submit evidence of the Beneficiary's highest level of education prior to entering the [REDACTED] program to establish whether she has a Higher Secondary Certificate or a Secondary School Certificate. The Petitioner did not respond to this request and has provided no evidence of the Beneficiary's academic credentials prior to her admission to [REDACTED].

Finally, our NOID requested evidence that [REDACTED] was an accredited institution of higher education when the Beneficiary studied there from July 15, 2001, through July 15, 2006. In response, the Petitioner submitted evidence published in the [REDACTED] 2006, that [REDACTED] has been granted statutory status under the act of Parliament of India empowering [REDACTED] to award "degrees, diplomas, certificates and other academic distinctions." However, the evidence submitted from [REDACTED] only shows that the Beneficiary was issued a "diploma" and nothing indicates that it is a bachelor's degree or that the Institute was yet issuing bachelor's degrees at the time that the Beneficiary completed her studies there on July 15, 2006. It is noted that a letter issued on October 9, 2015, by [REDACTED], joint director & COE for [REDACTED], again states that the Beneficiary completed a "Diploma Programme," not a bachelor's degree.

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Based on the foregoing, the Petitioner has not established that the Beneficiary possessed a U.S. bachelor's degree or a foreign equivalent degree from a college or university as of the priority date. The Petitioner also did not establish that the Beneficiary met the minimum educational requirements of the offered position set forth on the labor certification. Therefore, the Beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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 appeal is dismissed.

Cite as *Matter of J-E-, Inc.*, ID# 14295 (AAO Nov. 30, 2015)