



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-L-, INC.

DATE: JUNE 21, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, which researches and develops pharmaceuticals and ophthalmic products, seeks to employ the Beneficiary as a computer systems analyst. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires at least two years of training or experience.

The Director, Texas Service Center, denied the petition. The Director concluded that the Petitioner had not established that the Beneficiary was qualified for the proffered position.

The matter is now before us on appeal. The Petitioner asserts that the Director incorrectly concluded that the position requires a U.S. bachelor's degree or foreign equivalent, and that the Beneficiary's degree did not satisfy this requirement.¹ Upon *de novo* review, we will dismiss the appeal.

I. CASE HISTORY

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

The employment-based immigrant visa process consists of three parts. First, the U.S. employer must obtain a labor certification, which the U.S. Department of Labor (DOL) processes. *See* 20 C.F.R. § 656, *et seq.* The employer initiates its request for a labor certification by filing an ETA Form 9089, Application for Permanent Employment Certification (labor certification), with DOL. The labor certification sets forth: the position's job duties; the position's education, experience, and other special requirements; the required wage; and the position's work location(s). In addition, as part of the labor certification, a beneficiary attests to his or her education and experience. The date the labor certification is filed becomes the "priority date" for the immigrant visa petition. 8 C.F.R. § 204.5(d). The DOL's role in certifying the labor certification is set forth at section 212(a)(5)(A)(i)

¹ The Petitioner states the basis for the appeal with its Form I-290B, and states that a detailed brief will be submitted within 30 days. As of this date, over 5 months later, we have received no further response.

of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). Its approval of the labor certification affirms that, “there are not sufficient [U.S.] workers who are able, willing qualified” to perform the offered position where the beneficiary will be employed, and that the employment of the beneficiary will not “adversely affect the wages and working conditions of workers in the United States similarly employed.” *Id.* The labor certification is valid for 180 days from the date of its approval by DOL.

In the second step of the process, a petitioner files a Form I-140, Immigrant Petition for Alien Worker, with United States Citizenship and Immigration Services (USCIS) within the 180-day validity period. *See* 20 C.F.R. § 656.30(b)(1), 8 C.F.R. § 204.5. The agency then examines whether a petitioner can establish its ability to pay the proffered wage; whether the education and/or experience required for the offered position matches that required by the visa classification; and whether a beneficiary has the required education, training, and experience for the offered position. *See* section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii); 8 C.F.R. § 204.5.

B. The Petition and Labor Certification

As required by statute, the petition is accompanied by an approved labor certification, certified by the DOL.² The priority date of the petition is October 16, 2014.³

The required education, training, experience and skills for the offered position are set forth at Part H of the labor certification. In the instant case, the labor certification states that the position has the following minimum requirements:

- H.4. Education: minimum level required: Bachelor’s degree.
- ...
- H.4-B. Major field of study: Computer science, management information systems, or closely related field.
- ...
- H.6. Is experience in the job offered required for the job? No.
- 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? Yes.
- H.10-A. If Yes, number of months experience in alternate occupation required: 84.
- H.10-B. Identify the job title of the acceptable alternate occupation: Experience in information systems maintenance/support.
- ...
- H.14. Specific skills or other requirements: Position requires a Bachelor’s

² *See* Section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); *see also* 8 C.F.R. § 204.5(a)(2).

³ The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

(b)(6)

Matter of A-L-, Inc.

degree in Computer Science, Management Information Systems, or closely related field and 7 years of experience in information systems maintenance/support, including SAP Basis experience with end-to-end involvement implementing projects for large SAP systems (e.g., having 3000+ users). All stated experience must include Oracle, MS SQL, and/or HANA DB administration and optimization; SAP ECC; and SAP ABAP and Java stack administration.

On the labor certification, the Beneficiary listed his qualifying education for the position as a bachelor's degree in management information systems from [REDACTED] completed in 1993. The Petitioner submitted a copy of the Beneficiary's bachelor of commerce diploma from [REDACTED] and copies of the Beneficiary's academic transcript reflecting 3 years of study at [REDACTED] from 1991 through 1993.

In his decision, the Director noted that the labor certification requires applicants to possess a bachelor's degree in computer science, management information systems, or a closely related field and that the labor certification expressly states that the Petitioner would not accept a lesser degree combined with work experience in lieu of the bachelor's degree. The Director found that the Beneficiary's 3-year bachelor of commerce degree did not satisfy the requirements of the labor certification. Therefore, the Director denied the petition.

II. LAW AND ANALYSIS

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(l)(4).

A petitioner must establish that a beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

A. The Minimum Requirements of the Offered Position

In evaluating a 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. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In limited circumstances, USCIS may consider a petitioner's intent to determine the meaning of an unclear or ambiguous term in the labor certification. However, an employer's subjective intent 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). The best evidence of the

(b)(6)

Matter of A-L-, Inc.

petitioner's intent concerning the actual minimum educational requirements of the offered position is evidence of how it expressed those requirements to the DOL during the labor certification process and not afterwards to USCIS. The timing of such evidence ensures that the stated requirements of the offered position as set forth on the labor certification are not incorrectly expanded in an effort to fit the beneficiary's credentials. Such a result would be contrary to Congress' intent to limit the issuance of immigrant visas in the professional and skilled worker classifications to when there are no qualified U.S. workers available to perform the offered position. *See Id.* at 14.

In the instant case, the labor certification states that the position requires a bachelor's degree in computer science, management information systems, or closely related field. A bachelor's degree is generally found to require 4 years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm'r 1977).

On appeal, the Petitioner states that the Director incorrectly concluded that the labor certification requires a U.S. bachelor's degree or foreign equivalent. Although the Petitioner suggests on appeal that it was willing to accept less than a U.S. bachelor's degree or foreign equivalent, the Petitioner has not submitted probative evidence suggesting it ever expressed this willingness to the DOL or to potential U.S. candidates for the offered position. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The labor certification allows a petitioner numerous opportunities to indicate its willingness to accept alternatives to the minimum required education stated at Line H.4. The Petitioner in this case did not indicate a willingness to accept a lesser degree and expressly stated that a combination of education and experience would not be accepted in place of a bachelor's degree in the specified fields of study.

B. The Beneficiary's Qualifications

The Beneficiary possesses a bachelor of commerce degree issued on March 5, 1994, by [REDACTED] in [REDACTED] India. The Petitioner submitted a credentials evaluation, by [REDACTED] of the [REDACTED] concluded that the Beneficiary's 3-year bachelor of commerce degree plus his 3 years and 5 months of work experience combined to form "the equivalent of a Bachelor of Science Degree in Management Information Systems, from an accredited institution of higher education in the United States." In response to the Director's request for evidence the Petitioner submitted an "Expert Opinion Evaluation," by [REDACTED] of the [REDACTED] noted the Beneficiary's bachelor of commerce degree and stated that "[i]t is quite common for recruiters for IT positions to look for graduates with majors that emphasize abstract reasoning, numeracy and computational thinking."

The credentials evaluation by [REDACTED] relies on the Beneficiary's 3-year bachelor of commerce degree combined with his employment experience as being equivalent to a U.S.

(b)(6)

Matter of A-L-, Inc.

bachelor's degree. However, the Petitioner stated on the labor certification that a combination of education and experience was not acceptable.

The evaluation from [REDACTED] suggests that "[i]t is quite common for recruiters for IT positions" to hire candidates with the Beneficiary's credentials. However, he does not examine the 3 years of coursework completed by the Beneficiary or compare this to the coursework required for a bachelor's degree in computer science or management systems. Nor does [REDACTED] indicate that a commerce degree, itself, is academically "closely related" to computer science or management information systems, the only acceptable fields of study listed on the labor certification.

We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). 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." AACRAO, <http://www.aacrao.org/About-AACRAO.aspx> (accessed June 6, 2016). 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." AACRAO EDGE, <http://edge.aacrao.org/info.php> (accessed June 6, 2016).⁴ According to EDGE, a Bachelor of Commerce degree in India "represents attainment of a level of education comparable to two to three years of university study in the United States."

As discussed above, the labor certification does not permit a lesser degree, a combination of lesser degrees, and/or a combination of education and work experience, such as that possessed by the Beneficiary. The Petitioner did not submit any evidence to establish that the terms of the labor certification are ambiguous and that it intended the labor certification to require less than a 4-year U.S. bachelor's or foreign equivalent degree, as that intent was expressed during the labor certification process to the DOL and potentially qualified U.S. workers.

Therefore we conclude that the terms of the labor certification require a 4-year U.S. bachelor's degree in computer science, management information systems, or a closely related field or a foreign equivalent degree. The Beneficiary does not possess such a degree. The Petitioner did not establish that the Beneficiary met the minimum educational requirements of the offered position set forth on the labor certification by the priority date.

⁴ Federal courts have upheld our reliance on EDGE. *See, e.g., Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (finding that USCIS has discretion to discount the letters and evaluations submitted by a petitioner if they differ from reports in EDGE, which is "a respected source of information"); *Tisco Grp., Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314, *4 (E.D. Mich. Aug. 30, 2010) (finding that USCIS properly weighed the evaluations submitted by a petitioner and information from EDGE to conclude that a beneficiary's foreign degrees did not equate to a U.S. Master's degree). *See also Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010).

III. CONCLUSION

In summary, the Petitioner did not establish that the Beneficiary met the minimum educational requirements of the offered position set forth on the labor certification as of the priority date.

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; *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966); *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 A-L-, Inc.*, ID# 17652 (AAO June 21, 2016)