



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

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

MATTER OF L-P- DDS MS PA

DATE: SEPT. 22, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner operates a dental office and seeks to permanently employ the Beneficiary as a dental practice manager-dental hygienist. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This classification allows a U.S. employer to sponsor a foreign national with at least 2 years of training or experience for lawful permanent resident status.

On February 2, 2016, the Director, Texas Service Center, denied the petition. The Director concluded that the record did not establish the Beneficiary's educational qualifications for the offered position.

The matter is now before us on *de novo* appellate review. Because the Director did not consider the Beneficiary's qualifications under an alternate educational requirement stated on the accompanying labor certification, we will remand the matter for further proceedings.

I. LAW AND ANALYSIS

A. The Roles of DOL and USCIS in the Employment-Based Immigration Process

Employment-based immigration is generally a three-step process. First, an employer must obtain an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). Next, U.S. Citizenship and Immigration Services (USCIS) must approve an immigrant visa petition. *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, the foreign national must 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.

By approving the accompanying ETA Form 9089, Application for Employment Certification (labor certification) in the instant case, the DOL certified that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position of dental practice manager-dental hygienist. *See* section 212(a)(5)(A)(i)(I) of the Act. The DOL also certified that the employment of 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)(II).

The primary issue in these proceedings is whether the Beneficiary meets the requirements of the offered position certified by the DOL. *See* section 203(b)(3)(A)(ii) of the Act; 8 C.F.R. § 204.5.

B. The Director Did Not Consider an Alternate Educational Requirement

A petitioner must establish a beneficiary's possession of all the education, training, and experience specified on an accompanying labor certification by a petition's priority date. 8 C.F.R. §§ 103.2(b)(1), (12); *see also Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

In evaluating a beneficiary's qualifications, we must examine the job offer portion of an accompanying labor certification to determine the minimum requirements of an offered position. We may neither ignore a term of the labor certification, nor impose additional requirements. *See K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1, 3 (1st Cir. 1981).

The instant petition's priority date is September 9, 2013, the date the DOL accepted the labor certification application for processing. *See* 8 C.F.R. § 204.5(d).

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

- H.4. Education: Bachelor's degree in management, dental hygiene, or a closely related field.
- H.5. Training: None required.
- H.6. Experience in the job offered: 24 months
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: Associate's degree and 6 years of experience.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: None accepted.
- H.14. Specific skills or other requirements: "Valid Texas Dental Hygienist's license. To satisfy the educational requirement listed in H.4, employer will accept educational equivalency as determined by a qualified credentials evaluator in accordance with 8 CFR Section 214.2(h)(4)(iii)(D), three years of progressively responsible work experience in the fields will be considered equivalent to one year of college education, and any suitable combination of experience of education, training, or experience."

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The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) allows 3 years of specialized training or work experience to count as 1 year of U.S. university in establishing an equivalency to a U.S. bachelor's degree.¹

The Beneficiary attested on the accompanying labor certification to her receipt of an associate's degree in dental hygiene from the [REDACTED] Canada, in 1990. The Petitioner provided evidence that, on September 8, 1990, the Beneficiary earned a *diplome d'etudes collegiales* from the college.

The Petitioner submitted expert evaluations of the Beneficiary's college diploma, including two evaluations concluding that the diploma equated to a U.S. associate of science degree in dental hygiene. But the Director noted that the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), does not identify a Canadian *diplome d'etudes collegiales* as the equivalent of a U.S. associate's degree.² Rather, EDGE reports that such a diploma, whether a 2-year program in pre-university studies or a 3-year vocational program, equates to only 1 year of U.S. university study.

Pursuant to Parts H.4 and H.8 of the ETA Form 9089, the Director interpreted the accompanying labor certification as requiring the Beneficiary to have a bachelor's or associate's degree without combining education and experience, or lesser educational credentials. Because the record did not establish the Beneficiary's possession of single bachelor's or associate's degree, the Director denied the petition.

But the plain language of Part H.14 of ETA Form 9089 also appears to allow an applicant without a degree to qualify for the offered position. As previously indicated, Part H.14 states that the Petitioner will accept 3 years of work experience as 1 year of university education in determining an equivalency to a U.S. bachelor's degree. A U.S. bachelor's degree typically requires 4 years of university studies. *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). Thus, based on the 3-for-1 formula stated in Part H.14 of the form, it appears that an applicant with 1 year of university

¹ The job requirements do not appear to comply with the DOL regulation at 20 C.F.R. § 656.17(h)(4)(i), which requires alternative experience requirements on a labor certification to be "substantially equivalent" to the primary requirements of the job opportunity. See, e.g., *Matter of Nissin Travel Serv. (U.S.A.), Inc.*, 2012-PER-00246, 2014 WL 1809718, *3 (BALCA Apr. 30, 2014) (holding that the specific vocational preparation (SVP) value of a requirement derived from 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) exceeded the SVP of the primary educational requirement of a bachelor's degree, which is the equivalent of 2 years of experience).

² According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in more than 40 countries." *About AACRAO*, <http://www.aacrao.org/home/about> (last visited July 29, 2016). 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> (last visited July 29, 2016). Federal courts have found EDGE to be a reliable, peer-reviewed source of information about foreign educational equivalencies. See, e.g., *Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (finding that we may discount letters and education evaluations submitted by petitioners if they differ from reports in EDGE, which is "a respected source of information").

(b)(6)

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studies and 9 years of work experience, or with 12 years of work experience, could meet the baccalaureate requirement of the offered position.

The Director did not consider a March 10, 2010, "Professional Work Experience Evaluation Report" submitted by the Petitioner. The evaluation from [REDACTED] on behalf of [REDACTED] concludes that the Beneficiary has the equivalent of a U.S. bachelor of science degree in management based on the combination of her college diploma and more than 12 years of progressive experience in management since 1994.

On appeal, the Petitioner asserts that the Beneficiary's possesses a "suitable combination of education, experience, and training that qualifies her for the job offer."

As discussed above, Part H.14 of the ETA Form 9089 appears to allow an applicant without a degree to qualify for the offered position. Also, the requested classification of skilled worker does not require a beneficiary's possession of a degree. Section 203(b)(3)(i) of the Act (defining the term "skilled labor" as requiring only 2 years of training or experience). Thus, although the record does not establish the Beneficiary's possession of a bachelor's or associate's degree, she may otherwise qualify for the offered position under the terms of Part H.14 of the labor certification.

The Director did not consider whether the Beneficiary possesses the equivalent of a U.S. bachelor's degree under the terms of Part H.14 of the ETA Form 9089. We will therefore withdraw his decision and remand this matter for further proceedings.

C. The Beneficiary's Qualifications for the Alternate Educational Requirement

The record on appeal does not support the [REDACTED] conclusion that the Beneficiary has the equivalent of a U.S. bachelor's degree in management based on her college diploma and more than 12 years of experience in management since 1994.

The Beneficiary attested on the accompanying labor certification to more than 12 years of full-time, related experience before joining the Petitioner in 2007. The Beneficiary stated the following experience on ETA Form 9089:

- About 3 years, 9 months as a practice manager-hygienist for [REDACTED] in the United States from March 3, 2004, to November 30, 2007;
- About 3 years as a practice manager-hygienist for [REDACTED] in the United States from March 27, 2001, to March 14, 2004;
- About 1 year, 5 months as a practice manager-hygienist for [REDACTED] from November 10, 1999, to March 26, 2001; and
- About 5 years, 2 months as a practice manager-hygienist for [REDACTED] in Canada from August 3, 1994, to October 16, 1999.³

³ The Beneficiary also attested to part-time employment as a dental hygienist by another Canadian employer from May

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A petitioner must support a Beneficiary's claimed qualifying experience with letters from employers. 8 C.F.R. § 204.5(l)(3)(ii)(A). The letters must provide the names, addresses, and titles of the employers and a description of a beneficiary's experience. *Id.*

The record contains a letter from a practice manager on the stationery of [REDACTED]. The letter states the business's employment of the Beneficiary as a practice manager from November 1999 to March 2001, and from March 2004 to November 2007. The letter also describes her duties.

The [REDACTED] letter complies with 8 C.F.R. § 204.5(l)(3)(ii)(A). But information in the letter conflicts with the [REDACTED] and the accompanying labor certification. The [REDACTED] states the Beneficiary's employment by [REDACTED] as a "Management Consultant." The letter and the labor certification state her position as a "practice manager" or "Practice Manager-Hygienist."

Also, the letter and the labor certification state the Beneficiary's employment by [REDACTED] from November 1999 to March 2001, and from March 2004 to November 2007. The [REDACTED] states the Beneficiary's employment by [REDACTED] from 1999 to 2000 and from 2004 to 2008.

A petitioner bears the burden of establishing eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner must therefore resolve the inconsistencies of record by independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The record also contains a letter from a business manager on the stationery of [REDACTED]. The letter states the business's full-time employment of the Beneficiary as a practice manager from March 2001 to March 2004. But the letter does not describe her experience. The letter therefore does not comply with 8 C.F.R. § 204.5(l)(3)(ii)(A) and does not document the Beneficiary's claimed qualifying experience with [REDACTED].

Also, similar to the [REDACTED] letter, information in the letter from [REDACTED] conflicts with the [REDACTED]. The letter and the labor certification state the Beneficiary's employment by [REDACTED] as a "Practice Manager" or "Practice Manager-Hygienist" from March 2001 to March 2004. The [REDACTED] states her employment by [REDACTED] as a "Management Consultant" from "2002 to 2004."

The record further contains a letter from [REDACTED] confirming his employment of the Beneficiary from September 1994 to October 1999. But, unlike the [REDACTED] and the accompanying labor certification, the letter states the Beneficiary's employment as a "dental hygienist," not as an office or practice manager. The letter states that the Beneficiary "also had management responsibilities." But the letter does not specify the extent of the management

2, 1990, to August 1, 1994. That experience is not included in the [REDACTED]

responsibilities or what percentage of time she devoted to them.

Because the Director did not initially consider the Beneficiary's qualifications pursuant to Part H.14 of ETA Form 9089, the Director should notify the Petitioner of the deficiencies discussed above and afford it a reasonable opportunity to resolve them and/or submit additional evidence of the Beneficiary's qualifications.

Further, to ensure that the Petitioner did not improperly disqualify any U.S. workers without degrees during the labor certification process, the Director should also ask the Petitioner to provide copies of its recruitment documentation. The documentation should include copies of: the notice of filing; the prevailing wage determination; advertisements in newspapers and on the Internet; resumes or applications received; and, pursuant to 20 C.F.R. § 656.17(g)(1), the recruitment report. In addition, the Director should request that the Petitioner provide evidence of its ability to pay the proffered wage of \$82,243 in 2014 and 2015. 8 C.F.R. § 204.5(g)(2). The Director may also raise any other issues pertinent to the petition's approval.

II. CONCLUSION

The Director did not consider the Beneficiary's qualifications for the offered position under the alternate educational requirement stated in Part H.14 of the accompanying labor certification. We will therefore withdraw the Director's decision and remand this matter for further proceedings.

On remand, the Director should notify the Petitioner of deficiencies in its evidence of the Beneficiary's qualifications under the alternate educational requirement. The Director should also afford the Petitioner a reasonable opportunity to resolve the inconsistencies and/or submit additional evidence of the Beneficiary's qualifications. The Director should also request evidence of the Petitioner's recruitment and its ability to pay the proffered wage in 2014 and 2015.

ORDER: The decision of the Director, Texas Service Center, is withdrawn. The matter is remanded to the Director, Texas Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of L-P- DDS MS PA*, ID# 18091 (AAO Sept. 22, 2016)