U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20489424

Date: JUL. 11, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Professional

The Petitioner, a provider of software development and consulting services, seeks to employ the Beneficiary as a software engineer. The company requests his classification under the third-preference, immigrant visa category as a professional. *See* Immigration and Nationality Act ("the Act") section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not demonstrate the Beneficiary's possession of a master's degree as required for the offered position. On appeal, the Petitioner submits additional evidence. The company also argues that the Director disregarded evidence of the Beneficiary's educational requirements.

The Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See* section 291 of the Act, 8 U.S.C. § 1361 (discussing the burden of proof); *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). Upon *de novo* review, we will dismiss the appeal.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as a professional generally follows a three-step process. First, a prospective employer must obtain certification from the U.S. Department of Labor (DOL) that: (1) there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and (2) employment of a noncitizen in the position will not harm wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5).

Second, an employer must submit an approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS determines whether a noncitizen beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l).

Finally, if USCIS approves a petition, a beneficiary 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.

II. THE DEGREE REQUIRED FOR THE OFFERED POSITION

A petitioner must demonstrate a beneficiary's possession of all DOL-certified job requirements of an offered position by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). This petition's priority date is November 5, 2012, the date DOL accepted the accompanying labor certification for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

In assessing a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine the minimum requirements of an offered position. USCIS may neither ignore a certification term nor impose unstated requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

The accompanying labor certification states the minimum educational requirements of the offered position of software engineer as a U.S. master's degree or a foreign equivalent degree in computer science, information technology (IT), business administration, mathematics, or a related field of study.[1] The certification also states that the Petitioner will not accept an alternate combination of education and experience.

On the labor certification, the Beneficiary attested that, by the petition's priority date, an Indian university awarded him a master of science degree in IT. The Petitioner provided a copy of the two-year degree and an independent, professional evaluation of the Beneficiary's foreign educational credentials.

USCIS may treat an educational evaluation from a qualified expert as an advisory opinion. But, if an evaluation conflicts with other evidence or "is in any way questionable," the Agency may reject it or afford it lesser evidentiary weight. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). The evaluation that the Petitioner submitted concludes that the Beneficiary's foreign master's degree in IT equates to a U.S. master of science degree in information systems.

Besides the 2007 master's degree in IT, the record indicates that Indian universities issued the Beneficiary a three-year bachelor of commerce degree in 1991 and a two-year master of commerce degree in 2001. The evaluation finds the bachelor's degree comparable to three years of U.S. college or university studies, and the master of commerce degree equivalent to a U.S. bachelor's degree in business administration.

The Beneficiary's three-year bachelor's degree reflects one less year of study than most U.S. baccalaureates require. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977) (describing a U.S. bachelor's degree as "usually requiring 4 years of study"). Thus, in a written notice of intent to deny (NOID) the petition, the Director questioned the evaluation's conclusion that the Beneficiary's master's degree in IT equates to a U.S. graduate degree. The Director also cited the Electronic

[1] Additionally, the labor certification indicates that the offered position requires at least two years of employment experience in the job offered or as a software engineer, analyst, lead, CRM [customer relationship management] consultant, or a related occupation. The Director found that the Petitioner demonstrated the Beneficiary's possession of the minimum two years of experience required for the position.

Database for Global Education (EDGE), an online resource that federal courts have found to be a reliable source of foreign educational equivalencies.[2] EDGE states that a two-year Indian master of science degree preceded by a three-year Indian bachelor's degree equates to a U.S. baccalaureate. EDGE also identifies a three-year, bachelor's degree as a prerequisite for admission into an Indian master of science program.

Consistent with the evaluation that the Petitioner submitted, the Director agreed that the Beneficiary's master of commerce degree equates to a U.S. bachelor's degree in business administration. But, because EDGE indicates that admission to an Indian master of science program requires only a three-year baccalaureate degree, the Director questioned the evaluation's conclusion that the Beneficiary's graduate IT degree equates to a U.S. master's degree. The Director stated: "Essentially, the evidence supports [the conclusion] that the beneficiary attained the equivalent of two separate Bachelor's degrees, one in Commerce and one in [IT]."

The Petitioner's NOID response included additional evaluations of the Beneficiary's foreign education from two U.S. university professors, including one - [redacted] - who authored EDGE's information about Indian educational credentials. Consistent with the first evaluation that the Petitioner submitted, the professors found that, because the Beneficiary's master of commerce degree equates to a U.S. baccalaureate in business administration, his following two-year IT degree compares to a U.S. master's degree. [redacted] stated that "the following [IT] degree of 2 years would logically and typically be granted a Master's degree." The Petitioner also submitted online evidence that some U.S. graduate IT programs admit students with bachelor's degrees in any fields of study.

We do not find the professors' explanation and supporting evidence sufficient to demonstrate the Beneficiary's possession of a U.S. master's degree. Admission to a U.S. master's degree program typically follows four years of undergraduate studies. *See Matter of Shah*, 17 I&N Dec. at 245. We recognize that, in addition to a three-year bachelor of commerce degree, the Beneficiary attained a two-year master of commerce degree. But, based on the information in EDGE, the record indicates that admission to the Beneficiary's graduate IT program required only a three-year bachelor's degree. Thus, his two-year master's degree in IT appears to build on the three-year bachelor of commerce degree, not on his two-year master of commerce degree. Additionally, the record does not demonstrate that the Beneficiary's combined four years of master's-level education in India would equate to a U.S. master's degree as the offered position requires.

The website of the university that issued the Beneficiary's IT degree does not contradict EDGE's information. The website indicates that candidates to study for a master of science degree in IT must have passed "any degree of any Recognized University or authority accepted . . . as equivalent." Alagappa Univ., Directorate of Distance Educ., "Programme Project Report for Master of Science of Information Technology," 5, https:/[redacted][3] The Petitioner has not submitted

[2] EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). AACRAO is a non-profit, voluntary association of more than 11,000 professionals in more than 40 countries. *See* AACRAO, "Who We Are," https://www.aacrao.org/who-we-are; *see also Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as "a respected source of information").

[3] In India, "recognized universities" are those authorized by the country's University Grants Commission to award degrees. *See* Univ. Grants Comm'n Act of 1956, https://www.indiacode.nic.in/bitstream/123456789/1627/1/195603.pdf.

evidence rebutting the information in EDGE or on the university's website. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence).

The professors also found that the Beneficiary has sufficient equivalent semester credits to qualify for a U.S. master's degree in IT. The professors stated that a U.S. master's degree typically requires at least 180 semester credits: 30 credits for each of the six academic years of post-secondary education. [redacted] found that the Beneficiary's foreign education equates to "near 200 [U.S.] semester credits." But [redacted] did not explain how he calculated that amount. The other professor concluded that the Beneficiary has "approximately 210 semester credits." He found that the Beneficiary gained about 30 U.S. semester credits for each academic year of Indian university education, including: 90 semester credits during his three years of undergraduate studies; 60 semester credits during his two years of master of commerce studies; and 60 semester credits during his two-year master of science studies in IT.

As previously discussed, however, the record indicates that the Beneficiary's admission to his IT graduate program did not require his possession of the master of commerce degree. Thus, the record does not establish the relevance of his master of commerce credits. Subtracting those credits from the professor's calculation, the Beneficiary only has 150 semester credits, less than the typical U.S. master's degree requirement of 180. Thus, based on semester credits, we also find insufficient evidence of the Beneficiary's possession of a U.S. master's degree equivalency.

[redacted] additionally stated that he finds three-year Indian bachelor's degrees equivalent to U.S. bachelor's degrees "if passed in the First Class and if completed from a university that is graded 'A' by the NAAC [National Assessment and Accreditation Council] in India." He said his opinion differs from EDGE's in this regard because AACRAO members chose to omit this finding from his EDGE contribution. Both professors described the omission of [redacted] finding from EDGE as "arbitrary" and "inconsistent" with equivalencies for similar credentials in other countries like India that base their educational systems on the United Kingdom's (UK).

We acknowledge that EDGE treats three-year bachelor's degrees from India differently than three-year baccalaureates from the UK and other British Commonwealth countries. But the Petitioner has not demonstrated that EDGE's treatment of three-year Indian degrees differs from that of most credential evaluators. For example, in 2017, the Association of International Credential Evaluators, Inc. (AICE), an organization that promotes standards in the field of international credential evaluation, held a symposium at which participants generally agreed that three-year, Indian bachelor's degrees equate to three years of U.S. college or university studies. *See* AICE, "Setting the Standards for Graduate Admissions: Three-year Degrees and Other Admissions Dilemmas," https://aice-eval.org/wp-content/uploads/2017/04/AICE-2017-Symposium-Report.pdf. AICE reported:

> Although some have suggested that a three-year Indian degree can be equated to the four-year U.S. bachelor's degree based on the Indian institution's ranking and the student's degree classification, the Symposium participants agreed that these considerations are not valid. Universities in India participate in accreditation on a voluntary basis, and only about one-third or less of all Indian universities do participate, which means that ranking of institutions is somewhat arbitrary and certainly is not

> inclusive. In addition, degree classification is often not a valid assessment tool, as grades can be inflated, and the classification is often based on third-year results only and not the student's overall academic performance over the three-year period.

Id. at 3-4.

We therefore do not adopt the professors' approach to three-year Indian bachelor's degrees. Even if we did, the record would not support the equivalency of the Beneficiary's baccalaureate to a U.S. bachelor's degree. Contrary to the professors' requirements, a copy of the Beneficiary's degree indicates that he passed in the third - rather than the first - class.

Citing a precedent decision of ours, the Petitioner argues that USCIS should fully credit the educational evaluations that the company submitted. *See Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799 (AAO 2012). In *Skirball*, three expert opinion letters helped to persuade us of the beneficiary group's "cultural uniqueness" and its members' eligibilities for P-3 nonimmigrant visas. *Id.* at 805; *see also* section 101(a)(15)(P) of the Act, 8 U.S.C. § 1101(a)(15)(P).

But we credited the opinion letters in *Skirball* because the director had not questioned them, and the record did not otherwise cast doubt on their veracity. *Id.* at 806. In contrast, the Director questioned the first evaluation that the Petitioner submitted. The Director noted that the Beneficiary's bachelor's degree reflects one less year of study than typically required in the United States. The Director also noted EDGE's indication that, unlike typical U.S. graduate programs, the Beneficiary's foreign master's IT program required only a three-year degree for admission. Thus, unless the Petitioner explains the apparent inconsistencies of record, USCIS may reject the evaluations or afford them lesser evidentiary weight. *See Matter of Caron Int'l*, 19 I&N Dec. at 795.

The Petitioner also contends that USCIS improperly disregarded an answer that Agency officials publicly provided to immigration attorneys. *See* Am. Immigration Lawyers Assn. (AILA) Committee Meeting at NSC [Nebraska Service Center], A.1.d. (Apr. 12, 2007). The Petitioner notes that the officials indicated that Indian credentials consisting of a three-year bachelor's degree, a one-year postgraduate diploma, and a two-year master's degree may equate to a U.S. master's degree if the one-year diploma represents "progressive postgraduate education." *Id.* The Petitioner argues that the Beneficiary's combination of a three-year bachelor's of commerce degree, a two-year master's of commerce degree, and a two-year master's degree in IT merits similar treatment because the combination totals seven years of post-secondary education, one more than the credentials combination in the officials' example.

The meeting minutes, however, do not bind us in this matter. *See R.L. Inv. Ltd. Partners v. INS*, 86 F.Supp.2d 1014, 1022 (D. Haw. 2000), *aff'd*, 273 F.3d 874 (9th Cir. 2001) (holding that an unpublished opinion lacking an agency designation of authoritativeness does not bind the immigration service). Also, the USCIS officials conditioned their answer on the Indian educational credentials being "in the same or similar field [of study]." The Petitioner has not demonstrated that commerce and IT - the fields of study of the Beneficiary's credentials - are the same or similar. The Petitioner's argument therefore does not persuade us of the Beneficiary's qualifications for the offered position.

Finally, the Petitioner asserts that USCIS "arbitrarily and capriciously" considered the education evaluations it submitted by crediting the first evaluation and "taking issue" with those of the two professors. As previously discussed, however, the Director's NOID also questioned the initial evaluation. Thus, contrary to the Petitioner's contention, USCIS did not discriminate among the evaluations.

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary's possession of the minimum educational requirements of the offered position. We will therefore dismiss the appeal.

III. ABILITY TO PAY THE PROFFERED WAGE

Although unaddressed by the Director, the Petitioner also has not established its required ability to pay the proffered wage of the offered position. A petitioner must demonstrate its ability to pay a proffered wage from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must generally include copies of annual reports, federal tax returns, or audited financial statements. *Id.*

In determining ability to pay, USCIS examines whether a petitioner paid a beneficiary the full proffered wage each year beginning with the year of the petition's priority date. If a petitioner did not annually pay the full proffered wage or did not pay a beneficiary at all, USCIS considers whether the business generated sufficient annual amounts of net income or net current assets to pay any differences between the proffered wage and the wages paid. If net income and net current assets are insufficient, USCIS may consider other factors potentially affecting a petitioner's ability to pay the proffered wage. *See Matter of Sonegawa,* 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).[4]

The accompanying labor certification states the proffered wage of the offered position of software engineer as $78,811 a year. As previously indicated, the petition's priority date is November 5, 2012.

The Petitioner submitted copies of its federal income tax returns for 2013 through 2020. Contrary to 8 C.F.R. § 204.5(g)(2), however, the record lacks required evidence of the company's ability to pay the proffered wage in 2012, the year of the petition's priority date. The Petitioner submitted copies of financial statements for 2012. The statements, however, do not indicate that they were audited. The statements therefore do not meet regulatory requirements. *See* 8 C.F.R. § 204.5(g)(2) (stating that financial statements submitted as evidence of ability to pay must be "audited").

Also, USCIS records indicate the Petitioner's filing of Form I-140 petitions for other beneficiaries. A petitioner must demonstrate its ability to pay the proffered wage of each petition it files until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). This Petitioner must therefore demonstrate its ability to pay the combined proffered wages of this petition and any others it filed that were pending or approved as of this petition's priority date of November 5, 2012 or filed thereafter. *See Patel v. Johnson*, 2 F.Supp.3d 108, 124 (D. Mass. 2014) (upholding our revocation of a petition's

[4] Federal courts have upheld USCIS' method of determining a petitioner's ability to pay a proffered wage. *See, e.g., River St. Donuts, LLC v. Napolitano*, 558 F.3d 111, 118 (1st Cir. 2009); *Estrada-Hernandez v. Holder*, 108 F.Supp.3d 936, 942-44 (S.D. Cal. 2015).

approval where, as of the filing's grant, the petitioner did not demonstrate its ability to pay the combined proffered wages of multiple Form I-140 petitions).[5]

USCIS does not require a petitioner to demonstrate its ability to pay the combined proffered wages of multiple Form I-140s in a relevant year if the business paid a beneficiary at least the proffered wage of the offered position that year. The Petitioner submitted copies of U.S. Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements, indicating that it paid the Beneficiary at least the proffered wage of the offered position from 2014 through 2019. The company must therefore demonstrate its ability to pay the combined proffered wages of this petition and any others that were pending or approved only in the other years of 2012, 2013, 2020, and 2021.

USCIS records indicate that the Petitioner had 20 Form I-140s for other beneficiaries pending or approved in 2012, 2013, 2020, and 2021.[6] The record does not contain the proffered wages or priority dates of these other petitions. USCIS therefore cannot calculate the total combined proffered wages that the Petitioner must demonstrate its ability to pay in relevant years. For this additional reason, the Petitioner has not demonstrated its ability to pay the proffered wage.

In any future filing in this matter, the Petitioner must submit copies of annual reports, federal tax returns, or audited financial statements for 2012 and 2021. The company must also provide the proffered wages and priority dates of its 20 other Form I-140 petitions. The Petitioner may also submit additional evidence of its ability to pay the proffered wage, including evidence of wages paid to relevant beneficiaries in 2012, 2013, 2020, or 2021 and materials supporting the factors stated in *Sonegawa*. *See* 12 I&N Dec. 614-15.

IV. WILLFUL MISREPRESENTATION OF A MATERIAL FACT

Also unaddressed by the Director, the Petitioner appears to have willfully misrepresented a material fact on the accompanying labor certification application.

To approve a Form I-140 petition, USCIS must find that "the facts stated in the petition are true." Section 204(b) of the Act. A petition comprises its supporting evidence, including a labor certification. 8 C.F.R. § 103.2(b)(1). Thus, USCIS cannot approve a petition if the facts stated on an accompanying labor certification are untrue.

Part C.9 of the labor certification application asked the Petitioner "is there a familial relationship between the owners, stockholders, partners, corporate officers, incorporators, and the alien?" The Petitioner indicated "No." The company's founder and chief executive officer (CEO) signed the

[5] The Petitioner need not demonstrate its ability to pay the proffered wages of petitions that it withdrew or, unless pending on appeal or motion, that USCIS rejected, denied, or revoked. The Petitioner also need not demonstrate its ability to pay proffered wages before the priority dates of the corresponding petitions or after the corresponding beneficiaries obtain lawful permanent residence.

[6] USCIS records identify the 20 petitions by the following receipt numbers: [redacted]

application, declaring under penalty of perjury that he had read and reviewed the application and that its contents were true and accurate to the best of his knowledge.

USCIS records, however, indicate that the Petitioner's founder/CEO is the Beneficiary's brother. The men separately filed applications for adjustment of status to that of lawful permanent residents, listing their parents with the same names and dates of birth. Thus, the Petitioner's labor certification application appears to have falsely concealed the fraternal relationship between the company's founder/CEO and the Beneficiary.

The misrepresentation appears to be material. "[A] concealment or misrepresentation is material if it 'has a natural tendency to influence, or was capable of influencing, the decision of' the decision-making body to which it was addressed." *Kungys v. United States*, 485 U.S. 759, 770 (1988). Labor certification employers must attest to the *bona fides* of a job opportunity. 20 C.F.R. § 656.10(c)(8). Thus, had the Petitioner's application disclosed the apparent family relationship between the company's founder/CEO and the Beneficiary, DOL may have required the company "to demonstrate the existence of a *bona fide* job opportunity, *i.e.*, the job is available to all U.S. workers." 20 C.F.R. § 656.17(l).

The concealment also appears to be willful. A company's officers and principals "are presumed to be aware and informed of the organization and staff of their enterprise." *Matter of Silver Dragon Chinese Rest.*, 19 I&N Dec. 401, 404 (Comm'r 1986). Also, as previously indicated, the Petitioner's founder/CEO attested that he read and reviewed the labor certification application and that its contents were true and accurate. *See Matters of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018) (holding than a signature on an immigration application establishes a "strong presumption" that the signatory "knows the contents of the application and has assented to them")

In any future filing in this matter, the Petitioner must submit independent and objective evidence rebutting the apparent fraternal relationship between the company's founder/CEO and the Beneficiary.

V. CONCLUSION

The record on appeal does not demonstrate the Beneficiary's possession of the minimum educational requirements of the offered position. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.