



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

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

In Re: 24187736

Date: JAN. 24, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Professional

The Petitioner, a public charter school, seeks to employ the Beneficiary as a French immersion teacher at the elementary level. It requests classification of the Beneficiary under the third-preference, immigrant classification for professional workers. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based category allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that minimum education requirements as listed on the underlying labor certification support the requested professional classification. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. EMPLOYMENT-BASED IMMIGRATION

Employment-based immigration generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position. *Id.* Labor certification also indicates that the employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If DOL approves a position, an employer must next submit the certified labor application 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 considers whether a beneficiary meets the requirements of a certified position and a requested immigrant visa classification. If USCIS approves the petition, a foreign national may finally 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. ANALYSIS

To be eligible for professional classification, the labor certification must require, at a minimum, a U.S. bachelor's degree or a foreign equivalent degree. *See* 8 C.F.R. § 204.5(l)(3)(i). In order to determine what a job opportunity requires, we must examine "the language of the labor certification job requirements." *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine the certified job offer exactly as completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). Our interpretation of the job's requirements must involve reading and applying the plain language of the labor certification form. *Id.* at 834. Moreover, we read the labor certification as a whole to determine its requirements. "The [labor certification] is a legal document and as such the document must be considered in its entirety." *Matter of Symbioun Techs., Inc.*, 2010-PER-10422, 2011 WL 5126284 (BALCA Oct. 24, 2011) (finding that a "comprehensive reading of all of Section H" of the labor certification clarified an employer's minimum job requirements).

The labor certification in this case was filed on December 23, 2020. The education, training, experience, and other requirements for the proffered position are set forth at Part H of the labor certification. In this case, Part H states that the position of French immersion teacher (elementary level) has the following minimum requirements:

| | | |
|------|---|-------|
| 4. | Education: Minimum level required: | Other |
| 4-A. | If other, specify the education required: | ** |
| 4-B. | Major field of study: | *** |
| 5. | Is training required for the job opportunity? | No |
| 6. | Is experience in the job offered required for the job? | No |
| 7. | Is there an alternate field of study that is acceptable? | No |
| 8. | Is there an alternate combination of education and experience that is acceptable? | No |
| 9. | Is a foreign educational equivalent acceptable? | Yes |
| 10. | Is experience in an alternate occupation acceptable? | No |

At Part H, Box 14, the Petitioner provided the following additional language regarding Boxes 4-A and 4-B:

** Employer will accept a single degree *or any combination of degrees or diplomas* determined to be equivalent to a bachelor's degree by a qualified evaluation service. (continuation of H.4-A. Other education required) (Emphasis added.)

*** Education, Modern Languages (English, French), Teacher Elementary Education, French as a Foreign Language, English Education, Teaching or a field related to an area of Elementary Education (Music, Art). (continuation of H.4-B. Major field of study)

On appeal, the Petitioner states that the occupation of elementary school teacher customarily requires at least a bachelor's degree and that elementary school teachers are listed as members of the professions under section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32). It asserts that the Beneficiary

possesses at least a bachelor's degree and meets the requirements for professional classification.¹ It further states that "nothing stated on the [labor certification] would indicate the employer would accept less than a Bachelor's degree equivalent based on education."

The Director's decision did not address the Beneficiary's qualifications. However, the Beneficiary's academic credentials do not make him eligible for classification as a professional unless the labor certification itself, in accord with 8 C.F.R. § 204.5(l)(3)(i), requires at least a U.S. bachelor's degree or foreign equivalent degree. The issue on appeal is whether the minimum education requirements as listed on the labor certification support the requested classification.

In *Snapnames.com, Inc. v. Michael Chertoff*, No. 06-65-MO, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. *See also Maramjaya v. USCIS*, Civ. Act No. 06-2158, 2008 WL 9398947 (D.D.C. Mar. 26, 2008) (for professional classification, USCIS regulations require the beneficiary to possess a single four-year U.S. bachelor's degree or foreign equivalent degree). Thus, for purposes of the requested immigrant visa category, a foreign equivalent of a U.S. bachelor's degree must constitute a single degree.

Because a plain reading of the language in Part H, Box 14 and the Petitioner's own statements on appeal clearly indicates it would accept a combination of unspecified degrees to meet a bachelor's degree equivalency, the labor certification does not support the requested classification. The allowance of "a combination of degrees" to satisfy the bachelor's degree requirement results in the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree." *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D) (defining "equivalence to completion of a United States baccalaureate or higher degree" for purposes of H-1B classification.) Where *combinations of education or experience may equate to baccalaureate degrees*, the Act and regulations state so explicitly. *See* section 214(i)(2)(C) of the Act, 8 U.S.C. § 1184(i)(2)(C) (allowing H-1B workers to have "experience in the specialty equivalent to the completion of such [bachelor's] degree"); *see also* 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) (H-1B workers may have "education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate ... degree"). The regulations pertaining to the professional immigrant classification sought here do not contain similar language.

Neither the Act nor USCIS regulations allow a position to be classified as a professional position if the minimum educational requirement can be met with anything other than a single academic degree. Therefore, the provided labor certification does not support the requested classification of professional under section 203(b)(3) of the Act.

Although not raised by the Director, we also conclude that the record lacks evidence of the Petitioner's continuing ability to pay the proffered wage from the priority date. A petitioner must demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains

¹ The record includes the Beneficiary's academic records and an academic equivalency evaluation stating that his education in France is equivalent to a bachelor of arts degree in music education from an accredited university in the United States.

lawful permanent residence. 8 C.F.R. § 204.5(g)(2).² Evidence of ability to pay must include copies of annual reports, federal tax returns, or audited financial statements. *Id.*

Here, the Petitioner provided its audited financial statements for the year ending June 30, 2019, before the December 23, 2020 priority date. Additionally, where a petitioner has filed I-140 petitions for multiple beneficiaries, it must demonstrate that its job offer to each beneficiary is realistic, and that it has the ability to pay the proffered wage to each beneficiary. *See Patel v. Johnson*, 2 F.Supp.3d 108, 124 (D. Mass. 2014) (affirming our revocation of a petition's approval where, as of the filing's grant, a petitioner did not demonstrate its ability to pay the combined proffered wages of multiple petitions). Thus, the Petitioner must establish its ability to pay this Beneficiary as well as the beneficiaries of the other Form I-140 petitions that were pending or approved as of, or filed after, the priority date of the current petition. The record does not include evidence of the Petitioner's ability to pay the proffered wage to this Beneficiary or the beneficiaries of its other petitions in 2020, the year of the priority date, or thereafter. The Petitioner must address this evidentiary deficiency in any further filings.

III. CONCLUSION

The labor certification does not support the requested classification of professional under section 203(b)(3) of the Act because it allows for a combination of unspecified degrees to meet the bachelor's degree equivalency. 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. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

² This petition's priority date is December 23, 2020, the date the DOL accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).