U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26588461

Date: JUL. 6, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Skilled Worker)

The Petitioner, an information technology company, seeks to permanently employ the Beneficiary as a software application developer. The company requests his classification under the third-preference, employment-based ("EB-3") immigrant visa category as a "skilled worker." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). Prospective U.S. employers may sponsor noncitizens for lawful permanent residence in this category to work in jobs requiring at least two years of training or experience. *Id.*

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the Beneficiary's educational qualifications for the offered position. On appeal, the company contends that, as the job requires, the Beneficiary's three-year, foreign degree equates to a U.S. bachelor's degree in computer science.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the company has not sufficiently demonstrated the equivalence of the Beneficiary's degree to a U.S. baccalaureate or its issuance in the claimed field of study. We will therefore dismiss the appeal.[1]

I. LAW

Immigration as a skilled worker generally follows a three-step process. First, a prospective employer must obtain certification from the U.S. Department of Labor (DOL) that: there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and a noncitizen's permanent

[1] The Director's decision misidentifies the Petitioner's requested immigrant visa category, finding the Beneficiary "ineligible for classification as a professional" under section 203(b)(3)(A)(ii) of the Act. The Petitioner, however, does not contend that the error prejudiced the company. It maintains that the Beneficiary's three-year degree "is in fact the foreign equivalent of a singular 4 year U.S. Baccalaureate Degree in Computer Science." Thus, the Director decided the same question facing us on appeal: Has the Petitioner demonstrated the equivalency of the Beneficiary's three-year, foreign degree to a U.S. baccalaureate in computer science?

employment in the position would not harm wages and working conditions of U.S. workers with similar jobs. Section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

Second, an employer must submit an approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). 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)(3)(ii)(B).

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. ANALYSIS

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 13, 2020, the date 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).

When assessing a beneficiary's qualifications for a position, USCIS must examine the job-offer portion of an accompanying labor certification to determine the job's minimum requirements. USCIS may neither ignore a certification term nor impose an unstated requirement. *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 Petitioner's labor certification states the minimum requirements of the offered position of software application developer as a U.S. bachelor's degree, or a foreign equivalent degree, in electronics or computer science, plus two years of experience "in the job offered." The labor certification states that the company will not accept experience in an alternate occupation. The Beneficiary's experience is not at issue.

On the labor certification, the Beneficiary attested that, by the petition's priority date, an Indian university awarded him a bachelor's degree in electronics. As proof, the Petitioner submitted copies of his diploma and marks memoranda from the university. The materials indicate the Beneficiary's receipt of a three-year bachelor of science degree in 2007. The diploma and memoranda do not state the degree's major field of study.

The Director issued a request for additional evidence (RFE), seeking further proof of the Beneficiary's educational qualifications. The Petitioner's RFE response included three independent professional evaluations of the Beneficiary's degree, all concluding that his credential equates to a U.S. bachelor's degree. The immigration service has discretion to treat expert testimony as advisory opinions. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). But the Agency may reject or afford less evidentiary weight to an expert opinion that conflicts with other information or "is in any way questionable." *Id.*

The Director's decision notes that U.S. bachelor's degrees usually require four years of study, *see Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977), and that, for his degree, the Beneficiary studied only three years. The Director therefore concluded that, contrary to the offered position's educational requirements, the Petitioner did not demonstrate the Beneficiary's possession of a degree equating to a U.S. baccalaureate.

On appeal, the Petitioner contends that the Director disregarded the evaluations and supporting documentation in its RFE response. According to the company, these materials demonstrate the Beneficiary's possession of a foreign degree equating to a U.S. bachelor's degree in computer science.[2]

The evaluations equate the Beneficiary's degree to a U.S. bachelor's degree based primarily on the number of university credits he purportedly earned in India. The evaluation from Multinational Education & Information Services, Inc. (MEI) finds that, during the Beneficiary's three years of university studies, he earned 132 credits. To gain accreditation in the United States, baccalaureate programs must require at least 120 credits. *See, e.g.*, New England Comm'n of Higher Educ., "Policy on Credits and Degrees," 2, www.neche.org/wp-content/uploads/2018/12/Pp111_Policy_On_Credits-And-Degrees.pdf. Because the Beneficiary gained more credits than a U.S. baccalaureate typically requires, the evaluation concludes that he has the equivalent of a U.S. bachelor's degree.

The record, however, does not sufficiently explain how the MEI evaluation calculated the Beneficiary's credits. The evaluation contains an appendix listing the university courses he completed and their corresponding number of credits. Consistent with the university marks memoranda, the courses on the appendix match the examinations he passed. Except for year-long laboratory courses, which each received two credits, the MEI evaluator stated that he assigned eight credits to each year-long course the Beneficiary completed. The evaluator first stated that he assigned credits "based on the number of hours students attended classes." But he did not explain how many classroom hours equate to one credit. The evaluator then stated that he "estimated the credits:"

> [a]s a former student of Indian Universities, based on my personal visits, published documents, the number of years of course works, the nature of course works, the grades earned in these courses, hours of academic course work, and admission requirements for the awards.

The evaluator has not explained whether he calculated the Beneficiary's credits based on his number of classroom hours, the additional factors quoted above, both, or some combination of them. Also, the appendix values the courses completed by the Beneficiary at either eight or six credits. The evaluator does not explain how he determined the six-credit amounts and whether he based them on the four-credit-per-course system he described.

[2] On the labor certification, the Petitioner indicated its acceptance of a bachelor's degree in computer science or electronics. On appeal, however, the company contends that the Beneficiary's degree equates to a U.S. baccalaureate in only computer science. We therefore will not consider whether his degree lies in the field of electronics. *See United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020) (stating that U.S. tribunals, in both criminal and civil matters, follow the "party presentation principle," relying on parties to frame the issues for decision).

The other two educational evaluations - from Career Consulting International (CCI) and a professor from the Universidad [redacted] (UNEM) - each conclude that the Beneficiary has the equivalent of a U.S. bachelor of science degree and earned 138 credits in India. Like the MEI evaluation, however, the two additional assessments lack evidence supporting the bases of their credit determinations. The CCI and UNEM evaluators stated that they based the Beneficiary's credits on his number of classroom hours, with 15 classroom hours equating to one credit. The UNEM evaluation states: "Client's degree contains, *on the basis of an affidavit*, a total of 2,080 class or contact hours." (emphasis added). The Petitioner submitted more than 400 pages of evidence. But we are unable to find an affidavit or other documentation addressing the Beneficiary's number of university classroom hours. The record therefore does not sufficiently support the accuracy of the evaluations' credit calculations or their conclusions that the Beneficiary has the equivalent of a U.S. bachelor's degree.

Also, the evaluations have not established that university classroom hours in India relate to university credits in the United States. U.S. students "are assumed to spend two hours of outside preparation for every 1 hour of lecture." Robert A. Watkins, The University of Texas at Austin, "Assigning Undergraduate Transfer Credit: It's Only an Arithmetical Exercise," www.handouts.accrao.org/am07Ifinished/F034p_M_Donahue.pdf (accessed Feb. 19, 2008). The Indian system, however, is based on exams, not credits. *Id.* Because the country's educational systems do not readily equate, transferring credits from India to the United States requires a calculation involving the number of exams taken multiplied to reach "a base line of 30" for credit conversion. *Id.*

Further, all three evaluations list U.S. schools that purportedly offer three-year bachelor's degrees. But the evaluators do not compare the curricula of these three-year U.S. programs to the Beneficiary's coursework. The listings of these schools therefore do not convince us that he has the equivalent of a U.S. baccalaureate.

The three evaluations also do not establish the issuance of the Beneficiary's degree in the claimed field of computer science. The CCI and UNEM evaluations state his possession of the equivalent of a U.S. bachelor of science degree. But they do not state in what major field his degree lies. The UNEM evaluation finds insufficient evidence to determine the Beneficiary's major. The evaluation states:

> There is no basis on the evidence provided to determine whether the coursework in the degree in question is weighted towards particular subjects or equally among all subjects concerned, obviously allowing for the definition of a major according to the norms of the institution concerned.

The MEI evaluation equates the Beneficiary's degree to a U.S. baccalaureate "in mathematics, electronics, and computer science." But the evaluator does not explain how he determined these majors. The evaluation states the Beneficiary's completion of courses totaling 32 credits in each of the following fields: math; physics; and electronics. But, if math and electronics constitute majors, the evaluation does not explain its exclusion of physics, in which the Beneficiary received the same number of credits. Also, neither the evaluation nor the university marks memoranda state his completion of any computer science courses. Thus, the record does not explain how he merits a bachelor's degree in computer science. A petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary's possession of a foreign degree equating to a U.S. bachelor's degree or in the claimed field of computer science.

III. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's possession of the minimum educational qualifications required for the offered position. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.