U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27443465

Date: JUL. 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an automobile services company, seeks to employ the Beneficiary as a human resources specialist. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. See Immigration and Nationality Act (the Act), section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary meets the educational requirements for the position from the labor certification or qualifies for the requested classification as a professional. Specifically, he noted that the Petitioner specified on the certified ETA Form 9089, Application for Permanent Employment Authorization, that the offered position requires a minimum of a bachelor's degree in business, with no alternate combination of education and experience being acceptable. But he determined that the evidence, including the Beneficiary's diploma and transcripts from [redacted] University in Brazil, as well as an educational evaluation, shows that the Beneficiary holds only the equivalent of two years of study towards a bachelor's degree awarded by an accredited college or university in the United States. Although the evaluation concludes that the Beneficiary has the equivalent of a United States bachelor's degree when her education is combined with her work experience, the Director noted that the regulations at 8 C.F.R. § 204.5(l)(3)(ii)(C) pertaining to classification as a professional do not allow for this combination, as they require a United States baccalaureate degree or a foreign equivalent degree. 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.

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. These requirements must be satisfied by the priority date of the immigrant visa petition. *See* 8 C.F.R. § 204.5(g)(2); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977). For petitions that require a labor certification, the priority date is the date on which the DOL accepted the labor certification application for processing. 8 C.F.R. § 204.5(d).

To qualify as a professional, a beneficiary must be a member of the professions and hold at least a United States baccalaureate degree or a foreign equivalent degree. 8 C.F.R. § 204.5(l)(2).

On appeal, the Petitioner submits new evidence and makes several assertions. We first note that where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The Director notified the Petitioner in his request for evidence that additional evidence was required to show that the Beneficiary met the minimum requirements for the offered position and the requested classification, and listed the type of evidence needed to overcome the deficiency in the initial evidence.

The Petitioner asserts that since the Beneficiary attended undergraduate studies in addition to the coursework towards her two-year technologist diploma, her education is equivalent to four years of undergraduate education, and that the word "equivalent" has a broader meaning then the Director used in his decision. However, the regulation requires a United States baccalaureate degree or a "foreign equivalent degree," not an equivalent amount of education. And as noted by the Director, the Petitioner specifically indicated on Form ETA 9089 that an alternate combination of education and experience was not acceptable as a minimum requirement for the offered position.

In addition, the Petitioner also asserts that the Beneficiary's technologist diploma was awarded after an accelerated program which is in fact equivalent to a United States baccalaureate degree, and that it entitles her "to apply for a Masters Degree [MBA]." However, there is no indication in either the diploma or the transcripts that the program the Beneficiary completed at [redacted] University was an accelerated one, and this is also not noted in the academic evaluation submitted by the Petitioner. Further, the letter from UNIP describing the studies in which the Beneficiary is currently enrolled does not refer to the program as a master's degree program, and provides no information regarding entry requirements. As such, the Petitioner's assertions on appeal are insufficient to show that the Beneficiary meets the minimum requirements for the offered position and for the requested classification.

Accordingly, we adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit

that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

ORDER: The appeal is dismissed.