U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-T- LLC

DATE: OCT. 13, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a therapy provider, seeks to employ the Beneficiary permanently in the United States as an Occupational Therapist and requests classification of the Beneficiary as an advanced degree professional. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Director, Nebraska Service Center denied the visa petition and we dismissed the Petitioner's subsequent appeal. The matter is now before us on a motion to reconsider (MTR). The motion will be denied. We will affirm our prior decision.

The record reflects that the MTR is properly filed and timely. Our review of the record will be limited to the issues raised by the Petitioner in the MTR.

We conduct appellate review on a *de novo* basis. *See* 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). Our *de novo* authority has been long recognized by the federal courts. *See, e.g., Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence properly submitted on motion, which is allowed by the instructions to the Form I-290B, Notice of Appeal or Motion, incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). An application or petition that fails to comply with the technical requirements of the law may be denied even if the director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States,* 229 F.Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd,* 345 D.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ,* at 145.

As on appeal, the issue in this case is whether the record establishes that the Beneficiary met the requirements for the offered position set forth in the ETA Form 9089, Application for Permanent Employment Certification (labor certification), as of the priority date and is, therefore, eligible for classification as an advanced degree professional under section 203(b) of the Act. The priority date in this matter is September 3, 2013, the date the labor certification was accepted for processing by the U.S. Department of Labor (DOL). *See* 8 C.F.R. § 204.5(d).

In support of the MTR, the Petitioner has submitted the following evidence: Memorandum from Michael D. Cronin, Acting Associate Commissioner for Programs, and William R. Yates, Deputy

Executive Associate Commissioner for Operations, U.S. Immigration and Naturalization Service, AD00-08, *Educational and Experience Requirements for Employment-Based Second Preference (EB-2) Immigrants* (March 20, 2000); a Certification, signed on January 22, 2010, by , Officer-in-Charge, Regional Office, Republic of the Philippines, which documents the licensing of the Beneficiary as an Occupational Therapist; and an amended copy of the Beneficiary's resumé.

To establish that a beneficiary is qualified to perform the duties of an offered position, a petitioner must demonstrate that the beneficiary has met all of the requirements set forth in the labor certification by the priority date of the petition. *See* 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating the job offer portion of the labor certification to determine the required qualifications for the position, United States Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). We must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve reading and applying *the plain language* of the alien employment certification application form. *Id.* at 834. We cannot and should not look beyond the plain language of the labor certification that the Department of Labor (DOL) has formally issued.

In the present matter, the labor certification identifies the following eligibility requirements:

H.4.	Education: Master's.
H.4-B.	Major field of study: Occupational Therapy.
H.5.	Training: None required.
H.6.	Experience in the job offered: Required.
H.6-A.	Number of months experience required: 12.
H.7.	Alternate field of study: None accepted.
H.8.	Alternate combination of education and experience: None accepted.
H.9.	Foreign educational equivalent: Accepted.
H.10.	Experience in an alternate occupation: Not accepted.
H.14.	Specific skills or other requirements: Masters in Occupational Therapy or foreign equivalent, 1 year of experience in Occupational Therapy required and current California licensure required.

Accordingly, to qualify for the offered position, the Beneficiary in this case must hold a Master's degree in Occupational Therapy and have 12 months of experience in this same field.

On appeal, we found that the record did not establish that the Beneficiary held the Master's degree required by the labor certification and, therefore, that she neither qualified for the offered position nor for classification as an advanced degree professional under section 203(b)(2) of the Act. Specifically, our February 18, 2015, decision, which we incorporate herein by reference, found the Beneficiary's 1998 Bachelor of Science in Occupational Therapy from in The Philippines was not the foreign equivalent of a U.S. Master's degree in Occupational Therapy and that the terms of the labor certification did not allow us to consider whether her undergraduate degree, when combined with the claimed employment experience, provided her with the equivalent of a Master's degree pursuant to the regulation at 8 C.F.R. § 204.5(k)(2).

To establish the Beneficiary's Philippine baccalaureate degree as the foreign equivalent of a U.S. Master's degree, the Petitioner initially submitted two reports prepared by However, we found these assessments to be inconsistent with information provided by the Electronic Database for Global Education (EDGE), the peer-reviewed source of foreign credentials information relied upon by USCIS to determine foreign degree equivalencies. The information available from EDGE indicated that the Beneficiary's degree was the foreign equivalent of a U.S. Bachelor's degree. Moreover, the conclusions reached by these two reports were inconsistent with the additional credentials evaluations that had been submitted by the Petitioner on appeal. Accordingly, we found the assessments insufficient to demonstrate that the Beneficiary held the foreign equivalent of a U.S. Master's degree. Where an expert's opinion is not in accord with other information or is in any way questionable, USCIS may discount or give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Further, credential evaluations may be given less weight when their conclusions differ from the information provided by EDGE. *Viraj, LLC V. Mayorkas*, 2014 WL 4178338 *4 (C.A.11 Ga. Aug. 25, 2014).

The additional evaluations submitted by the Petitioner, which had been prepared by the and , found the Beneficiary to have the equivalent of the required Master's degree when her Philippine Bachelor's degree was combined with her years of employment experience as an Occupational Therapist. However, as the terms of the labor certification required the Beneficiary to hold a U.S. Master's degree or a foreign degree equivalent, and specified that no alternate combination of education and experience was acceptable, we did not find and opinions to demonstrate the Beneficiary's eligibility for the offered position. Moreover, we found their evaluations to have relied on employment experience not claimed by the Beneficiary on the labor certification, thereby lessening its credibility. *See Matter of Leung*, 16 I&N Dec. 2530 (BIA 1970). We also concluded that the experience letters submitted on appeal, which related to the Beneficiary's job training and volunteer experience at facilities providing occupational therapy, did not establish that she had actually worked as an Occupational Therapist. Accordingly, we found that even if the labor certification allowed for the consideration of the Beneficiary's employment history, that history was not established by the record.

On motion, the Petitioner contends that while USCIS may have found that the Beneficiary does not hold the foreign equivalent of a Master's degree in Occupational Therapy, she is, nevertheless, eligible for the offered position based on her Philippine degree in Occupational Therapy and her more than five years of post-baccalaureate employment experience as an Occupational Therapist.

In support of this claim, the Petitioner submits a copy of the Memorandum from Michael D. Cronin, Acting Associate Commissioner for Programs and William R. Yates, Deputy Executive Associate Commissioner for Operations, U.S. Immigration and Naturalization Service, AD00-08, *Educational and Experience Requirements for Employment-Based Second Preference (EB-2) Immigrants* (March 20, 2000). The Petitioner contends that as Part H.14. of the labor certification states that the Petitioner will accept a "Masters in Occupational Therapy or foreign equivalent," and the March 20, 2000 memorandum indicates that "an alien beneficiary who does not actually hold an advanced degree may still qualify as an EB-2 professional if he or she has the equivalent of an advanced degree," we must find the Beneficiary in this matter to hold the advanced degree required by the labor certification.

Moreover, the Petitioner contends that we unreasonably ignored the Beneficiary's work experience, which totals six years and eight months, "simply because of her designation or title as a 'volunteer and/or trainee.'" The Petitioner points to a revised copy of the Beneficiary's resume, in which the designation of "Volunteer" has been amended to that of "Occupational Therapist," as evidence of her employment as an Occupational Therapist, even though on a voluntary or trainee basis. The Petitioner also submits a copy of a certification signed by Officer-in-Charge, Regional Office, Republic of the Philippines, which establishes that the Beneficiary was licensed in the Philippines as an Occupational Therapist at the time that the experience letters submitted for the record indicate that she worked as a trainee or volunteer. The Petitioner further states that evidence of the Beneficiary's prior employment was not listed in full in Part K. of the labor certification since it was not seeking to establish the Beneficiary's eligibility for the offered position based on a combination of her baccalaureate degree and employment history, and, therefore, considered her employment history "surplusage."

On motion, the Petitioner also responds to our concerns on appeal regarding the absence of evidence resolving the inconsistent conclusions reached by the credentials evaluations submitted in support of the visa petition, asserting that no real inconsistencies exist. To explain the two sets of conclusions discussed above, the Petitioner points to the subjective nature of expert opinions. It also reports that while the first set of evaluations were based solely on the Beneficiary's academic degree and transcripts, it specifically advised and to consider the Beneficiary's employment history in assessing her eligibility for the offered position since USCIS had already determined that her Philippine degree was not the foreign equivalent of a Master's degree.

However, while we note the Petitioner's assertions regarding the Beneficiary's qualifications for the offered position and the new evidence that has been submitted on motion, we continue to find that the record does not demonstrate that the Beneficiary is eligible for the offered position of Occupational Therapist or for classification as an advanced degree professional under section 203(b) of the Act.

Although, the Petitioner points to the language in Part H.14. of the labor certification as proof that the Beneficiary may qualify for the offered position based on a combination of education and experience, we do not find the requirement in H.14., "Masters in Occupational Therapy or foreign equivalent," to allow for this interpretation. The terms and conditions set forth in Part H. of a labor certification must be read as a whole. Here the instant labor certification (Parts H.4., H.4-B.,H.8. and H.9.) indicates that the offered position requires a Master's degree in Occupational Therapy or a foreign equivalent degree, and that an alternate combination of education and experience is not acceptable. Accordingly, the "foreign equivalent" requirement indicated by the Petitioner in Part H.14. of the labor certification must be read as a requirement for a single foreign equivalent degree, not a combination of a foreign degree and employment experience.

Further, while the policy memorandum issued on March 20, 2000 by the legacy U.S. Immigration and Naturalization Service advises that USCIS officers, pursuant to 8 C.F.R. § 204.5(k)(2), may consider a U.S. baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty to be the equivalent of a Master's degree, it does not allow this office to determine that the instant Beneficiary's degree and employment experience qualify her for the offered position. The March 20, 2000, guidance does not empower a USCIS officer to find an advanced degree equivalency based on education and employment except where the labor certification allows for this consideration, which in the present case it does not. Therefore, even if we were to find the record to establish that the Beneficiary had five years of progressive experience as an Occupational Therapist as of the priority date, it would not establish her eligibility for the offered position.[1]

Finally, although we have taken note of the Petitioner's assertions that the record contains sufficient evidence to establish that the Beneficiary has more than six years of qualifying employment as an Occupational Therapist, we are not persuaded. On motion, the Petitioner contends that a simple reading of the Beneficiary's revised resumé, and the experience statements and employment certifications provided by her previous employers is all that is needed to establish her years of employment as an Occupational Therapist. However, the employment statements and certifications referenced by the Petitioner are vague, offering no information on the specific duties performed by the Beneficiary. Accordingly, they do not comply with the regulation at 8 C.F.R. § 204.5(g)(1), which requires that letters submitted to establish a beneficiary's qualifying employment experience provide "a specific description of the duties performed." Further, the Beneficiary's amendment of her resumé to reflect that she was employed as an "Occupational Therapist" rather than an "OT Volunteer" while residing in the Philippines and her descriptions of the duties she performed for her prior employers cannot cure the evidentiary deficiencies in the record's documentation of her employment history. The claims made by the Beneficiary on her resumé with regard to her prior employment are not proof of that employment. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22

[1] We make no finding of the Beneficiary's eligibility for classification as an advanced degree professional under section 203(b)(2) of the Act in any other petition. Rather, our finding in the instant matter that the Beneficiary is not eligible for classification as an advanced degree professional is limited to the petition before us on motion.

I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, we continue to find that the record in this matter does not establish that the Beneficiary has the six plus years of qualifying employment that the Petitioner asserts.[2]

As previously noted, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). In the present case, the labor certification states that the offered petition requires a U.S. Master's degree in Occupational Therapy or a foreign equivalent degree, and that no alternate combination of education and experience will be accepted. Therefore, for the visa petition to be approved, the record must demonstrate that, as of the September 3, 2013 priority date, the Beneficiary had the Master's or foreign equivalent degree stipulated by the labor certification. The Beneficiary cannot qualify under a different set of requirements.

The record, however, does not demonstrate that the Beneficiary holds the U.S. Master's degree or foreign equivalent degree required by the labor certification. Accordingly, the Petitioner has not established that she is qualified for the offered position. Neither is she eligible in the instant matter for classification as an advanced degree professional under section 203(b)(2) of the Act. The motion will, therefore, be denied and we will affirm our dismissal of the appeal.

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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here that burden has not been met.

ORDER: The motion is denied.

Cite as *Matter of P-T- LLC,* ID# 13621 (AAO Oct. 13, 2015)

[2] In determining that the record does not establish that the Beneficiary has the experience claimed by the Petitioner, we make no finding whether the Beneficiary's work as a volunteer or trainee may be qualifying employment experience for the purposes of establishing eligibility under section 203(b)(2) of the Act. Our decision regarding the Beneficiary's claimed employment experience relates solely to the record before us and the lack of evidence in that record to demonstrate the nature of the Beneficiary's prior employment.