U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-R-G-, LLC

DATE: SEPT. 30, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, PETITION FOR ALIEN WORKER

The Petitioner, a rehabilitative services business, seeks to permanently employ the Beneficiary in the United States as a Speech Language Pathologist under section 203(b)(2) of the Immigration and Nationality Act (the Act). *See* 8 U.S.C. § 8 U.S.C. § 1153(b)(2). The Director, Nebraska Service Center, denied the immigrant visa petition. The matter is now before us on appeal. The appeal will be dismissed

At issue in this case is whether the Beneficiary possesses the foreign equivalent of a U.S. master's degree as required by the terms of the labor certification and the requested preference classification.

I. PROCEDURAL HISTORY

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).[1] The priority date of the petition is November 8, 2013.[2]

Part H of the labor certification states that the offered position has the following minimum requirements:

H.4. Education: Master's degree in "Speech and Hearing, Audiology, or Speech-Language Pathology."
H.5. Training: None required.
H.6. Experience in the job offered: None required.
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: None accepted.
H.14. Specific skills or other requirements: Must possess or be eligible to obtain a valid Speech-Language Pathologist License from the state of intended employment.

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[1] *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); *see also* 8 C.F.R. § 204.5(a)(2).

[2] The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

Part J of the labor certification states that the Beneficiary possesses a Master's degree in Speech and Hearing from India, completed in 2003. The record contains a copy of the Beneficiary's Bachelor's degree in Hearing, Language and Speech from India, completed in 2000, and a copy of his Master of Science degree in Speech and Hearing and corresponding transcripts from completed in 2003. The record contains a copy of transcripts for the Beneficiary's clinical practicum program that the Beneficiary completed in 2003 at the

The record contains the following evaluations of the Beneficiary's education credentials:

- From the dated February 15, 2006, concluding that the Beneficiary's three-year bachelor's degree and his two year master's degree with the required clinical practicum "may be considered comparable in level to a U.S. Master of Science degree in Speech, Language and Hearing awarded by regionally accredited colleges/universities in the United States."
- By for dated March 18, 2015, concluding that the Beneficiary's bachelor's and master's degrees are the equivalent of a U.S. "Master of Science degree in Speech Pathology."
- By for dated October 27, 2014, concluding that the Beneficiary's bachelor's and master's degrees, together with his five years of work experience, is "equivalent to a U.S. Master of Science in Speech and Hearing from a regionally accredited college or university in the United States of America."
- By for dated October 27, 2014, concluding that the Beneficiary has the foreign equivalent of a U.S. bachelor's degree, which, when combined with his five years of experience, is equivalent to a "Master of Science in Speech and Hearing from an institution of postsecondary education in the United States of America."

The director's decision denying the petition concludes that the Beneficiary does not have the foreign equivalent of a U.S. master's degree to meet the terms of the labor certification.

On appeal, the Petitioner states that the Beneficiary's educational credentials are the foreign equivalent of a U.S. master's degree.

The Petitioner's appeal is properly filed and makes a specific allegation of error in law or fact. We conduct appellate review on a *de novo* basis.[3] We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.[4] We may deny a petition that does not

[3] *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). The AAO's *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).

[4] The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or

comply with the technical requirements of the law even if the director does not identify all of the grounds for denial in the initial decision.[5]

II. LAW AND ANALYSIS

A. The Roles of the DOL and USCIS in the Immigrant Visa Process

At the outset, it is important to discuss the respective roles of the DOL and U.S. Citizenship and Immigration Services (USCIS) in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by the DOL. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

> Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
>
> > (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
> >
> > (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to the DOL, or the regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by federal circuit courts:

> There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).[6] *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1).

[5] *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

[6] Based on revisions to the Act, the current citation is section 212(a)(5)(A).

. . .

> Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

> The labor certification made by the Secretary of Labor . . . pursuant to section 212(a)(14) of the [Act] is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

> The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).

> The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

Therefore, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the beneficiary qualifies for the offered position, and whether the offered position and the beneficiary are eligible for the requested employment-based immigrant visa classification.

B. The Minimum Requirements of the Offered Position

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined as:

> [A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The petitioner must establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 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 beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by "examin[ing] the certified job offer *exactly* as it is completed by the prospective employer." *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 [labor certification]" even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

In the instant case, the labor certification states that the offered position requires a Master's degree in "Speech and Hearing, Audiology, or Speech-Language Pathology." The Petitioner relies on the Beneficiary's three-year Bachelor's degree in Hearing, Language, and Speech from [redacted] India, followed by his Master of Science degree in Speech and Hearing from [redacted] India, as being equivalent to a U.S. master's degree.

The record contains a copy of the Beneficiary's bachelor's degree diploma, a copy of his master's degree diploma, and a copy of transcripts for the Beneficiary's clinical practicum program that the Beneficiary completed in 2003 at the [redacted]

As noted above, the record contains four evaluations of the Beneficiary's educational credentials, two of which equate the Beneficiary's degrees alone as equivalent to a U.S. master's degree, and two that equate the Beneficiary's degrees and five years of experience as being equivalent to a U.S. master's degree.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony)

Specifically, the evaluation from the [redacted] concludes that the Beneficiary's three-year bachelor's degree and his two-year master's degree with the required clinical practicum "may be considered comparable in level to a U.S. Master of Science degree in Speech, Language and Hearing awarded by regionally accredited colleges/universities in the United States."

The evaluation by [redacted] for [redacted] concludes that the Beneficiary's bachelor's and master's degrees are the equivalent of a U.S. "Master of Science degree in Speech Pathology." In reaching this conclusion, [redacted] states that the Beneficiary's bachelor's degree from [redacted] is "equal to three years of undergraduate coursework from an accredited institution of higher education in the United States." He then states that the first year of the Beneficiary's master's degree program is equal to the final year of a U.S. undergraduate program and the second year of the master's degree program is "equivalent to one year of graduate-level coursework or a Master's degree from an accredited institution in the United States."

These two evaluations conclude that the Beneficiary possesses the foreign equivalent of a U.S. master's degree through education alone. We note that the evaluations by [redacted] and [redacted]

conclude that the Beneficiary's bachelor's and master's degrees, together with his five years of work experience, are equivalent to a U.S. Master's degree in Speech and Hearing.

As noted above, the issue in this case is whether the Beneficiary possesses the foreign equivalent of a U.S. master's degree through education alone as required by the terms of the labor certification. The labor certification does not state an alternate combination of education and experience for the Beneficiary to qualify as an advanced degree professional by possessing a bachelor's degree followed by five years of progressive experience in the specialty under 8 C.F.R. § 204.5(k)(2). The conflicting opinions in these evaluations tend to demonstrate that the Petitioner has not established by the preponderance of the evidence that the Beneficiary possesses the foreign equivalent of a U.S. master's degree through education alone.

We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." *See* http://www.aacrao.org/About-AACRAO.aspx. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." *See* http://edge.aacrao.org/info.php. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.[7]

According to EDGE, the Beneficiary's three-year Bachelor of Science degree is comparable to three years of university study in the United States, and the Master of Science degree is comparable to a bachelor's degree in the United States. These conclusions by EDGE correspond with the conclusions by and .

We note that the record contains a copy of transcripts for the Beneficiary's clinical practicum program that he completed in 2003 at the . After consulting with AACRAO on this matter, we note that this clinical practicum was part of the Beneficiary's master's degree program and does not alter EDGE's conclusions noted above. We further note that the evaluation from the references the Beneficiary's "required clinical

[7] In *Confluence International, Inc. v. Holder,* 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the beneficiary's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc. v. USCIS,* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the beneficiary's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification required a degree and did not allow for the combination of education and experience.

practicum" with his master's degree which also demonstrates that this practicum was a required part of the Beneficiary's two-year degree.

On appeal, the Petitioner asserts that the conclusions in the evaluations by the [redacted] are consistent with the degree requirements of many U.S. universities. The Petitioner cites six U.S. universities that award master's degrees in the same amount of time that it took the Beneficiary to complete his degree. The evaluation from [redacted] appears to support this assertion because he concludes that the Beneficiary's second year of the master's degree program is "equivalent to one year of graduate-level coursework or a Master's degree from an accredited institution in the United States." While we note that certain U.S. universities have accelerated master's degree programs, nothing in the record establishes that the second year of the Beneficiary's master's degree was such an accelerated program or that establishes the second year was alone equivalent to a U.S. master's degree. Further, nothing in the record demonstrates that the entrance requirements to the Master of Science program at [redacted] included completion of a U.S. bachelor's degree equivalent.

Therefore, based on the conclusions of EDGE and the evaluations by [redacted] and [redacted] the evidence in the record on appeal is not sufficient to establish that the Beneficiary possesses the foreign equivalent of a U.S. master's degree through education alone to meet the minimum requirements of the labor certification.

III. CONCLUSION

In summary, the Petitioner did not establish that the Beneficiary possesses the foreign equivalent of a U.S. master's degree as required by the terms of the labor certification. The director's decision denying the petition is affirmed.

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 appeal is dismissed.

Cite as *Matter of H-R-G-, LLC*, ID# 13693 (AAO Sept. 30, 2015)