



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

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

MATTER OF A-E-S-D-

DATE: MAY 30, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a public school, seeks to employ the Beneficiary as a senior math teacher. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Beneficiary has the required education for the offered position. Specifically, the Director stated that the Beneficiary did not possess a degree in a required field of study.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary is qualified for the offered job. Upon *de novo* review, we will dismiss the appeal.

I. LAW AND ANALYSIS

A. Employment-Based Immigration

Employment-based immigration generally follows a three-step process. First, an employer must obtain an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).¹ By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer may file an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national 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.

¹ The priority date of a petition is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d). The priority date in this case is November 13, 2014.

B. Beneficiary's Education

The Petitioner must establish that the Beneficiary satisfied all of the educational, training, experience, and any other requirements stated on the labor certification by the priority date of November 13, 2014. See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 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 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 Mass., 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 Co. v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). 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.

In this case, the labor certification requires a master's degree in mathematics education, general mathematics, or a related field; or a bachelor's degree in mathematics education, general mathematics, or a related field, plus five years of experience in the offered job, as a general math teacher, or in a related occupation.

Section J. of the labor certification states (incorrectly) that the highest level of education achieved by the Beneficiary relevant to the requested occupation is a master's degree in mathematics education from [REDACTED] in the Philippines, completed in 2005.

The record contains the following documents relating to the Beneficiary's education:

- Bachelor of science degree in aviation electronics and communication engineering issued by [REDACTED] in the Philippines on October 30, 1998, together with transcripts;²
- Transcripts from [REDACTED] in the Philippines indicating that the Beneficiary earned 18 credits in a certificate of teaching curriculum (undergraduate) from 1989-1991, and nine credits in a special curriculum in 2005;
- Transcripts from [REDACTED] in the Philippines indicating that the Beneficiary earned 42 credits toward a master's degree in mathematics education from 1998-2005;³ and

² The transcripts indicate that the Beneficiary took several courses at [REDACTED] and was granted transfer credit for those courses at [REDACTED]

- A letter from the registrar of [REDACTED] indicating that the Beneficiary has completed all of the academic units required in the master of education, with a major in mathematics as of term two of school year 2004-2005.

The record also contains the following credentials evaluations:

- Evaluation from [REDACTED] concluding that the Beneficiary's credentials are the equivalent of a bachelor of science in electrical engineering with emphasis on aviation electronics and communications engineering, plus 27 semester credit hours of transfer credit in education, plus 42 semester credit hours toward a master of education with an emphasis on mathematics;
- Evaluation from [REDACTED] at [REDACTED] in Nebraska, concluding that although there are minor "holes," the Beneficiary "has covered essentially all of the courses in a typical U.S. regionally accredited bachelor's degree in mathematics for aspiring teachers." The evaluation compared the Beneficiary's bachelor's and master's courses to "typical" mathematics major requirements for a bachelor of arts degree; and
- Evaluation from [REDACTED] Ph.D., equating the Beneficiary's bachelor of science degree, together with his 21 years of post-baccalaureate progressive work experience, to a U.S. master's degree in education.

The Director's decision denying the petition stated that the undergraduate coursework taken by the Beneficiary does not compare to a mathematics curriculum, as the Beneficiary's course emphasis related to aviation electronics and communication engineering. The Director noted that while the Beneficiary took mathematics courses towards a master's degree, no actual degree was awarded.⁴ He determined that the Beneficiary does not have a master's degree or bachelor's degree in mathematics education, general mathematics, or related field as required by the labor certification. We agree.

On appeal, the Petitioner asserts that we should accept the evaluation of [REDACTED] as it is "not in any way questionable."⁵ The Petitioner states that the evaluation compares the Beneficiary's relevant college courses with the corresponding courses in the field of mathematics at a typical U.S. degree program. [REDACTED] states that the Beneficiary has covered "essentially all" (but not all) of the courses in a typical U.S. regionally accredited bachelor's degree in mathematics, and he includes the Beneficiary's master's degree courses in his comparison. However, he does not conclusively state that the Beneficiary's bachelor's degree is the foreign equivalent of a U.S. bachelor's degree in mathematics education, general mathematics, or a related field.

³ The Beneficiary's accumulation of academic credits is not, however, the master's degree required by the labor certification. The Petitioner concedes on appeal that the Beneficiary does not have the required master's degree.

⁴ The Petitioner stated that the Beneficiary quit the master's program before receiving his degree.

⁵ USCIS may reject or afford less evidentiary weight to an expert opinion that conflicts with evidence or "is in any way questionable." *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988).

The evaluations submitted by the Petitioner are dissimilar. The evaluation from [REDACTED] concludes that the Beneficiary's credentials are the equivalent of a bachelor of science in electrical engineering with emphasis on aviation electronics and communications engineering, plus additional credits in education and mathematics; the evaluation from [REDACTED] concludes that the Beneficiary has covered essentially all of the courses in a typical U.S. regionally accredited bachelor's degree in mathematics; and the evaluation from [REDACTED] Ph.D., equates the Beneficiary's bachelor of science degree, together with his 21 years of post-baccalaureate progressive work experience, to a U.S. master's degree in education.

The labor certification in this case requires at least a bachelor's degree in mathematics education, general mathematics, or a related field. The Beneficiary has a bachelor of science in aviation electronics and communication engineering. The terms of the labor certification do not permit an individual to qualify for the offered position based on additional non-degree coursework. The evidence in the record is not sufficient to establish that the Beneficiary's bachelor's degree in aviation electronics and communication engineering is, by itself, the foreign equivalent of a U.S. bachelor's degree in mathematics education, general mathematics, or a related field. Instead, the Beneficiary possesses educational credentials that the Petitioner claims are, when combined together, equivalent to a U.S. bachelor's degree in a relevant field. Since the Petitioner did not establish that the Beneficiary's degree is in one of the required fields of study, the Beneficiary does not meet the minimum requirements of the labor certification.⁶

The evidence in the record does not establish that the Beneficiary possessed a master's degree or bachelor's degree in mathematics education, general mathematics, or related field as required by the labor certification. Therefore, the Beneficiary does not meet the minimum requirements of the offered job, and the petition cannot be approved.

C. Ability to Pay the Proffered Wage

Although not addressed by the Director, the record does not establish that the Petitioner has the continuing ability to pay the proffered wage from the priority date. The proffered wage is \$40,352 per year.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be

⁶ Also on appeal, the Petitioner asserts that the Beneficiary can meet the requirements of 8 C.F.R. § 204.5(k)(2) by combining degrees, master's and bachelor's coursework, and experience. The Petitioner submits copies of correspondence dated January 7, 2003, and July 23, 2003, respectively, written by Efrén Hernández, III, former Director of Business and Trade Services of USCIS, expressing his opinion about the possible means to satisfy the requirement of a foreign equivalent of a U.S. advanced degree for purposes of 8 C.F.R. § 204.5(k)(2). Whether or not the Beneficiary possesses an advanced degree or its equivalent under 8 C.F.R. § 204.5(k)(2) is a separate issue from whether or not the Beneficiary meets the educational requirements of the labor certification.

accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

A petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'I Comm'r 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, USCIS requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'I Comm'r 1967).

In this case, the record does not contain annual reports, federal tax returns, or audited financial statements for the Petitioner for 2014 onward as required by 8 C.F.R. § 204.5(g)(2).⁷ Thus, the Petitioner has not established its ability to pay the proffered wage.

II. CONCLUSION

The record does not establish that the Beneficiary has a degree in the field of study required by the labor certification. Accordingly, the Beneficiary is not qualified for the offered position. The record also does not establish the Petitioner's continuing ability to pay the proffered wage.

ORDER: The appeal is dismissed.

Cite as *Matter of A-E-S-D-*, ID# 366036 (AAO May 30, 2017)

⁷ The record contains the Petitioner's audited financial statements for the year ending June 30, 2013; an IRS Form W-2, Wage and Tax Statement issued by the Petitioner to the Beneficiary in 2014; and paystubs issued to the Beneficiary by the Petitioner for several pay periods in 2015.