U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-C-, LLC

DATE: SEPT. 28, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an electronic commerce business, seeks to employ the Beneficiary as a senior operations manager. 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 "EB-2" 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 terms of the labor certification do not support EB-2 classification because it stated minimum requirements that are less than the requirements for an advanced degree. The Petitioner filed a motion to reconsider this decision with the Director, and the Director denied the motion.

On appeal, the Petitioner states that the terms of the labor certification meet the minimum requirements for advanced degree professional classification under section 203(b)(2) of the Act.

Upon *de novo* review, we will sustain the appeal.

The regulations state that in order to be eligible for EB-2 classification, the job offer portion of the labor certification must demonstrate that the job requires a professional holding an advanced degree or the equivalent. 8 C.F.R. § 204.5(k)(4)(i). The regulation at 8 C.F.R. § 204.5(k)(2) defines "advanced degree" as a master's degree or a bachelor's degree followed by five years of progressive experience. If the labor certification allows for less than an advanced degree, the position will not qualify for EB-2 classification.

The Director denied the petition, concluding that the terms of the labor certification do not support EB-2 classification because it stated minimum requirements in section H.14 that are less than an advanced degree. Section H.14 states that the Petitioner is "willing to accept *any suitable combination of education, experience or training* that is equivalent to the actual minimum

requirements of the position and shows demonstrable ability in the skill sets required for the position." This language in italics, although in different word order, is known as *Kellogg* language.[1]

We generally do not interpret the *Kellogg* language in section H.14 to mean that the employer would accept lesser qualifications than the stated primary and alternative requirements on the labor certification, thereby disqualifying the position for advanced degree professional classification unless the additional language allows for requirements that fall below the minimum EB-2 requirements.

Here, section H.14 states that the Petitioner is "willing to accept any suitable combination of education, experience or training *that is equivalent to the actual minimum requirements of the position and shows demonstrable ability in the skill sets required for the position.*" The phrase in italics is the portion that differs from the *Kellogg* language. We conclude that the additional language does not add any additional meaning that would allow for anything less than an advanced degree. The language indicates that any suitable combination of education and experience is allowed only if it is equivalent to the actual minimum requirements stated in sections H.4, H.6, and H.8 of the labor certification. Therefore, the position offered meets the minimum requirements for EB-2 classification.

ORDER: The appeal is sustained.

Cite as *Matter of A-C-, LLC*, ID# 803225 (AAO Sept. 28, 2017)

[1] The Board of Alien Labor Certification Appeals (BALCA) held in *Francis Kellogg*, 1994-INA-465 and 544, 1995-INA 68 (BALCA Feb. 2, 1998) (en banc), that "where [the beneficiary] does not meet the primary job requirements, but only potentially qualifies for the job because the employer has chosen to list alternative job requirements, the employer's alternative requirements are unlawfully tailored to the [beneficiary's] qualifications . . . unless the employer has indicated that applicants with any suitable combination of education, training or experience are acceptable."