



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

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

MATTER OF A-B-C-, LLC

DATE: JAN. 10, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a renewable energy company that converts sugarcane waste into coal-substitute fuel, seeks to employ the Beneficiary as chief engineer. It requests his classification under the second-preference, immigrant category as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 202(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, “EB-2” category allows a U.S. business to sponsor a foreign national for lawful permanent resident status to work in a job requiring at least a master’s degree, or a bachelor’s degree followed by five years of experience.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate its required ability to pay the position’s proffered wage, or the Beneficiary’s possession of the minimum educational requirements of the offered position.

On appeal, the Petitioner asserts that the Director disregarded or overlooked evidence establishing the company’s ability to pay and the Beneficiary’s qualifying education.

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

I. EMPLOYMENT-BASED IMMIGRATION

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)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position, and that employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If the DOL approves a position, an employer must next submit the labor certification 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 DOL-certified job requirements of an offered position. If USCIS grants a petition, a foreign national may finally 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.

II. EDUCATIONAL REQUIREMENTS OF THE OFFERED POSITION

A petitioner must establish a beneficiary's possession, by a petition's priority date, of all DOL-certified job requirements of an offered position.¹ *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). In evaluating a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine a position's minimum requirements. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Madany v. Smith*, 696 F.2d. 1008, 1015 (D.C. Cir. 1983) (holding that the "DOL bears authority for setting the *content* of the labor certification") (emphasis in original).

Here, the labor certification identifies the minimum educational requirements of the offered position of chief engineer as a U.S. master's degree or a foreign equivalent degree in chemical engineering.² The certification indicates that the Petitioner will accept neither an alternate field of study, nor an alternate combination of education and experience.

The Petitioner submitted documentation indicating that, by the petition's priority date, the Beneficiary earned a *civilingenjorsexamen*, a Swedish master's degree, in chemical engineering. The Petitioner also provided two, independent evaluations concluding that the foreign credential equates to a U.S. master's degree in chemical engineering. USCIS may reject or give lesser evidentiary weight to an expert evaluation that conflicts with other evidence or "is in any way questionable". *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). Here, the evaluations submitted by the Petitioner do not fully analyze the Beneficiary's credentials. The first evaluation states that the Beneficiary received his *civilingenjorsexamen* after completing a four-and-a-half-year university program and that, before his university admission, he likely received a four-year *avgangsbetyg*, a Swedish high school leaving certificate. However, the evaluation does not state definitively whether the Beneficiary possesses an *avgangsbetyg* or whether his *civilingenjorsexamen* program required the credential for admission. The second evaluation does not state the length of the Beneficiary's university program but rather relies on the "number of credits earned" and "the hours of academic course work." However, the Beneficiary's educational documentation does not list the number of credits he earned or indicate the number of coursework hours he completed. The evaluator does not explain how he reached his conclusions without this information.

In addition to the deficiencies discussed above, as the Director noted, the evaluations' conclusions conflict with that of the Electronic Database for Global Education (EDGE), an online resource that

¹ This petition's priority date is June 16, 2017, the date the DOL accepted the labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

² The labor certification states that the position also requires 10 years of specialized experience. The Beneficiary's experience, however, is not at issue.

federal courts have found to reliably evaluate foreign educational credentials.³ EDGE describes a *civilingenjorsexamen* as the equivalent of a U.S. bachelor's degree, not a master's degree. Although the second evaluation cites EDGE as a reference and identifies the evaluator as the author of more than 150 entries in the electronic database, the evaluator does not explain why he disagrees with EDGE's conclusion regarding a *civilingenjorsexamen*. See *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record). Based on the evaluations and the information from EDGE, the record does not establish that the Beneficiary's *civilingenjorsexamen* is equivalent to a U.S. master's degree.

In its notice of appeal, the Petitioner also asserts that the Director "ignored" additional records of the Beneficiary's studies. These records refer to courses the Beneficiary completed at another university before receiving the *civilingenjorsexamen*. The evaluations of record, however, do not mention these courses, nor did the Petitioner submit separate assessments of them. Thus, the additional coursework does not demonstrate the Beneficiary's possession of a master's degree. The Director's disregard of the courses therefore did not prejudice the Petitioner. Also, even if the additional coursework equates to U.S. university credit, the record would not indicate that the Beneficiary's *civilingenjorsexamen* program included those courses. The labor certification states that the offered position requires a single degree that is, or equates to, a U.S. master's degree. A combination of the Beneficiary's additional coursework and his *civilingenjorsexamen* therefore would not satisfy the minimum requirements of the offered position.

For the foregoing reasons, the record does not establish the Beneficiary's possession of the minimum educational qualifications for the offered position.

III. ABILITY TO PAY THE PROFFERED WAGE

A petitioner must also demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal tax returns, or audited financial statements. *Id.*

In determining ability to pay, USCIS examines whether a petitioner paid a beneficiary the full proffered wage each year from a petition's priority date. If a petitioner did not annually pay the full proffered wage, USCIS considers whether it generated annual amounts of net income or net current assets sufficient to pay any differences between the proffered wage and wages paid. If net income and net current assets are insufficient, USCIS may consider other factors affecting a petitioner's

³ See, e.g., *Virag, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as "a respected source of information"). EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), "a non-profit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in more than 40 countries." AACRAO, "Who We Are," <https://www.aacrao.org/who-we-are> (last visited Jan. 8, 2019).

ability to pay a proffered wage. *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).⁴

Here, the labor certification states the proffered wage of the offered position of chief engineer as \$200,000 a year. As previously noted, the petition's priority date is June 16, 2017.

The Petitioner submitted copies of its audited financial statements for 2015 and 2016, and the federal income tax returns of its parent company for 2016. Contrary to 8 C.F.R. § 204.5(g)(2), however, the record lacks required evidence of the Petitioner's ability to pay in 2017, the year of the petition's priority date. The record therefore does not establish the Petitioner's ability to pay the proffered wage from the petition's priority date onward. Without required evidence for 2017, other factors alone cannot demonstrate the Petitioner's ability to pay the proffered wage. We will therefore not consider the Petitioner's ability to pay under *Sonogawa*.

On appeal, the Petitioner asserts that the Director ignored evidence that, after the petition's priority date, the company paid the Beneficiary a wage rate above the proffered wage. A payroll record indicates that the Petitioner paid the Beneficiary \$7,692.31 for a two-week period in October 2017. If the Beneficiary had received that amount every two weeks over the full year, his total wages would have exceeded the annual proffered wage of \$200,000 by six cents. The Petitioner therefore argues that the payroll record demonstrates its ability to pay the proffered wage.

The Petitioner's payment of the proffered wage over a two-week period in 2017, however, does not establish its ability to pay the wage over the full year. Indeed, the Petitioner submitted a copy of an IRS Form W-2, Wage and Tax Statement, indicating that it paid the Beneficiary a total of \$198,521.50, less than the annual proffered wage, in 2017. The record therefore does not establish that the Petitioner paid the Beneficiary the annual proffered wage that year.

Also, even if the Petitioner demonstrated that its 2017 payments to the Beneficiary equaled or exceeded the annual proffered wage, the record would lack required evidence for that year. Without regulatory required evidence, the record would not establish the Petitioner's ability to pay the proffered wage. The Petitioner has therefore not demonstrated its ability to pay the proffered wage from the petition's priority date onward.⁵

IV. CONCLUSION

The record on appeal does not establish the Beneficiary's possession of the minimum education required for the offered position or the Petitioner's ability to pay the proffered wage. We will therefore affirm the Director's decision.

⁴ Federal courts have upheld USCIS' method of determining a petitioner's ability to pay a proffered wage. *See, e.g., River St. Donuts, LLC v. Napolitano*, 558 F.3d 111, 118 (1st Cir. 2009).

⁵ In any future filings in this matter, the Petitioner must submit copies of annual reports, federal taxes, or audited financial statements for 2017 and, if available, 2018. The Petitioner may also submit additional evidence of its ability to pay, including materials supporting the factors stated in *Sonogawa*.

Matter of A-B-C-, LLC

ORDER: The appeal is dismissed.

Cite as *Matter of A-B-C-, LLC*, ID# 2061040 (AAO Jan. 10, 2019)