U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28470110

Date: SEP. 26, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Advanced Degree)

The Petitioner, a provider of information technology consulting services, seeks to permanently employ the Beneficiary as a principal consultant, ERP.[1] The company requests his classification under the employment-based, second preference (EB-2) immigrant visa category as a member of the professions holding an "advanced degree" or its equivalent. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). U.S. businesses may sponsor noncitizens for permanent residence in this category to work in jobs requiring at least bachelor's degrees followed by five years of progressive experience in applicable specialties. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree").

The Acting Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the Beneficiary's possession of a bachelor's degree as required for the offered job and the requested immigrant visa category. On appeal, the Petitioner submits additional evidence and contends that the Director improperly disregarded parts of an expert opinion letter.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the company has not established the equivalency of the Beneficiary's three-year foreign degree to a U.S. baccalaureate. We will therefore dismiss the appeal.

I. LAW

Immigration as an advanced degree professional generally follows a three-step process. First, a prospective employer must obtain certification from the U.S. Department of Labor (DOL) that: there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and a noncitizen's employment in the position will not harm wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D).

Second, an employer must submit a DOL-approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204(a)(1)(F) of the Act, 8 U.S.C.

[1] The record indicates that "ERP" stands for enterprise resource planning software.

§ 1154(a)(1)(F). Among other things, USCIS determines whether a noncitizen beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(k)(3); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977).

Finally, if USCIS approves a petition, a beneficiary 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.

II. ANALYSIS

An advanced degree professional must have an advanced degree or its equivalent. Section 203(b)(2)(A) of the Act. The term "advanced degree" means:

> any 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.

8 C.F.R. § 204.5(k)(2).

Also, a petitioner must demonstrate that, by a petition's priority date, a beneficiary met all DOL-certified job requirements on a labor certification. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). This petition's priority date is April 4, 2022, the date DOL accepted the Petitioner's labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

When assessing a beneficiary's qualifications, USCIS must examine the job-offer portion of a labor certification to determine a job's minimum requirements. USCIS may neither ignore a certification term nor impose unstated requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

The Petitioner's labor certification states the minimum requirements of the offered position of principal consultant, ERP as a U.S. bachelor's degree or a foreign equivalent degree in management information systems (MIS), accounting, or a "related" field, plus five years of experience "in the job offered" or as a business systems analyst, senior functional consultant, or a related occupation. Also, part H.14 of the labor certification - "Specific skills or other requirements" - states that "experience must include Oracle Financial tools, SCM, Oracle Costing Modules, SQL, TOAD, XLM Publisher and Workflow."

On the labor certification, the Beneficiary attested that, by the petition's priority date, he received a bachelor's degree in accounting. The Petitioner submitted copies of documents from an Indian university indicating the Beneficiary's receipt of a three-year bachelor of commerce degree in 1999.[2] The Petitioner also provided an independent evaluation equating his Indian bachelor's degree to three

[2] On the labor certification, the Beneficiary stated his receipt of a 2007 degree from the Institute [redacted] The record, however, lacks evidence that he has such a credential, or that the [redacted] issues degrees.

years of U.S. college or university studies towards a bachelor of science degree in accounting. The record also contains a printout from the Electronic Database for Global Education (EDGE), stating that a three-year Indian bachelor of commerce degree equates to three years of U.S. college or university studies. Federal judges have found EDGE, an online resource created by the American Association of Collegiate Registrars and Admissions Officers, to constitute a reliable source of foreign educational equivalencies. *See, e.g., Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as "a respected source of information").

In a request for additional evidence, the Director noted that the record did not indicate the equivalency of the Beneficiary's three-year foreign credential to a U.S. bachelor's degree, which usually requires four years of full-time, post-secondary studies. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). The Director therefore asked the Petitioner to submit additional evidence of the Beneficiary's possession of the required degree.

The Petitioner's response included a new educational evaluation from a different evaluator and an expert opinion letter from a professor at a Costa Rican university. These documents state the equivalency of the Beneficiary's three-year Indian degree to a U.S. bachelor of science degree in MIS. Despite the additional evidence, the Director concluded that the Petitioner did not demonstrate the Beneficiary's qualifying education for the offered job or the requested immigrant visa category.

A. The Expert Opinion Letter

On appeal, the Petitioner contends that the Director improperly disregarded the expert's opinion that the Beneficiary's number of university classroom hours of instruction in India demonstrates the equivalence of his three-year degree to a U.S. baccalaureate. The record indicates that U.S. baccalaureates generally require completion of 120 credit hours. The Beneficiary attested that his university in India required him to attend 2,400 classroom hours of instruction to obtain his degree. The expert's letter states: "This [amount] equates to a total of 160 credit hours when converted to the United States system."

We do not find the expert opinion letter to be persuasive, however. First, its conclusion that the Beneficiary's three-year foreign credential equates to a U.S. bachelor's degree conflicts with the findings of the prior evaluation the Petitioner submitted and the EDGE report. The expert letter states that it "supersedes any previous evaluation." But we decline to disregard the prior evaluation and the EDGE report submitted by the Petitioner. The immigration service may reject or afford lesser evidentiary weight to an advisory opinion that conflicts with other information or is "in any way questionable." *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988).

Also, the expert opinion letter miscites information. For example, the letter quotes an article to assert that, because U.S. universities admit three-year degree holders from the European Union and Israel into master's degree programs, "Indian [three-year] bachelor degree-holders should be provided the same opportunity to pursue graduate education in the U.S." *See* Leo J. Sweeney & Ravi Kallur, "Three Year Undergraduate Degrees: Recommendations for Graduate Admission Consideration," *ADSEC News*, 5, Apr. 2005. But the cited article does not suggest that all three-year Indian degrees equate to U.S. baccalaureates. Rather, the article proposes only two specific equivalents: a first-class honors three-year degree awarded after a secondary degree; and a three-year degree awarded in addition to a

post-graduate diploma. The record does not indicate the Beneficiary's receipt of his degree after obtaining a secondary degree or his additional receipt of a post-graduate diploma. Thus, the cited article does not truly support the Beneficiary's purported possession of the equivalent of a U.S. bachelor's degree.

Also, the expert opinion letter does not demonstrate that lecture hours are an appropriate measure for assigning credits in the Indian higher-educational system. The U.S. system presumes two hours of individual study time for each classroom hour of post-secondary instruction. *See* 34 C.F.R. § 600.2 (defining the term "credit hour"). If India has a different ratio between classroom instruction and individual studies, application of the U.S. credit system to Indian classroom hours would be inappropriate.

Further, the expert opinion letter states that the Beneficiary had a different major field of study (MIS) than the one indicated in the prior evaluation (accounting) and does not adequately explain the inconsistency. A copy of the Beneficiary's consolidated marks memorandum indicates that half of the 14 university subjects he completed relate to accounting, including: Accountancy I; Accountancy II; Accountancy III; Cost Accountancy; Auditing; Management Accountancy; and Income Tax. His other completed courses include: Business Economics; Industrial Organization Management; Indian Heritage and Culture; Business Statistics; Banking Theory and Philosophy; Science and Civilization; and Mercantile and Indian Law. Despite the Beneficiary's concentration of accounting courses and his lack of classes in information systems, the expert letter concludes that the Beneficiary has the equivalent of a U.S. bachelor's degree in MIS. The expert reasons that, because some U.S. MIS graduate programs admit students holding degrees in undergraduate commerce, the Beneficiary's commerce degree equates to a bachelor's degree in MIS. The letter states:

> The acceptability of a bachelor's degree in commerce as [a] pre-requisite for admission to graduate study in MIS at an accredited institution in the United States establishes a functional equivalency . . . [because] the recognition of a foreign qualification should be determined according to its practical utility.

The expert opinion letter, however, does not adequately explain how the Beneficiary's degree equates to a U.S. bachelor of science degree in MIS when the record indicates that he did not complete any courses in information systems. This deficiency also casts doubt on the credibility of the expert opinion letter as a whole. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (stating that doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of remaining evidence).

The Petitioner also contends that the Director disregarded the expert's critique of *Shah*, which the Director cited in both the RFE and the decision. In *Shah*, the Regional Commissioner ruled, in part, that the petitioner did not demonstrate the equivalency of a beneficiary's three-year Indian bachelor's degree in chemistry to a U.S. baccalaureate in the same field. *Matter of Shah*, 17 I&N Dec. at 245-46, 247. The expert's letter contends that the Regional Commissioner erred for various reasons, including that he: reviewed incomplete evidence; and disregarded the "intensity" of the beneficiary's university instruction in India and his admission into a U.S. university graduate program.

The Director, however, cited *Shah* only for the proposition that U.S. bachelor's degrees usually require four years of full-time, post-secondary education. *See Matter of Shah*, 17 I&N Dec. at 245. Other

publicly available sources confirm this uncontroversial proposition. *See, e.g.*, Nat'l Ctr. for Educ. Statistics, App'x B. Glossary, https://nces.ed.gov/programs/raceindicators/glossary.asp (defining the term "bachelor's degree" as a "degree granted for the successful completion of a baccalaureate program of studies, usually requiring at least 4 years (or equivalent) of full-time college-level study"). Thus, even if the Regional Commissioner wrongly decided *Shah*, the Director correctly found that U.S. bachelor's degrees usually require four years of full-time, post-secondary education. Thus, the Director's disregard of this part of the expert's letter is immaterial.

B. Evidence on Appeal

The Petitioner also submits an affidavit from a purported former classmate of the Beneficiary regarding the number of classroom hours their university required them to complete to obtain their bachelor of commerce degrees. We do not consider evidence submitted on appeal, however, if a petitioner received a prior request for such evidence and a reasonable opportunity to provide it, and, at the time of the request, the evidence was reasonably available. *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

The Director's RFE asked the Petitioner to submit additional evidence of the Beneficiary's educational qualifications and provided the company more than 12 weeks to respond. Thus, the record shows the company received adequate notice and opportunity to respond. The Petitioner states that university evidence of the Beneficiary's classroom hours is unavailable because his school no longer operates. But the company did not provide documentation of the university's purported closure, or assert or demonstrate the unavailability of the letter from the Beneficiary's classmate at the time of the RFE. Thus, we assume that the letter was reasonably available. We therefore decline to consider it on appeal.

Even if we accepted the letter on appeal, it would not establish the equivalency of the Beneficiary's degree to a U.S. bachelor's degree. As previously discussed, the expert opinion letter does not persuade us regarding the relevancy of his number of classroom hours in India, particularly where the record shows he took no substantive courses in MIS, the claimed major field of study.

III. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's educational qualifications for the offered job or the requested immigrant visa category. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.