



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

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

In Re: 30415536

Date: MAY 2, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an information and technology services business, seeks to employ the Beneficiary as a database administrator under the employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability in the sciences, arts or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish the Beneficiary alternatively met the advanced degree requirements through five years of progressive post-baccalaureate experience at the time of filing the labor certification. Subsequently, the Director granted the Petitioner's combined motion to reopen and reconsider and issued a new decision affirming the denial of the petition. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL).¹ *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). 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 files 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,

¹ The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is May 15, 2019. *See* 8 C.F.R. § 204.5(d).

the foreign national applies 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.

Section 203(b)(2)(A) of the Act grants preference classification to qualified immigrants who are members of the profession holding advanced degrees or their equivalent. *See also* 8 C.F.R. § 204.5(k)(1).

The regulation at 8 C.F.R. § 204.5(k)(2) defines an advanced degree as any U.S. academic or professional degree or a foreign equivalent degree above that of baccalaureate. A U.S. 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. *Id.* Further, the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires an official academic record showing a U.S. baccalaureate degree or foreign equivalent degree and evidence in the form of letters from current and former employers reflecting at least five years of progressive post-baccalaureate experience in the specialty.

A beneficiary must also have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg'l Comm'r 1977).

II. ANALYSIS

The labor certification indicates that the offered position requires at least a U.S. bachelor's degree, or foreign equivalent degree, in computer science, engineering, mathematics, business administration, or related quantitative field and at least 60 months of experience. The Petitioner also indicated the position could accept an alternate, related occupation with at least 60 months of experience.

The record indicates the Beneficiary received a bachelor of engineering degree from the [redacted] [redacted] in India, satisfying a foreign equivalent degree. However, the Director determined that the record did not demonstrate the Beneficiary had the five years of progressive post-baccalaureate experience required by the terms of the labor certification. Specifically, the Director found the Petitioner did not establish the Beneficiary received his foreign equivalent degree in 2005; rather than 2011, the issue date on the degree certificate. Thus, the Director concluded the Beneficiary only had approximately 44 months of post-baccalaureate experience from February 2011, approximately 16 months short of the required minimum of 60 months of experience.

The specific issue we must address is *when* the Beneficiary received his bachelor's degree from the [redacted]

On appeal, the Petitioner asserts that the Director misapplied *Matter of O-A-, Inc.*, Adopted Decision 2017-03 (AAO Apr. 17, 2017), in requiring the submission of a provisional certificate and “[t]he substantial evidence in the record clearly supports, by a preponderance of the evidence, the conclusion that the Beneficiary completed all degree requirements in November 2005, not nearly six years later in February 2011.” For the reasons discussed below, the Petitioner has not established the Beneficiary received his bachelor's degree in November 2005.

The statute and regulations governing this classification refer to a “degree,” not a diploma. The “initial evidence” requirement for professionals under 8 C.F.R. § 204.5(l)(3)(ii)(C) states that “[e]vidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.” We have previously determined that an “official academic record” is not limited to a formal diploma.²

Accordingly, we must conduct a case-specific analysis to determine when the Beneficiary completed all substantive requirements to earn the degree and when the university approved the degree as demonstrated by an official academic record. When determining whether a document is an official academic record that substantiates a claimed degree, we may consider whether the document was issued by a university in the normal course of its business; whether the document was issued contemporaneous with events; and whether the document indicates that all degree requirements, not just the required coursework, have been completed.³

At the outset, although the Director indicated the Petitioner’s failure to provide the Beneficiary’s provisional certificate, *Matter of O-A-, Inc.* does not require such a submission. Rather, the adopted decision states that a provisional certificate will constitute the official academic record of a beneficiary’s “degree” for purposes of calculating the five-year period of post-graduate experience, if a petitioner establishes that all the substantive requirements for the degree were met and that the degree was in fact approved by the responsible university body at the time a provisional certificate was issued. *Matter of O-A-, Inc.*, Adopted Decision 2017-03, at 4.⁴ When a petitioner submits a provisional certificate as evidence of a beneficiary’s receipt of a degree, we consider evidence presented regarding the individual nature of each university’s or college’s requirements for each program of study and each student’s completion of those requirements. A petitioner bears the burden to establish that a beneficiary’s provisional certificate reflects that, at the time the certificate was issued, all the substantive requirements for the degree were met and the degree was in fact approved by the responsible college or university body. *Id.*

Here, the Petitioner states that the Beneficiary has never received a provisional certificate. If he would have received one, then it could have been used in determining the five-year post-baccalaureate experience. Thus, we must conduct a case-specific analysis based on the submitted evidence to determine when the Beneficiary completed all substantive requirements to earn the degree and when the university approved the degree as demonstrated by an official academic record.⁵

The record contains a degree certificate from the [redacted] stating that “. . . having been examined and found duly qualified for the degree of Bachelor of Engineering (Instrumentation & Control) and placed in the Higher Second Class in November 2005. The said degree has been

² See *Matter of O-A-, Inc.*, Adopted Decision 2017-03 at 3.

³ See *Matter of O-A-, Inc.*, Adopted Decision 2017-03 at 4.

⁴ The provisional degree certificate in *Matter of O-A-, Inc.* was determined to be consistent with that described by The American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE), which states that a provisional degree certificate issued by an Indian university can provide “evidence of completion of all requirements for the degree in question . . . and is comparable to an official U.S. academic transcript with a degree statement certifying completion of all requirements for the degree . . .” See *India: Provisional Degree Certificate*, AACRAO, <https://www.aacrao.org/edge/country/credentials/credential/india/provisional-degree-certificate>.

⁵ See *Matter of O-A-, Inc.*, Adopted Decision 2017-03 at 4.

conferred on him.” The degree certificate is signed by the vice chancellor and dated “9th February 2011.” The document indicates the Beneficiary “was placed in the Higher Second Class in November 2005” rather than completing all substantive requirements and conferring his degree in November 2005.

Similarly, the record includes an examination document, dated June 12, 2006, from the controller of examinations indicating the Beneficiary “[p]assed the: B.E. (REV) (INSTRU. & CONTROL) examination held by [redacted] in the month of NOV 2005 and was placed in HIGHER SECOND CLASS.” Again, the document only shows the Beneficiary passing the examination in November 2005 and placing in the higher second class. Although the brief references *Matter of Productivity Improvements, Inc.*, 87-INA-671 (Sept. 27, 1988) (finding no difference between receiving the degree and completing all the requirements for the degree), the Petitioner did not show the Beneficiary completed all substantive requirements and conferred his bachelor’s degree in November 2005. In addition, the examination document does not indicate that the Beneficiary met all substantive requirements for his degree in November 2005 date or specify when the degree was approved by the university. Further, the record does not contain sufficient evidence corroborating the substantive requirements of the Beneficiary’s specific program of study. Without such evidence, the record does not support the Petitioner’s claims that the Beneficiary completed all substantive requirements, and that the university approved the issuance of his bachelor of engineering degree, in November 2005.

Furthermore, the Petitioner submitted a university-issued statement of marks from the [redacted] [redacted] indicating the Beneficiary’s grades on examinations for each of the four years with each year showing two semesters. The statement of marks for the November 2005 examination was issued on June 12, 2006. However, the statement of marks does not demonstrate his completion of all degree requirements in November 2005. The document simply confirms when he took his examinations in each semester and indicates his last examination in November 2005; the Petitioner did not submit a consolidated statement of marks with additional relevant information, such as the date the university approved the degree. In addition, the statement of marks for the Beneficiary’s final semester’s examinations was issued in June 2006 and does not support a determination that the university approved his completion of all degree requirements in November 2005. The Petitioner has not provided an explanation for the seven-month delay between the date of the last semester examination and the final statement of marks.

Moreover, the Petitioner provided a January 10, 2023 letter from the director of the board of examinations and evaluation for [redacted] (formerly the [redacted]). The letter claims the Beneficiary satisfied the requirements for the bachelor’s degree in November 2005, and both the June 12, 2006 and February 9, 2011 documents discussed above were issued by the university. The letter, written nearly 17 years after the Beneficiary’s purported completion of the degree, was issued in response to the Beneficiary’s inquiries, not in the university’s normal course of business, and after the Director’s decision and in support of the motion. Further, this letter is not an official academic record substantiating that the degree was awarded in November 2005. Although the letter states that the Beneficiary “was examined and found duly qualified for the said degree in the month of November 2005,” the record otherwise lacks any evidence documenting the substantive requirements for the university’s bachelor of engineering degree at the time of the Beneficiary’s enrollment. Further, the letter does not explain why the Beneficiary was issued an examination

document in June 2006 when he purportedly conferred his bachelor's degree seven months earlier in November 2005.

Finally, as additional proof that the Beneficiary conferred his degree in November 2005, the Petitioner cites to submitted evaluations of his educational credentials. The first evaluation from W-E- states that the Beneficiary's bachelor of engineering degree was awarded in 2005 and then generally discusses core curriculum of the [redacted]. However, the record does not support this statement and the evaluator does not explain how it reached this conclusion. As discussed above, the evidence indicates the Beneficiary passed his final semester examinations in November 2005, but it does not demonstrate that the degree was approved as completed and awarded by the university at that time. Again, the Petitioner has not explained the seven-month delay between the November 2005 examinations and the June 2006 examination document and the last statement of marks, and the record does not contain contemporaneous evidence indicating that the university approved the Beneficiary's completion of the degree in 2005.

The second evaluation from R-K- states that the Beneficiary "passed all eight semesters" according to the statement of marks, and the Beneficiary "studied for eight semesters and completed his studies in November 2005." The issue here is not whether the Beneficiary completed all eight semesters or passed his final exam but when the Beneficiary completed all substantive requirements to earn the degree and when the university approved the degree. R-K- further claims that "[a]s evidenced by the diploma, upon his successful completion of the final examination in November 2005, [the Beneficiary] completed all final examinations and thus graduated from the program," and "[s]ubsequent to that date, he was not required to, nor did he, complete any additional coursework towards her [sic] degree." Again, the diploma does not reflect the Beneficiary graduated from the program in November 2005 rather than indicating the Beneficiary "was placed in the Higher Second Class in November 2005." Moreover, although the evaluation asserts that the Beneficiary was not required to complete any additional requirements, R-K- does not provide any corroborating information or evidence to support this assertion. The record lacks evidence documenting the substantive requirements for the university's bachelor of engineering degree at the time of the Beneficiary's enrollment.

On appeal, the Petitioner submits an updated evaluation from R-K-. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence and make these claims, we will not consider them for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").⁶

Based on a case-specific analysis of the educational documentation submitted in support of the petition, we conclude that the evidence does not support the Petitioner's claim that the Beneficiary was awarded

⁶ Regardless, the evaluation makes claims not supported in the record. Specifically, the evaluation claims that "the final year marks statement explicitly affirms [the Beneficiary's] completion of the bachelor's degree" and "the official degree certificate . . . explicitly states that [the Beneficiary] met all the requirements in November 2005." For the reasons discussed above, the statement of marks makes no indication of the Beneficiary completing the requirements for his bachelor's degree, nor does the degree certificate reflect the Beneficiary met all the requirements in November 2005. The evaluator does not explain how he formed these conclusions.

his bachelor of engineering degree in November 2005 or any date prior to February 2011. The Petitioner has not demonstrated the Beneficiary's possession, by the petition's priority date, of the requisite five years of post-baccalaureate experience required for the offered position.

III. CONCLUSION

For the reasons discussed, the record does not establish that the Beneficiary satisfied all requirements stated on the labor certification as of the priority date. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.