



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

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

MATTER OF P-, INC.

DATE: APR. 6, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an information technology services and products business, seeks to employ the Beneficiary as a business systems analyst. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigration classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1152(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 found that, based on the issuance date of the Beneficiary’s bachelor’s degree, the Beneficiary could not show, as required, a minimum of five years of post-baccalaureate experience to establish that she possesses the equivalent of an advanced degree.

On appeal, the Petitioner contends that it has established that the Beneficiary has the required five years of progressive post-baccalaureate experience as the Beneficiary earned her degree before her diploma was formally issued.

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

#### I. LAW

Employment-based immigration is generally a three-step process. First, an employer must obtain an approved ETA Form 9089, Application for Permanent Employment Certification (labor certification) from the U.S. Department of Labor (DOL).<sup>1</sup> See section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, 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. 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

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<sup>1</sup> The date the labor certification is filed, in cases such as this one, is called the “priority date.” A beneficiary must be eligible as of that date, and so in this case, the Beneficiary must have had the five years of requisite experience by the date the labor certification was filed.

(USCIS). See section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national must 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.

For an advanced degree professional position, the underlying labor certification must provide that the job requires an advanced degree or its equivalent. See 8 C.F.R. § 204.5(k)(4)(i). In pertinent part, U.S. Department of Homeland Security regulations define the term “advanced degree” as: “[A]ny 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) (emphasis added). To be eligible for this EB-2 classification solely on the basis of a foreign degree equivalent of a U.S. bachelor’s degree, a beneficiary must also possess five years of qualifying post-baccalaureate experience. 8 C.F.R. § 204.5(K)(3).

## II. ANALYSIS

The Beneficiary in this case possesses a bachelor’s degree in instrumentation engineering from [REDACTED] India. There is no question that the Beneficiary’s degree qualifies her for EB-2 classification or that her post-degree experience qualifies as progressive experience. The only question is when [REDACTED] conferred the Beneficiary’s “degree.” Specifically, we explore here whether the required five years of experience is to be measured from the date on which she received her formal diploma or earlier, when she completed all the requirements for degree and received what is commonly termed a *provisional certificate* reflecting that her degree was approved. We conclude that, based on the specific circumstances and evidence in this case, the provisional certificate constitutes the official academic record of the Beneficiary’s “degree” for the purposes of calculating the five-year period of post-graduate experience.

Several dates are critical to this case. The visa petition’s priority date (the date the labor certification was filed with DOL) is July 25, 2014. Although [REDACTED] issued a provisional certificate to the Beneficiary on August 28, 2006, it did not provide her with a diploma until October 4, 2010. The record establishes that she accrued approximately 2 years and 11 months of qualifying experience between her *diploma* date and her priority date. The Director accordingly concluded that the Beneficiary fell short of the five-year experience requirement and denied the petition.

On appeal, the Petitioner maintains that the Beneficiary does have the requisite five years of post-degree experience if we recognize her “degree” as having been conferred as of the date of her provisional certificate. The record contains experience letters that confirm the Beneficiary’s qualifying experience began as of November 13, 2006, and, therefore, that the Beneficiary has the required five years of experience if measured from the date of her provisional certificate.

The statute and regulations governing the EB-2 classification speak in terms of “degrees,” not diplomas. So, from the outset, it is clear that we cannot limit our analysis in this case to the date on which a university confers a formal diploma. Applicable EB-2 regulations reflect this distinction. For EB-2 “bachelor plus five” petitions, the “initial evidence” rule requires the submission of an “official academic record” showing that a beneficiary has a foreign equivalent “degree.” 8 C.F.R. § 204.5(k)(3)(i)(B). An “official academic record” is not limited to a formal diploma.<sup>2</sup> In fact, in the very next provision – relating to EB-2 exceptional ability petitions – the initial evidence rule expressly distinguishes between degree and diploma: “[a]n official academic record showing that the alien has a *degree, diploma, or similar award* from a college, university . . . .” 8 C.F.R. § 204.5(k)(3)(ii)(A) (emphasis added).<sup>3</sup>

Accordingly, we must conduct a case-specific analysis to determine whether, at the time a provisional certificate is issued, a beneficiary has completed all substantive requirements to earn the degree and the university has approved the degree. We must consider 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 will bear the burden to establish that a beneficiary’s provisional certificate reflects that, at the time the certificate was issued, all of the substantive requirements for the degree were met and that the degree was approved by the responsible university body.<sup>4</sup>

Here, the record demonstrates that, as of the issuance of the provisional certificate in August 2006, the Beneficiary had completed all substantive requirements and that [REDACTED] had approved the degree. The record contains the following documents contemporaneous with relevant events: a copy of the Beneficiary’s provisional certificate, dated August 28, 2006, which states that she “qualified for the Degree of Bachelor of Engineering . . . at the Final Examination held in May 2006;” a statement of the Beneficiary’s marks showing that she passed her final examination in instrumentation engineering in May 2006; a copy of the Beneficiary’s bachelor of engineering diploma, issued on October 4, 2010; and a copy of the Beneficiary’s academic transcripts.

In addition, the Petitioner submitted a November 4, 2015, statement from the registrar at [REDACTED] which indicates that the university “follows a standard practice of holding degree awarding Convocation[s] with a gap of some years, which sometimes may be four or five years” and

<sup>2</sup> See also USCIS Adjudicator’s Field Manual, Appendix 22-1, Memorandum from Michael D. Cronin, Acting Associate Commissioner, USCIS HQ 70/6.2, *Educational and Experience Requirements for Employment-Based Second Preference (EB-2) Immigrants* (March 20, 2000). <https://uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-26573/0-0-0-31107.html> (last accessed Mar. 29, 2017), (“Whether the alien beneficiary possesses the advanced degree should be demonstrated by evidence *in the form of a transcript from the institution* that granted the advanced degree. An adjudicator must similarly consider the *baccalaureate transcript* . . . .”) (emphasis added).

<sup>3</sup> While this provision helps clarify that the terms degree and diploma are not equivalent, we note generally that, in contrast to the advanced degree category, the EB-2 exceptional ability category is not grounded entirely in an academic award and thus its initial evidence rule is more expansive than that of the advanced degree category.

<sup>4</sup> Along with any other proffered evidence, a petitioner must also submit a copy of a beneficiary’s statement of marks or transcript to demonstrate years of study, and coursework completed, along with a copy of the provisional certificate. See 8 C.F.R. § 204.5(k)(3) (requiring the submission of an official academic record as evidence of a beneficiary’s possession of an advanced degree or equivalent of an advanced degree).

that it, therefore, issues provisional certificates to students who have obtained their degrees in order to meet these students' "immediate requirements." The registrar further states that the subsequent issuance of a final, original certificate at the time of convocation "is a mere formality recognizing one's degree & performance" and that the Beneficiary's provisional certificate is "proof . . . that she completed all requirements for her degree in 2006 and . . . achieved her Bachelor's degree at that time, despite the fact that her original degree certificate could be issued only in 2010."

Finally, we have considered information available from the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE),<sup>5</sup> and find it to support the Petitioner's claim and evidence. On the matter of provisional certificates issued by Indian universities, EDGE states:

The Provisional Degree Certificate is evidence of completion of all requirements for the degree in question, the name of the degree and the date upon which it was approved by the responsible university governing body, and is comparable to an official US academic transcript with a degree statement certifying completion of all requirements for the degree, the name of the degree and the date upon which it was approved by the academic senate at universities in the United States.<sup>6</sup>

We also note that EDGE reports that some students never receive their "final Degree Certificate," but instead rely on their provisional degree certificate as evidence of degree completion. *Id.*

### III. CONCLUSION

The Beneficiary's provisional certificate and her statement of marks demonstrate that the Beneficiary completed all the substantive requirements for a bachelor's degree and that [REDACTED] approved her degree. The Beneficiary's diploma is, therefore, established as a delayed formality and we find that the Beneficiary's provisional certificate conferred on her the foreign equivalent degree to a U.S. bachelor's degree. Applying the date of the provisional certificate, we also find the Beneficiary to have at least five years of qualifying post-baccalaureate employment experience as of the priority date. Therefore, the Petitioner has established that the Beneficiary meets the academic and experience requirements of the labor certification and for EB-2 classification.

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<sup>5</sup> AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher educational professionals who represent approximately 2,600 institutions in more than 40 countries. <http://www.aacrao.org/centennial/about.html> (last accessed Mar. 29, 2017). According to its registration page, EDGE is "a web-based resource for the evaluation of foreign educational credentials." <http://edge.aacrao.org/info/php> (last accessed Mar. 29, 2017).

<sup>6</sup> See *India: Provisional Degree Certificate*, AACRAO, <http://edge.aacrao.org/country/credential/provisional-degree-certificate> (last accessed Mar. 29, 2017).

*Matter of P-, Inc.*

**ORDER:** The appeal is sustained.

*Matter of P-, Inc.*, ID# 113465 (AAO Apr. 6, 2017)