



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

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

MATTER OF O-T- LLC

DATE: APR. 14, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a software consulting and staffing business, seeks to employ the Beneficiary as a programmer analyst. It seeks to classify the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 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. A bachelor's degree alone does not qualify as an "advanced degree," but a bachelor's degree plus five years of post-baccalaureate progressive experience will suffice for EB-2 classification purposes.

The Director of the Nebraska Service Center denied the petition. The Director found, based on the issuance date of the Beneficiary's bachelor's degree diploma, that the Beneficiary could not show a minimum of five years of post-baccalaureate experience, as required to establish that he possesses the equivalent of an advanced degree.

On appeal, the Petitioner contends that the Beneficiary does have the five years of post-baccalaureate experience, which should be measured from when he received a provisional degree certificate demonstrating that his degree was complete and approved, not from the later date when the diploma itself was issued.

Upon *de novo* review, we will withdraw the Director's decision. The case will be remanded to the Director for further consideration and the issuance of a new decision.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer must obtain 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 DOL certifies that there

¹ 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 requisite five years of experience by the date the labor certification was filed.

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. Second, the employer may file 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, the foreign national 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

A. Post-Baccalaureate Experience

For this advanced degree professional position, the 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, 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. See 8 C.F.R. § 204.5(k)(3).

The Beneficiary possesses a bachelor of engineering degree from [REDACTED] in [REDACTED] India. There is no question that the Beneficiary’s degree qualifies him for EB-2 classification or that his experience qualifies as progressive experience. The issue in this proceeding is *when* the Beneficiary received his “degree” from the university. More specifically, we will explore whether the “degree” dates from when the Beneficiary actually received the formal *diploma*, or earlier when he completed all of the requirements for the degree and received what is commonly termed a *provisional degree certificate* indicating that his degree was approved. We conclude, based on the specific circumstances and evidence in this case, that the provisional degree certificate constitutes the official academic record of the Beneficiary’s “degree” for purposes of dating the degree and calculating the five-year period of post-graduate experience.

In this case, the Beneficiary’s priority date (when the labor certification was filed) is May 27, 2015. [REDACTED] issued a provisional degree certificate to the Beneficiary on July 16, 2006. However, the Beneficiary did not receive his formal diploma until February 14, 2009. Following the receipt of his provisional degree certificate, the Beneficiary was employed by [REDACTED] from July 24, 2006, to December 7, 2007, and with [REDACTED] from December 10, 2007, to December 21, 2012.²

² The Beneficiary went to work for the Petitioner as a programmer analyst on December 24, 2012, and continued to be employed as such through the priority date of May 27, 2015, and beyond. This employment is not qualifying experience

Regarding February 14, 2009, as the date of the Beneficiary's degree, the Director found that the Beneficiary did not have five years of qualifying experience at the time his employment with [REDACTED] ended in December 2012. As calculated by the Director, the Beneficiary accrued just over three years and ten months of qualifying experience with [REDACTED] between his *diploma* date of February 14, 2009, and the date his employment ended in December 2012. Therefore, the Beneficiary did not meet the minimum experience requirement of the labor certification and the EB-2 visa classification.

On appeal, the Petitioner maintains that the Beneficiary did accrue the requisite five years of post-degree experience if we recognize that his "degree" was conferred on the earlier date of his provisional degree certificate, which was July 16, 2006. The Beneficiary began working in a qualifying capacity eight days later, more than two and one-half years before he received his formal diploma. So the Beneficiary has the required five years of experience if measured from the date of his provisional degree certificate, but not if measured from the date of his diploma.

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 to the date on which a university confers a formal diploma on its newest alumni. Applicable EB-2 regulations reflect this distinction. For these EB-2 "bachelor plus five" petitions, the "initial evidence" rule requires submission of an "official academic record" showing the 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.³ 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, certificate, or similar award* from a college, university," 8 C.F.R. § 204.5(k)(3)(ii)(A) (emphasis added).⁴

Accordingly, we must conduct a case-specific analysis to determine whether, at the time a provisional degree certificate is issued, the individual 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 degree certificate reflects that, at the time the certificate was issued, all of the substantive

under the terms of the labor certification (specifically, box J.21 of the ETA Form 9089).

³ 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 visited Mar. 15, 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).

⁴ 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.

requirements for the degree were met and the degree was in fact approved by the responsible university body.⁵

In this case, the record demonstrates that the provisional degree certificate in July 2006 was a certification that the Beneficiary had completed all substantive requirements and the university had in fact approved the degree. The record contains the following university documents contemporaneous with the relevant events: (1) copies of the Beneficiary's statements of marks from [REDACTED] for all eight semesters of his degree program from 2002 to 2006, showing that he passed all of the examinations; (2) a copy of the Beneficiary's provisional degree certificate issued by [REDACTED] on July 16, 2006, which states that the Beneficiary "has completed all the requirements and has become eligible for award of the BE, Electrical & Electronics Engg. in June 2006;" and (3) a copy of the Beneficiary's diploma that [REDACTED] issued on February 14, 2009. In addition, the Petitioner submitted a March 2016 letter from [REDACTED] registrar stating that the Beneficiary's "earned a Bachelor's degree in Electrical & Electronics in June 2006 after completing all the courses requirements (*sic*) . . . however his final degree was issued in February of 2009. Degree issue date should not be considered as degree completion date. In [the Beneficiary's] case degree completion date is June 2006."

Finally, we turn to information publicly available from the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE),⁶ and note that it accords with the Petitioner's claim and evidence. On the matter of provisional degree certificates issued by Indian universities, AACRAO 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.⁷

EDGE additionally notes that some students never receive their "final Degree Certificate," but instead rely on the provisional degree certificate as evidence of degree completion. *Id.*

⁵ Along with any other proffered evidence, petitioners 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).

⁶ AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in over 40 countries." <http://www4.aacrao.org/centennial/about.htm> (last visited Mar. 15, 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 visited Mar. 15, 2017).

⁷ *See India: Provisional Degree Certificate*, AACRAO, <http://edge.aacrao.org/country/credential/provisional-degree-certificate> (last visited Mar. 15, 2017).

The provisional degree certificate, together with the statements of marks, demonstrates that the Beneficiary completed all the substantive requirements and that the university approved his degree. We find that the issuance of the provisional degree certificate conferred on the Beneficiary the foreign equivalent of a bachelor's degree. Applying the date of the provisional degree certificate, we also find that the Beneficiary gained at least five years of qualifying post-baccalaureate experience. Accordingly, the Petitioner has established that the Beneficiary meets the minimum education and experience requirements of the labor certification and of EB-2 classification.

B. Ability to Pay

Aside from establishing that the Beneficiary is eligible for classification as an advanced degree professional and qualifies for the job offered under the terms of the labor certification, the Petitioner must also establish its continuing ability to pay the Beneficiary the proffered wage of \$111,426 from the priority date of the petition until the date the Beneficiary acquires lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. *Id.* In addition to the Beneficiary in this case, the Petitioner must also establish its ability to pay the proffered wages of all the other beneficiaries of its I-140 immigrant petitions from the priority date of the instant petition onward. *See* 8 C.F.R. § 204.5(g)(2); *see also Matter of Great Wall*, 16 I&N Dec. 142, 144 (Acting Reg'l Comm'r 1977). In this case, the record does not contain evidence of the Petitioner's ability to pay the proffered wage in the year of the priority date, 2015. As such, the petition cannot be approved.

III. CONCLUSION

The Petitioner has established that the Beneficiary meets the requirements of the labor certification and is eligible for EB-2 classification; however, the record does not demonstrate the Petitioner's ability to pay the Beneficiary the proffered wage from the priority date onward. Accordingly, we will remand this case to the Director for consideration of the ability to pay issue, and any other issue(s) that may be deemed pertinent.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of O-T- LLC*, ID# 11976 (AAO Apr. 14, 2017)