



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

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

MATTER OF I- CORP.

DATE: APR. 19, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an information processing, manufacturing, sales and services business, seeks to employ the Beneficiary as a managing consultant. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second-preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based “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 and an additional five years of post-baccalaureate progressive experience will suffice for EB-2 classification purposes.

The Director of the Nebraska Service Center denied the petition and the Petitioner’s following motions to reopen and reconsider. In both decisions, the Director concluded that the record did not establish, as required for the offered position and the requested classification, the Beneficiary’s possession of at least five years of post-baccalaureate experience.

On appeal, the Petitioner asserts that the Beneficiary’s post-baccalaureate experience should be measured from the time she received a provisional certificate demonstrating her degree was complete and approved and not from when the diploma itself was later issued.

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

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 a labor certification, the DOL certifies that insufficient U.S. workers are able, willing, qualified, and available for an offered position and that a foreign national’s permanent employment in the position will not harm the wages and

¹ In cases like this one, the filing date of a labor certification is called the “priority date.” Here the priority date is March 19, 2015. As of that date, a beneficiary must meet the job requirements of an offered position. Thus, the Beneficiary here must have had the five years’ requisite experience by the date of the labor certification’s filing.

working conditions of U.S. workers with similar jobs. Section 212(a)(5)(A)(i)(I)-(II) of the Act. If the DOL approves the labor certification, the employer must then submit an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, 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.

For an advanced degree professional position, a labor certification must state 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 “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) (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 record establishes the Beneficiary’s possession of a foreign degree equivalent to a U.S. bachelor’s degree in an acceptable field of study and that the Beneficiary’s experience qualifies as progressive experience. The only question is *when* the university conferred the “degree” to the Beneficiary. At issue here is whether the Beneficiary’s five years of experience is only measured from when she received the formal *diploma* itself, or earlier, when she completed all the requirements for the 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 her “degree” for purposes of calculating the five-year period of post-graduate experience.

The university issued the Beneficiary a provisional certificate on May 27, 2007, but she did not receive her formal diploma until March 28, 2008. The record contains evidence of the Beneficiary’s employment experience with two different employers from December 3, 2007, to February 22, 2013, a period of over five years. The Director, however, found that the Beneficiary’s post-baccalaureate experience did not begin until March 29, 2008, when she received her formal diploma and concluded that the Beneficiary’s post-degree experience, from March 29, 2008, to February 22, 2013, did not meet the requisite amount of five years.

On appeal, the Petitioner maintains that the issuance of the Beneficiary’s provisional degree certificate on May 27, 2007, marks her attainment of the degree. The Petitioner therefore contends that all of the Beneficiary’s experience is post-baccalaureate in nature, satisfying the requirements of the offered position and the requested classification.

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 simply limit our analysis to the date on which a university confers a formal diploma. 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.² 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).³

Accordingly, we must conduct a case-specific analysis to determine whether the 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 all of the substantive requirements for the degree were met and that the degree was in fact approved by the responsible university body.⁴

Here, the issuance of the Beneficiary’s provisional certificate on May 27, 2007, demonstrates her completion of all substantive requirements and her university’s approval of the degree. The certificate states the Beneficiary’s passage of the final baccalaureate examination and her satisfaction of “all the requirements for the award of the degree.” A copy of the Beneficiary’s memorandum of marks indicates the Beneficiary’s passage of the exam after completing four years of coursework.

The Petitioner also submitted information from the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE),⁵ an online resource that federal courts have found provides reliable, peer-reviewed information about foreign

² 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 Apr. 11, 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).

³ 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.

⁴ 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. 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).

⁵ 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 Apr. 11, 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 Apr. 11, 2017).

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educational equivalencies. On the matter of provisional 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.⁶

In addition, EDGE notes that some students never receive their “final Degree Certificate” but instead rely on a provisional degree certificate as evidence of degree completion. *Id.*

III. CONCLUSION

The provisional certificate, together with the statement of marks, demonstrates that the Beneficiary completed all the substantive requirements and that the university approved her degree. We find that the issuance of the provisional certificate conferred on the Beneficiary the foreign equivalent of a bachelor’s degree as of May 2007. Applying the provisional certificate date, we also find that she obtained 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.

ORDER: The appeal is sustained.

Cite as *Matter of I- Corp.*, ID# 313310 (AAO Apr. 19, 2017)

⁶ See *India: Provisional Degree Certificate*, AACRAO, <http://edge.aacrao.org/country/credential/provisional-degreecertificate> (last visited Apr. 11, 2017).