



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

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

MATTER OF P-C-, INC.

DATE: AUG. 15, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a construction company, seeks to employ the Beneficiary as a civil engineer. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant 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 denied the petition on the ground that the labor certification does not require at least a bachelor's degree and five years of experience to qualify for the job, which is the minimum requirement for classification as an advanced degree professional.

On appeal the Petitioner asserts that it mistakenly designated the petition as a request for advanced degree professional classification rather than professional classification, and that the Beneficiary has the requisite qualifications for classification as a professional.

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,

¹ The date the labor certification is filed is called the "priority date." *See* 8 C.F.R. § 204.5(d). The Petitioner must establish that all eligibility requirements for the petition have been satisfied from the priority date onward.

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 a petition seeking classification of the beneficiary as an advanced degree professional, the job offer portion of the labor certification must demonstrate that the job requires a professional holding an advanced degree or the equivalent. *See* 8 C.F.R. § 204.5(k)(4)(i).

An “advanced degree” is defined at 8 C.F.R. § 204.5(k)(2) as “any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate” or “a United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty.”

II. ANALYSIS

The Petitioner’s Form I-140, Immigrant Petition for Alien Worker, specified in part 2, box 1.d, that it was being filed for “[a] member of the professions holding an advanced degree or an alien of exceptional ability.”²

The petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), with a priority date of April 1, 2015. Section H of the labor certification specifies the following with respect to the education, training, and experience required to qualify for the job of civil engineer:

4.	Education: Minimum level required:	Bachelor’s degree
4-B.	Major Field of Study:	Civil Engineering
5.	Is training required in the job opportunity?	No
6.	Is experience in the job offered required?	Yes
6-A.	How long?	36 months
7.	Is an alternate field of study acceptable?	No
8.	Is an alternate combination of education and experience acceptable?	No
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	Yes
10-A.	How long?	36 months
10-B.	Job titles of alternate occupations:	Engineer or related field

In denying the petition the Director noted that the labor certification only required a bachelor’s degree and three years of experience, which is less than the minimum requirement of a bachelor’s degree and five years of experience for classification as an advanced degree professional.

² The Petitioner makes no claim that the Beneficiary is entitled to classification in the latter category as an alien of exceptional ability.

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The Petitioner does not contest that the minimum requirements for advanced degree professional classification are a bachelor's degree and five years of experience. The Petitioner asserts that it made a typographical error in part 2 of the Form I-140 by checking box 1.d (for advanced degree professional) instead of box 1.e (for professional), and requests that we reconsider the petition as if it were filed for the intended classification of professional.

We cannot grant the Petitioner's request. The petition as filed clearly seeks classification of the Beneficiary as an advanced degree professional, not as a professional. We will not consider a petition in a different visa classification once the Director has issued a decision. A petitioner may not make material changes to a petition on appeal in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988).

Since the labor certification does not require at least a bachelor's degree and five years of experience to qualify for the job offered, it does not support the classification of advanced degree professional. Accordingly, the labor certification is not valid for the instant petition. Since the petition is not supported by a valid labor certification, it must be denied. *See* 8 C.F.R. § 204.5(k)(4)(i).

III. CONCLUSION

The labor certification does not support the petition's requested classification of advanced degree professional because the terms of the labor certification do not require the Beneficiary to have at least a bachelor's degree and five years of experience to qualify for the job offered.

ORDER: The appeal is dismissed.

Cite as *Matter of P -C-, Inc.*, ID# 722200 (AAO Aug. 15, 2017)