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

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

MATTER OF [REDACTED]

DATE: JAN. 26, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a diversified company offering a variety of technology products and services, seeks to employ the Beneficiary as a senior leader – digital learning and technology. 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), 8 U.S.C. § 1153(b)(2). This category allows a U.S. business to sponsor a professional with an advanced degree or its equivalent for lawful permanent resident status.

The Director, Nebraska Service Center, denied the petition. The Director concluded that the ETA Form 9089, Application for Permanent Employment Certification (labor certification), does not support the requested classification.

The matter is now before us on appeal. On appeal, the Petitioner asserts that an advanced degree professional may possess the equivalent of a bachelor's degree based on a combination of educational credentials. However, as will be discussed, the Act does not allow for such combination of education when requesting classification as an advanced degree professional.

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

I. LAW

Employment-based immigration is generally a three-step process. First, an employer must obtain an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). Next, 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. Finally, if USCIS approved the immigrant visa 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.

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By approving the labor certification, in this case, the DOL certified that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position of senior leader. See section 212(a)(5)(A)(i)(I) of the Act. The DOL also certified that the employment of 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)(II).

In these proceedings, USCIS must determine whether the Beneficiary meets the requirements of the offered position certified by the DOL. We must also determine whether the Petitioner and the Beneficiary qualify for the requested immigrant classification. See, e.g., *Tongatapu Woodcraft Haw., Ltd. v Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984) (holding that the immigration service “makes its own determination of the alien’s entitlement to [the requested] preference status”).

## II. ANALYSIS

### A. The Requirements of the Requested Classification

A petition for an advanced degree professional must be accompanied by a valid individual labor certification, an application for Schedule A designation, or documentation of a beneficiary’s qualifications for a shortage occupation. 8 C.F.R. § 204.5(k)(4)(i). A labor certification accompanying a petition for an advanced degree professional “must demonstrate that the job requires a professional holding an advanced degree or its equivalent.” *Id.*

The term “advanced degree” means “any United States academic or professional degree or a foreign equivalent degree above that of a 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). Thus, the regulations state that the equivalent of an advanced degree is a single U.S. bachelor’s degree, or a single foreign degree equivalent to a U.S. bachelor’s degree, followed by at least 5 years of progressive experience in the specialty.

Here, the labor certification states the minimum requirements of the offered position of senior leader as a U.S. bachelor’s degree or a foreign equivalent degree in HR-technology, computer science, or an information technology (IT)-related field, plus 120 months (10 years) of experience in a “related learning technology, HR-technology or IT occupation.” The labor certification also states that the Petitioner will accept an alternate combination of education and experience in the form of “a 3 yr degree & 2 yr cert as equiv to US Bach degree,” plus 10 years of experience.

In addition, Part H.14 of the labor certification restates the position’s requirements as:

Bachelor’s degree, or foreign degree equivalent, in HR-technology, Computer Science or IT related field, and ten (10) years of progressively responsible experience in a related learning technology, HR-technology or IT occupation required.

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\*Alternatively, a 3 year degree and 2 year certificate as the equivalent to a U.S. Bachelor's degree is acceptable.<sup>1</sup>

To determine the minimum requirements of an offered position, we must examine the job offer portion of an accompanying labor certification. We may neither ignore a term of the labor certification, nor impose additional requirements. See *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1, 3 (1st Cir. 1981).

The regulations and the legislative history of the Act indicate that an advanced degree equivalency requires a degree that is either a single, U.S. bachelor's degree or a single, foreign equivalent of a U.S. bachelor's degree, without combining educational credentials or combining education with experience. The regulation at 8 C.F.R. § 204.5(k)(2) is written in singular number. The regulation states that an advanced degree equivalency is a U.S. bachelor's "degree" or a foreign equivalent "degree." The plain language of the regulation therefore indicates that an advanced degree equivalency requires a single degree, rather than a combination of lesser education credentials.

Also, in response to complaints that the immigrant visa regulations bar the substitution of experience for education, the former Immigration and Naturalization Service (INS) reviewed the Immigration Act of 1990. The INS found that "both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, an alien must have at least a bachelor's degree." 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991).

Thus, based on the plain language of the regulations and the legislative history of the Act, an advanced degree equivalency requires a single degree. See also *SnapNames.com v. Chertoff*, No. CV 06-65-MO, 2006 WL 3491005, \*\*10-11 (D. Or. Nov. 30, 2006) (holding that USCIS properly concludes that classification as a professional or advanced degree professional requires a single degree equivalent to a baccalaureate). The plain language of the labor certification states the Petitioner's acceptance of a combination of a 3-year bachelor's degree and a 2-year certificate as the equivalent of a U.S. bachelor's degree. But U.S. bachelor's degrees usually require 4 years of university study. *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). By accepting a combination of educational credentials in lieu of a single bachelor's degree, the labor certification does not demonstrate that the job requires an advanced degree professional.

On appeal, the Petitioner notes that the requested classification is for foreign nationals holding advanced degrees or their "equivalent." Section 203(b)(2)(A) of the Act.<sup>2</sup> The Petitioner claims that because the labor certification allows a foreign national holding the "equivalent" of an advanced

<sup>1</sup> Part H.14 of the labor certification also lists other requirements of the offered position, including experience with various technologies. Because the other requirements listed in Part H.14 are not at issue, we will not recite them.

<sup>2</sup> The Petitioner's brief cites section 121 of the Act. As the current Act lacks a section 121, we assume the Petitioner refers to section 203(b)(2)(A) of the Act.

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degree in the form a 3-year bachelor's degree and a 2-year certificate followed by more than 5 years of progressive experience in the specialty, the labor certification supports an advanced degree professional.

However, as previously discussed, the regulation at 8 C.F.R. § 204.5(k)(2) defines the "equivalent" of an advanced degree as a single, U.S. bachelor's degree, or a single, foreign equivalent, followed by at least 5 years of progressive experience in the specialty. Also as previously discussed, the legislative history of the Act indicates that an advanced degree equivalency requires a single degree without combining educational credentials or combining education with experience. The Petitioner's asserted interpretation of "equivalent" in section 203(b)(2)(A) of the Act conflicts with the plain language of the regulations and the legislative history of the Act.

On appeal, the Petitioner cites to letters from a former immigration service official in support of its assertion that an advanced degree professional may possess a combination of educational credentials equivalent to a U.S. bachelor's degree. Specifically, the Petitioner submits two letters dated January 7, 2003, and July 23, 2003, respectively, from Efren Hernandez III of the former Immigration and Naturalization Service (INS) Office of Adjudications to counsel in other cases, expressing his opinion about the possible means to satisfy the requirement of a foreign equivalent of a U.S. advanced degree for purposes of 8 C.F.R. 204.5(k)(2). Within the July 2003 letter, Mr. Hernandez states that he believes that the combination of a post-graduate diploma and a 3-year baccalaureate degree may be considered to be the equivalent of a U.S. bachelor's degree and that he believes that such a combination of degrees, along with 5 years of progressive experience may satisfy the "advanced degree" requirements.

First, opinion letters of immigration officials do not bind us. See *Matter of Butt*, 26 I&N Dec. 108, 111 n.3 (BIA 2013) (citation omitted) (noting that interpretations contained in opinion letters warrant respect only to the extent they have "the power to persuade"). Private discussions and correspondence solicited to obtain advice from USCIS are not binding on us or other USCIS adjudicators and do not have the force of law. *Matter of Izummi*, 22 I&N 169, 196-197 (Comm'r 1968); see also, Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, U.S Immigration & Naturalization Service, *Significance of Letters Drafted By the Office of Adjudications* (December 7, 2000).

Moreover, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not a combination of degrees, diplomas or employment experience. Additionally, although 8 C.F.R. § 204.5(k)(2), as referenced by the Petitioner and in Mr. Hernandez' correspondence, permits a certain combination of progressive work experience and a bachelor's degree to be considered the equivalent of an advanced degree, there is no comparable provision to substitute a combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree. We do not find the determination of the credentials evaluation probative in this matter. It is further noted that a bachelor's degree is generally found to require 4 years of education. *Shah*, 17 I&N Dec. at 244. In that case, the Regional Commissioner declined to consider

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a 3-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require 4 years of study. *Id.* at 245.

For the foregoing reasons, we find that the labor certification does not demonstrate that the offered position of senior leader requires a professional holding an advanced degree or its equivalent. Thus, contrary to 8 C.F.R. § 204.5(k)(4)(i), the labor certification does not support the requested classification of advanced degree professional. We will therefore affirm the Director's decision and dismiss the appeal.

### C. The Beneficiary's Possession of the Required Educational Credentials

Although not addressed by the Director, the record also does not demonstrate the Beneficiary's possession of the educational credentials required for the requested classification.

A petition for an advanced degree professional must be accompanied by evidence of the Beneficiary's possession of a U.S. advanced degree or a foreign equivalent degree, or a U.S. baccalaureate or a foreign equivalent degree followed by 5 years of progressive experience. 8 C.F.R. § 204.5(k)(3)(i).

The regulations and their history indicate that evidence of a bachelor's degree must include an official academic record from a college or university. To obtain professional status in the third preference immigrant category, evidence must include "an official college or university record." 8 C.F.R. § 204.5(l)(3)(ii)(C). Also, in discussing the advanced degree requirements, the INS stated that "[t]he term baccalaureate means a bachelor's degree received from a college or university, or an equivalent degree." Proposed Rules for Employment-Based Immigrants, 56 Fed. Reg. 30703, 30706 (July 5, 1991). To qualify as an advanced degree professional based on the equivalency of an advanced degree, we therefore interpret the regulations to require a petition to include evidence of a beneficiary's possession of a U.S. bachelor's degree or a foreign equivalent degree from a college or university.

In this case, the record contains copies of a bachelor of science degree and a consolidated marks memorandum from [REDACTED] in India. The documents indicate the Beneficiary's completion of the 3-year degree in April 1999. The record also contains a copy of a certificate from the [REDACTED] in India, indicating the Beneficiary's attainment of the title of [REDACTED] in systems management from the institute in 2001.

The record does not establish the Beneficiary's Indian bachelor's degree as the foreign equivalent of a U.S. bachelor's degree. An expert evaluation of the Beneficiary's foreign educational credentials finds the 3-year bachelor's degree equivalent to 3 years of university studies in the United States. As previously indicated, U.S. bachelor's degrees usually require 4 years of university study. *Shah*, 17 I&N Dec. at 245.

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The evaluation concludes that the Beneficiary possesses the equivalent of a U.S. bachelor's degree based on a combination of his 3-year bachelor's degree and the 2-year certificate from [REDACTED]. But, as previously discussed, the regulations and the legislative history of the Act indicate that an advanced degree equivalency requires a degree that is either a single, U.S. bachelor's degree or a single, foreign equivalent of a U.S. bachelor's degree, without combining educational credentials or combining education with experience. The record therefore does not establish the Beneficiary's possession of a single foreign degree equivalent to a U.S. bachelor's degree.

Also, the record does not establish the issuance of the Beneficiary's [REDACTED] certificate by a college or university. In its annual report for 2014-15, the University Grants Commission, the government body that coordinates, determines, and maintains Indian standards of higher education, does not list the [REDACTED] as a university or an institution deemed to be a university. See Univ. Grants Comm'n, *Annual Report 2014-15*, at [http://www.ugc.ac.in/pdfnews/2465555\\_Annual-Report-2014-15.pdf](http://www.ugc.ac.in/pdfnews/2465555_Annual-Report-2014-15.pdf) (accessed January 24, 2017).<sup>3</sup> The record therefore does not establish the Beneficiary's possession of a U.S. baccalaureate equivalent issued by a college or university.

For the foregoing reasons, the record does not establish the Beneficiary's possession of the educational credentials required for the requested classification of advanced degree professional. For this reason, we will also dismiss the appeal.

### III. CONCLUSION

The labor certification does not demonstrate that the offered position requires an advanced degree professional and therefore does not support the requested classification. In addition, the record does not demonstrate the Beneficiary's possession of the educational credentials required for the requested classification.

The petition will remain denied for the reasons stated above, with each considered an independent and alternate ground of denial. In visa petition proceedings, a petitioner bears the burden of establishing eligibility for the requested classification. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner did not meet that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of* [REDACTED], ID# 122972 (AAO Jan. 26, 2017)

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<sup>3</sup> The commission's 2014-15 annual report was the most recent annual report available on the agency's website.