



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

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

MATTER OF K- LLC

DATE: JULY 17, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a water and fire damage restoration service company, seeks to employ the Beneficiary as a quality control analyst. 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 Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary has the required education for the offered job and the second preference immigrant classification. Specifically, the Director determined that the Beneficiary did not have a single foreign degree that is equivalent to a four-year U.S. bachelor's degree in a specified field.¹

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary has a combination of degrees that are equivalent to a four-year U.S. bachelor's degree.

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

¹ An advanced degree professional petition must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i). Further, an "advanced degree" is a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, *or* a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive, post-baccalaureate experience in the specialty. *See* 8 C.F.R. § 204.5(k)(2). When a beneficiary relies on a bachelor's degree and five years of progressive experience for qualification as an advanced degree professional, the degree must be a single U.S. bachelor's (or foreign equivalent) degree in the relevant field of study.

I. LAW AND ANALYSIS

A. Employment-Based Immigration

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).² 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, if USCIS approves the petition, the foreign national applies 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.

B. Beneficiary's Education

A petitioner must establish a beneficiary's possession of all the education specified on an accompanying labor certification as of the priority date. See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977). In this case, the labor certification requires a master's degree in business administration, industrial engineering, or related fields and 12 months of experience as a quality control analyst, quality control manager, sales manager, production manager, or related occupation; or a bachelor's degree in business administration, industrial engineering, or related fields, plus five years of experience. The record establishes that the Beneficiary has the required experience for the offered job.

Section J. of the labor certification reflects that the highest level of education claimed by the Beneficiary relevant to the requested occupation is a bachelor's degree in business administration from [REDACTED] in [REDACTED] Pakistan, completed in 2004.

The record contains the following documents relating to the Beneficiary's education:

- Diploma in business administration issued by [REDACTED] in Pakistan in 1999, together with examination results;
- Provisional certificate and marks certificate from [REDACTED] in Pakistan showing the Beneficiary passed the bachelor of business administration examination in 2001; and
- Master of business administration (MBA) degree issued by [REDACTED] in Pakistan in 2004, together with a transcript and a verification certificate.

² The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is July 10, 2015. See 8 C.F.R. § 204.5(d).

The record also contains an evaluation from [REDACTED] concluding that the Beneficiary's bachelor of business administration and master of business administration, when considered together, are the equivalent of a U.S.-awarded bachelor of business administration degree.³

The Director determined that the Beneficiary did not have a single foreign degree that is equivalent to a four-year U.S. bachelor's degree. However, the Beneficiary's MBA from [REDACTED] in Pakistan is the single-degree equivalent to a four-year U.S. bachelor's degree in business administration. See *AACRAO EDGE*, <http://edge.aacrao.org/country/credential/master-of-arts-commerce-and-science?cid=single> (last visited July 17, 2017) (confirming that the "Master's degree represents attainment of a level of education comparable to a bachelor's degree in the United States").⁴

Thus, the record establishes that the Beneficiary meets the requirements for the offered job as stated on the labor certification. We will withdraw the Director's decision; however, because the petition cannot be approved, we will dismiss the appeal.

C. Ability to Pay the Proffered Wage

Although not discussed by the Director, the petition cannot be approved because the Petitioner has not established its ability to pay the proffered wage from the priority date onward. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director

³ The evaluation equates the Beneficiary's diploma in business administration issued by [REDACTED] to graduation from technical school plus one year of lower-division, university-level credit from a regionally accredited college or university in the United States, and it equates his bachelor of business administration degree from [REDACTED] to two years of lower-division, university-level credit from a regionally accredited college or university in the United States.

⁴ The Electronic Database for Global Education (EDGE) was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in more than 40 countries." *About AACRAO*, <http://www.aacrao.org/home/about> (last visited July 17, 2017). According to the registration page for EDGE, EDGE is "a web-based resource for the evaluation of foreign educational credentials." *AACRAO EDGE*, <http://edge.aacrao.org/info.php> (last visited May 24, 2017). According to AACRAO, the Beneficiary's MBA is comparable to the EDGE credentials for the Pakistani master of arts, commerce, and science degrees.

may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage.

The proffered wage for the position of quality control analyst is \$83,158 per year, and the priority date is July 10, 2015. With the petition, the Petitioner submitted its federal tax return for calendar year 2014, and its reviewed financial statements for tax years ending 2013 and 2014.

In a request for evidence (RFE), we notified the Petitioner that the record does not contain regulatory-prescribed evidence of its ability to pay the proffered wage in 2015.

Therefore, we asked the Petitioner to submit one of the following types of required evidence to establish its continuing ability to pay the proffered wage as of the 2015 priority date:

- A complete copy of its 2015 federal income tax return, with all accompanying schedules;
- A complete copy of its 2015 annual report;
- A complete copy of its 2015 audited financial statements; or
- If the Petitioner has 100 or more employees, a statement from its financial officer confirming its ability to pay the offered wage.⁵

We also asked the Petitioner to submit the Beneficiary's IRS Form W-2, Wage and Tax Statement, or his IRS Form 1099-MISC, Miscellaneous Income, if the Petitioner paid the Beneficiary wages in 2015.

In response to the RFE, the Petitioner submitted its combined reviewed financial statements for 2015, and its IRS Form 1065, U.S. Return of Partnership Income, for 2016.⁶ The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. An audit is conducted in accordance with generally accepted auditing standards to obtain a reasonable assurance that the financial statements of the business are free of material misstatements. The accountant's report that accompanied the combined financial statements states that they are reviewed statements, as opposed to audited statements. Accountants only express limited assurances in reviews. As stated on the accountant's report, the financial statements are the representations of management and the accountant expresses no opinion pertinent to their accuracy.⁷ The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage.

⁵ The Petitioner represented on the labor certification and the petition that it employs 40 workers.

⁶ The Petitioner is a multi-member limited liability company (LLC) taxed as a partnership. For an LLC taxed as a partnership, where the petitioner's income is exclusively from a trade or business, USCIS considers net income to be the figure shown on Line 22 of page one of the petitioner's IRS Form 1065. However, if the Schedule K has relevant entries for additional income or additional credits, deductions, or other adjustments, net income is found on page 5 of IRS Form 1065 at line 1 of the Analysis of Net Income (Loss) of Schedule K. In this case, the Petitioner's net income of \$187,954 is found on Schedule K of its 2016 tax return. The Petitioner had net current assets of \$686,447 in 2016. Therefore, the Petitioner has established its ability to pay the proffered wage in 2016.

⁷ The accountant's report also lists an exception to generally accepted accounting principles.

Further, the reviewed financial statements include results of another entity. Because an LLC is a separate and distinct legal entity from its members, the assets of its members or of other entities cannot be considered in determining the Petitioner's ability to pay the proffered wage. *See Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm'r 1980). In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage." Therefore, the 2015 combined reviewed financial statements for the Petitioner and another entity do not establish the Petitioner's ability to pay the proffered wage in 2015, and the petition cannot be approved.

II. CONCLUSION

The record establishes that the Beneficiary meets the requirements for the offered job as set forth on the labor certification. We will withdraw the Director's decision. However, because the Petitioner has not established its ability to pay the proffered wage in 2015, the petition cannot be approved.

ORDER: The appeal is dismissed.

Cite as *Matter of K- LLC*, ID# 294229 (AAO July 17, 2017)