



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

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

MATTER OF U-I-, INC.

DATE: JULY 24, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an information technology consulting business, seeks to employ the Beneficiary as a technical lead. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigration classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1152(b)(2). This “EB-2” 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, concluding that the record did not establish that the Beneficiary had the five years of post-baccalaureate experience required for classification as an advanced degree professional.

On appeal, the Petitioner contends that the Beneficiary has the required post-baccalaureate experience because the Beneficiary earned his degree prior to the date his diploma was issued.

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

I. LAW

Employment-based immigration is generally a three-step process. First, an employer obtains an approved ETA Form 9089, Application for Permanent Employment Certification (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 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. 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

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

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.

A petition for an advanced degree professional must be accompanied by documentation showing that the Beneficiary is a professional holding an advanced degree. 8 C.F.R. § 204.5(k)(1). An “advanced degree” is defined 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).

Also, 8 C.F.R. § 204.5(k)(3)(i)(A) and (B) require “an official academic record showing that the alien has a United States . . . degree or a foreign equivalent degree.”

II. ANALYSIS

At issue in this case is the date that the Beneficiary began to accrue the necessary post-baccalaureate experience for classification as an advanced degree professional. Specifically, the issue is whether the five years of experience required for classification as an advanced degree professional is measured from the date on which the Beneficiary received his diploma or, as claimed by the Petitioner, the date the Beneficiary passed the degree examinations, or alternatively, the date on which he became eligible for his degree.

The Beneficiary has a master of business administration in information technology from [REDACTED] in India, which the record establishes is equivalent to U.S. bachelor’s degree. The record also contains evidence of the Beneficiary’s employment experience.²

The Director found that the Beneficiary’s post-baccalaureate experience did not begin to accrue until the university issued his diploma on April 12, 2010. Considering only experience gained from the diploma date onward, the Director found that the Beneficiary possessed 1,607 of the required 1,825 days of post-degree experience, which was not sufficient to establish five years of post-baccalaureate experience by the priority date.

On appeal, the Petitioner maintains that the Beneficiary accrued the requisite five years of post-degree experience if we recognize that his degree was conferred after he passed the examinations for the degree and not when his diploma was issued.

² The record contains an affidavit from the Beneficiary’s former supervisor at [REDACTED] and [REDACTED] attesting to this experience. The dates in this affidavit conflict with two other letters from this employer on company letterhead which state that the Beneficiary worked there from October 9, 2010 to September 5, 2014. However, the record also contains a letter from this employer stating that the Beneficiary was employed there as of July 2007. The Petitioner must resolve this discrepancy in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In support of its claim, the Petitioner submitted the following evidence:

- The Beneficiary's diploma, issued by [REDACTED] on April 12, 2010, which states that he completed the prescribed requirements for his degree in 2007;
- The Beneficiary's academic transcripts, which indicate that he passed the examinations for all of his degree courses in January 2007;
- A letter issued on April 30, 2016, by the [REDACTED] deputy registrar, which states that, as of January 2007, the Beneficiary had successfully completed the coursework for his master's degree and was conferred the degree on April 26, 2007. This letter states that the Beneficiary had applied for the degree on March 11, 2010, and that it was issued on April 12, 2010.
- A report analyzing the Beneficiary's academic credentials prepared by [REDACTED]

The statute and regulations governing the EB-2 classification use the terms "degree" and "official academic record," not "diplomas." For EB-2 "bachelor plus five" petitions, the "initial evidence" rule requires the submission of an "official academic record" showing that a beneficiary has a foreign equivalent "degree." 8 C.F.R. § 204.5(k)(3)(i)(B). Therefore, an "official academic record" is not limited to a diploma.³ Accordingly, we must conduct a case-specific analysis to determine whether the Beneficiary completed all substantive requirements to earn the degree and whether the university approved the degree as demonstrated by an official academic record. To do this, we consider the individual nature of the university's requirements for the Beneficiary's program of study and his completion of those requirements. The Petitioner bears 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 Petitioner did not submit an official academic record demonstrating that the Beneficiary completed all substantive requirements of his degree and that the university approved the degree prior to April 12, 2010. When determining whether a document is an official academic record that substantiates the claimed degree, we may consider whether the document was issued by the university in the normal course of its business; whether the document was originally issued

³ See *Matter of O-A-, Inc.*, Adopted Decision 2017-03 (AAO Apr. 17, 2017); 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 July 12, 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 Along with any other 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).

contemporaneous with events; and whether the document indicates that all requirements for the degree, in addition to the required coursework, have been completed.⁵

The Petitioner did not establish that the letter from the deputy registrar is an official academic record that substantiates the claimed degree. The letter from the deputy registrar, written nine years after the Beneficiary claims to have completed the degree, appears to be a recitation of the information contained in the Beneficiary's statement of marks. The letter was issued in response to a request from the Beneficiary, not in the university's normal course of its business. Further, although the letter indicates that the Beneficiary completed the academic requirements for his degree, it does not state that all degree requirements were completed. It also does not reflect that the university approved the award of the Beneficiary's degree prior to April 12, 2010. Therefore, the letter does not demonstrate that the Beneficiary completed all substantive requirements for the degree and that it was approved by the university as of January 2007 when he completed his final examinations or on April 26, 2007, the date the degree was conferred according to the deputy registrar's letter.

In addition, although a university-issued statement of marks is an official academic record, the Beneficiary's statement of marks alone does not demonstrate that the Beneficiary completed his degree requirements in January 2007. The Beneficiary's statement of marks simply confirms that he passed the final examinations for his degree in January 2007. As discussed above, the Petitioner has not established that passing the final examinations means that the Beneficiary completed all substantive degree requirements such that he had earned his degree prior to April 12, 2010.⁶

Accordingly, for the reasons stated above, we find that the Petitioner has not established that the Beneficiary had the required post-baccalaureate experience for EB-2 classification. In addition, the Beneficiary does not possess the five years of experience required by the terms of the labor certification as of the priority date.⁷

⁵ For example, a university-issued provisional certificate issued contemporaneous with events (stating that all degree requirements, including required coursework, have been met) together with a statement of marks constitutes an official academic record that may demonstrate that a beneficiary completed all the substantive requirements for a degree and that the university approved the degree. *Matter of O-A-, Inc.*, Adopted Decision 2017-03 at 4. We further note that the provisional degree certificate in *Matter of O-A-, Inc.* was determined by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education to be "evidence of completion of all requirements for the degree in question . . . and is comparable to an official US academic transcript with a degree statement certifying completion of all requirements for the degree" See *India: Provisional Degree Certificate*, AACRAO, <http://edge.aacrao.org/country/credential/provisional-degree-certificate> (last visited July 12, 2017).

⁶ On appeal, the Petitioner cites to one of our non-precedent decisions in which we previously held that a beneficiary had five years of post-baccalaureate experience when measured from the completion of his studies and examinations for the degree. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

⁷ To be eligible for approval, a beneficiary must also have all the education, training, and experience specified on the labor certification as of the petition's priority date. See *Matter of Wing's Tea House*, 16 I&N 158 (Acting Reg'l Comm'r 1977).

III. CONCLUSION

The Petitioner has not established that the Beneficiary earned his degree prior to April 12, 2010. For this reason, we find that the Beneficiary did not have a minimum of five years of qualifying post-baccalaureate employment experience as of the priority date of the petition. Therefore, the Petitioner has not established that the Beneficiary meets the requirements of the labor certification or for classification as an advanced degree professional.

ORDER: The appeal is dismissed.

Cite as *Matter of U-I, Inc.*, ID# 316395 (AAO July 24, 2017)