



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

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

MATTER OF E-, INC.

DATE: JULY 24, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an internet travel service business, seeks to employ the Beneficiary as a software engineer. 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 found that, based on the issuance date of the Beneficiary’s baccalaureate degree diploma, the Petitioner had not shown that she had the five years of post-baccalaureate experience required to establish the equivalent of an advanced degree.

On appeal, the Petitioner contends that the Beneficiary has the required five years of progressive post-baccalaureate experience, as the Beneficiary earned her degree prior to the date her 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

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.

(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.

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.

The Beneficiary has a master’s degree in computer applications from [REDACTED] in India, which the record establishes is the foreign equivalent degree of a U.S. bachelor’s degree. The record also contains evidence of the Beneficiary’s over five-and-a-half years of related employment experience gained prior to the petition’s priority date of May 27, 2015.

The Director found that the Beneficiary’s post-baccalaureate experience did not begin to accrue until the university issued her diploma on October 13, 2009. Considering only experience gained from the diploma date onward, the Director found that the Beneficiary only possessed 1,210 days of the required 1,825 days of qualifying post-degree 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 her degree was conferred when she passed the examinations for the degree in April 2001; or alternatively, on November 8, 2001, the date of publication as indicated on the statement of marks.

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

- The Beneficiary’s diploma, issued by the [REDACTED] on October 13, 2009, which reflects that she passed the final examinations for her degree in April 2001;
- The Beneficiary’s academic transcripts, which indicate that she passed the examinations for all of her degree courses in November 2001;
- A letter issued on April 25, 2016, by the [REDACTED] which states that the Beneficiary completed her master’s degree course in April 2001; and

- A report analyzing the Beneficiary's academic credentials from an evaluator for [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.²

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.³

Here, the Petitioner did not submit an official academic record demonstrating that the Beneficiary completed all substantive requirements of her degree and that the university approved the degree prior to October 13, 2009. 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 contemporaneous with events; and whether the document indicates that all requirements for the degree, in addition to the required coursework, have been completed.⁴

The Petitioner did not establish that the letter from the [REDACTED] is an official academic record that substantiates the claimed degree. This letter, written 15 years after the

² 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).

³ 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).

⁴ 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 AACRAO EDGE 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).

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 appears to have been 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 her 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 October 13, 2009. 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 the April 2001 date on which she completed her final examinations or on November 8, 2001, the effective date of publication.

Although a university-issued statement of marks is an official academic record, in this case the Beneficiary's statement of marks does not demonstrate that the Beneficiary completed all of her substantive degree requirements in April 2001. The Beneficiary's statement of marks simply confirms that she passed the final examinations for her degree in April 2001. The Petitioner has not established that passing the final examinations means that the Beneficiary completed all substantive degree requirements such that she had earned her degree prior to October 13, 2009.

Consequently, the Petitioner has not established that the Beneficiary possessed five years of post-baccalaureate experience in the specialty by the priority date of the petition. Therefore, we affirm the Director's finding that the petition cannot be approved for the requested classification of advanced degree professional.

III. CONCLUSION

The Petitioner has not established that the Beneficiary earned her degree prior to the issuance of her diploma on October 13, 2009. For this reason, we find that the Beneficiary did not have five years of qualifying post-baccalaureate employment experience as of the petition's priority date. Therefore, the Petitioner has not established that the Beneficiary meets the requirements for EB-2 classification. In addition, because the Beneficiary does not possess five years of post-baccalaureate experience as required on the approved labor certification, she also does not have the education and experience required by the job offered as of the priority date.⁵

ORDER: The appeal is dismissed.

Cite as *Matter of E-, Inc.*, ID# 134993 (AAO July 24, 2017)

⁵ 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).