



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

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

MATTER OF A- INC.

DATE: JULY 25, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a computer software and hardware development company, seeks to permanently employ the Beneficiary in the United States as an [redacted] power 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 the Beneficiary had the six years of post-baccalaureate experience required by the labor certification.

On appeal, the Petitioner asserts that the Beneficiary does have the six years of required post-baccalaureate experience if it is measured from the date he completed his studies, rather than from the date his diploma was awarded.

Upon *de novo* review, 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).<sup>1</sup> *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

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<sup>1</sup> 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 six years of requisite post-baccalaureate 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 petitioner must establish that a beneficiary meets all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

## II. ANALYSIS

The Petitioner stated on the labor certification that the offered job requires candidates to possess a "Bachelor's degree or foreign equivalent in Electrical Engineering, Computer Science, Computer Engineering, or a related field and six years of progressive post baccalaureate experience in a System Level Power Tuning and Analysis role or a related occupation." The Beneficiary has a bachelor of exact sciences degree from [REDACTED] Israel, which the record establishes is the foreign equivalent degree of a U.S. bachelor's degree. At issue in this case is the date that the Beneficiary began to accrue the required post-baccalaureate experience. Specifically, the issue is whether the experience is measured from the date on which the university issued the Beneficiary's diploma or, as claimed by the Petitioner, the date the Beneficiary finished his studies and became eligible for his degree.

The Director found that the Beneficiary's post-baccalaureate experience did not begin to accrue until the university issued his diploma on June 30, 2008. Considering only experience gained from the diploma date onward, the Director concluded that the Beneficiary possessed "1,950 days of the 2,190 days of required progressive, post-baccalaureate experience." Therefore, the Director denied the petition.

On appeal, the Petitioner asserts that since the Beneficiary "completed all the academic courses for his degree on September 10, 2007," his employment experience should be calculated from that date, which would show that the Beneficiary possesses 2,236 days of qualifying experience. In support of its claim, the Petitioner submitted the following evidence:

- The Beneficiary's diploma, with English translation, issued by [REDACTED] on June 30, 2008;
- The Beneficiary's academic transcripts dated March 26, 2009, with English translation, showing his coursework at [REDACTED] since 1998, and stating that in "2006/2007 the student was registered as studying towards a Bachelor degree majoring in Statistics and specializing in Computer Science;"
- A letter issued on November 17, 2015, by the [REDACTED] registrar, which states that the Beneficiary had successfully completed the coursework for his "degree studies (B.A.) in Statistics as primary major and Computer Sciences as secondary major, and is eligible for the degree as of 9/10/2007;" and

- A credentials evaluation prepared by [REDACTED] for [REDACTED] After examining the Beneficiary's academic credentials, [REDACTED] concluded that the Beneficiary possessed the "foreign equivalent of a four-year Bachelor of Science Degree, with a dual major in Statistics and Computer Science, from an accredited US college or university." The evaluation twice states that the Beneficiary's degree was awarded on June 30, 2008.

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.<sup>2</sup> 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.

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 the issuance of his diploma on June 30, 2008. 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.<sup>3</sup>

The Petitioner did not establish that the letter from the registrar is an official academic record that substantiates the claimed degree. The letter from the registrar, written seven years after the Beneficiary claims to have completed the degree, was issued in response to a request from the

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<sup>2</sup> 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 24, 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).

<sup>3</sup> 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 24, 2017).

Beneficiary, not in the university's normal course of its business. Further, the letter from the registrar states only that the Beneficiary was "eligible" for the award of his degree as of September 10, 2007. 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 June 30, 2008. Therefore, the letter does not demonstrate that the Beneficiary completed all substantive requirements for the degree and was approved by the university for the degree as of the September 2007 date on which he completed his studies.<sup>4</sup>

In addition, although a university-issued academic transcript is an official academic record, the Beneficiary's transcript alone does not demonstrate that he completed his degree requirements in 2007 as claimed by the Petitioner on appeal. In contrast to the Petitioner's assertion on appeal, the Beneficiary's transcript states that he was still pursuing his degree in 2007 and does not state that his coursework was completed.<sup>5</sup> Moreover, the credentials evaluation submitted by the Petitioner twice states that the degree was awarded on June 30, 2008, and the Beneficiary indicated on the labor certification that he received his bachelor's degree in 2008.

While the Petitioner asserts that we should calculate the Beneficiary's post-baccalaureate employment experience from an earlier date, 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 June 30, 2008. Therefore, we will measure the Beneficiary's post-baccalaureate experience from his diploma date of June 30, 2008. Using this date, we do not find that the Beneficiary possesses the required six years of post-baccalaureate experience.

On appeal, the Petitioner states that even if we calculate the Beneficiary's post-baccalaureate experience from June 30, 2008, the Beneficiary "still demonstrates more than 72 months of employment experience" if we include his work experience with the Petitioner toward his accumulation of the six years of post-baccalaureate experience required by the labor certification. However, according to DOL regulations, a beneficiary's experience with the petitioner cannot be used to qualify the beneficiary for the offered position unless the experience was "in a position not substantially comparable to the position for which certification is being sought." *See* 20 C.F.R. § 656.17(h)(4)(i)(3). In this case, the

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<sup>4</sup> In addition, while the translators of this letter and of the Beneficiary's diploma both attested to their fluency in English and Hebrew, and while both translators affirmed their translations as "true and accurate," we note that the translation of the registrar's letter states that the Beneficiary was awarded a "B.A." while the translation of the diploma states that the Beneficiary was awarded "the degree of Bachelor (B.Sc.) of Exact Sciences." This discrepancy raises questions regarding the accuracy of at least one of the translations, and the Petitioner must resolve this discrepancy with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

<sup>5</sup> It is unclear why the document, which is dated March 26, 2009, refers to the Beneficiary as "studying towards a Bachelor degree" in 2006/2007 rather than referring to the Beneficiary having been awarded a bachelor's degree on June 30, 2008, as suggested by the diploma in the record. This internal inconsistency raises questions regarding the accuracy of the translation of the transcript, and the Petitioner must resolve this inconsistency with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

*Matter of A- Inc.*

Beneficiary's work with the Petitioner since January 27, 2014, was in the offered job. Therefore, the Petitioner cannot rely on this experience for the Beneficiary to qualify for the proffered position.

### III. CONCLUSION

We find that the Beneficiary did not have a minimum of six years of qualifying post-baccalaureate employment experience as of the priority date, as required on the approved labor certification. Accordingly, the Petitioner has not established the Beneficiary's eligibility for the immigration benefit sought.

**ORDER:** The appeal is dismissed.

Cite as *Matter of A- Inc.*, ID# 267069 (AAO July 25, 2017)