



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

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

MATTER OF V-C-P-S-

DATE: JULY 26, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a public school district, seeks to employ the Beneficiary as an exceptional children teacher. It requests her classification 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)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, “EB-2” category allows U.S. employers to sponsor foreign nationals for lawful permanent resident status if they have master’s degrees, or bachelor’s degrees followed by five years of experience.

The Director of the Texas Service Center denied the petition. The Director concluded that, contrary to the requirements of the offered position and the requested classification, the record did not establish the Beneficiary’s possession of at least five years of post-baccalaureate experience.

On appeal, the Petitioner asserts that the Director miscalculated the Beneficiary’s post-degree experience. The Petitioner contends that the Director should have measured the experience from the Beneficiary’s completion of her final degree examination, rather than from the later date on which a university issued her diploma.

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

**I. LAW**

Employment-based immigration generally follows a three-step process. First, an employer files a labor certification application with 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). The DOL must certify that the United States lacks able, willing, qualified, and available workers for an offered position, and that employment of a foreign national will not hurt the wages and working conditions of U.S. workers with similar jobs. *Id.* If the DOL certifies a position, the employer must then 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 approves a 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.

A position for an advanced degree professional must require an advanced degree or its equivalent. See 8 C.F.R. § 204.5(k)(4)(i). The term “advanced degree” means: “[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

A petitioner must also establish a beneficiary’s possession of all DOL-certified job requirements by a petition’s priority date.<sup>1</sup> See *Matter of Wing’s Tea House*, 16 I&N Dec. 158, 160 (Acting Reg’l Comm’r 1977).

## II. ANALYSIS

### A. The Beneficiary’s Possession of the Minimum Amount of Post-Baccalaureate Experience

In this case, the labor certification states the minimum requirements of the offered position of exceptional children teacher as a U.S. bachelor’s degree, or a foreign equivalent degree, followed by five years of experience in the offered position and a North Carolina professional educator’s license. The record establishes the Beneficiary’s possession of the Romanian equivalent of a U.S. bachelor’s degree and the required license. The Petitioner also documented the Beneficiary’s possession of five years of progressive experience in the job offered: from July 2002 to July 2006; and from August 2007 to August 2008. See 8 C.F.R. § 204.5(g)(1) (requiring a petitioner to support a beneficiary’s claimed, qualifying experience with letters from employers).<sup>2</sup>

At issue, rather, is whether all of the Beneficiary’s experience is post-baccalaureate in nature. The Director measured her post-degree experience from the issuance of her baccalaureate diploma on July 23, 2003, concluding that she lacked the requisite five years of experience from that date. The Petitioner, however, asserts the Beneficiary’s attainment of her degree about one year earlier, in July 2002, when she passed a final degree examination. The Petitioner therefore contends that all of the Beneficiary’s experience is post-baccalaureate in nature.

The statute and regulations governing the EB-2 classification use the terms “degree” and “official academic record,” not “diploma.” For EB-2 “bachelor plus five” petitions, the “initial evidence” rule requires the submission of an “official academic record” showing a beneficiary’s possession of a foreign equivalent “degree.” 8 C.F.R. § 204.5(k)(3)(i)(B). Thus, an “official academic record” is

<sup>1</sup> This petition’s priority date is April 4, 2014, the date the DOL accepted the labor certification application for processing. See 8 C.F.R. § 204.5(d) (explaining how to determine a petition’s priority date).

<sup>2</sup> The record indicates the Petitioner’s employment of the Beneficiary in the offered position in temporary visa status since August 2008. The Petitioner, however, does not assert that the Beneficiary gained qualifying experience with it. See 20 C.F.R. § 656.17(i)(3) (barring employers from relying on experience that foreign nationals gained with them, unless they gained the experience in positions substantially different than their offered positions or the employers demonstrate the impracticality of training U.S. workers for the offered positions).

not limited to a diploma.<sup>3</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.<sup>4</sup>

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>5</sup>

Here, the Petitioner submitted a letter from officials of the Beneficiary's university, stating that it issued her a "certificate of graduation" upon her passage of the final degree exam in July 2002. The letter states that the certificate remained valid for one year and entitled the Beneficiary to the same rights as her diploma.

The university letter does not constitute an official academic record demonstrating the Beneficiary's completion of all substantive degree requirements and the university's approval of the degree before July 23, 2003. Dated 14 years after the Beneficiary's purported receipt of the certificate, the letter apparently was not issued in the normal course of school business, but rather at the Beneficiary's request. Moreover, while the letter indicates the Beneficiary's passage of the degree examination in July 2002, it does not state that the exam's passage marked the completion of all degree requirements.

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<sup>3</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 26, 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>4</sup> 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).

<sup>5</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 26, 2017).

The university letter asserts that Romanian law requires the issuance of certificates of graduation to students who pass degree examinations. But the record lacks copies of the certificate of graduation or documentation of the law, articles about it, or its legal citation. Thus, contrary to the Petitioner's assertion, the record does not establish the Beneficiary's completion of all degree requirements and her school's approval of the degree, as evidenced by an official academic record, by July 2002 or at any time before her diploma date of July 23, 2003. Using this date to calculate post-baccalaureate experience, we find that the record does not establish the Beneficiary's possession of the minimum amount of post-baccalaureate experience required for the offered position and the requested classification. We will therefore affirm the Director's decision.

#### B. The Beneficiary's Possession of a Degree in a Required Major Field of Study

Although unaddressed by the Director, the record also does not establish the Beneficiary's possession of a degree in a major field of study required for the offered position. In evaluating a beneficiary's qualifications, we must examine the job offer portion of a labor certification to determine the minimum requirements of an offered position. We may neither ignore a term of the labor certification, nor impose additional requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983).

The labor certification here states the minimum educational requirements of the offered position of exceptional children teacher as a U.S. bachelor's degree, or a foreign equivalent degree, in the "major field of study" of "educational psychology" or "special education." The labor certification does not indicate the Petitioner's acceptance of degrees in any other fields.

The record indicates the Beneficiary's receipt of a *diploma de licenta*, with a specialization in psychology. The Petitioner submitted two, independent evaluations of the Beneficiary's foreign educational credentials. Both evaluations equate her diploma to a U.S. bachelor of science degree in the major field of psychology, with a minor or specialization in educational psychology. The record identifies the Beneficiary's major field of study as "psychology," not "educational psychology" or "special education" as the labor certification specifies. The record therefore does not establish the Beneficiary's possession of a bachelor's degree in a major field of study required for the offered position.<sup>6</sup>

In any future filings in this matter, the Petitioner must submit additional evidence establishing the Beneficiary's possession of a U.S. bachelor's degree, or a foreign equivalent degree, in the major field of study of educational psychology or special education, as the labor certification specifies.

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<sup>6</sup> One evaluation states the Beneficiary's completion of additional university studies, resulting in a certificate equating to a U.S. master's degree in the major field of "military psychology technology." The Petitioner, however, neither submitted academic records of this credential, nor asserted it as a qualification for the offered position.

### III. CONCLUSION

Contrary to the requirements of the offered position and the requested classification, the record does not establish the Beneficiary's possession of at least five years of post-baccalaureate experience. We will therefore affirm the Director's decision.

**ORDER:** The appeal is dismissed.

Cite as *Matter of V-C-P-S-*, ID# 467125 (AAO July 26, 2017)