



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

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

MATTER OF G- CO.

DATE: JULY 26, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a vehicle manufacturer, seeks to permanently employ the Beneficiary in the United States as an over-the-air reflash validation engineer. 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 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 Nebraska Service Center denied the petition after determining that the job offer allows candidates to qualify for the position with less than an advanced degree and, therefore, the job offer did not qualify to classify a beneficiary as a professional holding an advanced degree.

On appeal, the Petitioner asserts that the Director misinterpreted the requirements of the job offer and clarifies that the minimum requirements of the offered job are "a master's degree and 36 months of experience or, alternatively, a bachelor's degree and 60 months of experience."

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

A petition for classification as an advanced degree professional must be supported by a labor certification demonstrating that the job requires a professional holding an advanced degree or the equivalent. 8 C.F.R. § 204.5(k)(4)(i).

The labor certification states that the position requires a master's degree in electronics engineering or in electronics and communication engineering and 36 months of experience in the offered job or as an engineer or "test or project lead engineer." The Petitioner indicated that a candidate could alternatively qualify for the offered position with a bachelor's degree and five years of experience. The Petitioner stated on the labor certification that it would "also accept any equally suitable combination of education, training, and/or experience which would qualify an applicant to perform the job offered."

The Director concluded that the Petitioner's language allowing "any equally suitable combination of education, training, and/or experience which would qualify an applicant to perform the job offered," allowed candidates who did not possess an advanced degree to qualify for the offered job. As such,

the Director found that the offered job did not support a petition for classification as a professional holding an advanced degree. On appeal, the Petitioner asserts that its inclusion of this language on the labor certification does not change the minimum requirements to qualify for the position.

The language stating that the Petitioner would accept “any suitable combination of education, training, or experience” is referred to as “*Kellogg* language,” based on the Board of Alien Labor Certification Appeals ruling in *Francis Kellogg*, 1994-INA-465 and 544, 1995-INA 68 (Feb. 2, 1998) (*en banc*). The Petitioner asserts that its inclusion of “*Kellogg* language” on the labor certification does not change the minimum requirements to qualify for the position. We agree; we do not consider the presence of “*Kellogg* language” on the labor certification to have any material effect on the interpretation of the stated minimum requirements of the job offer. As detailed above, the labor certification specifies that the offered position requires a master’s degree and 36 months of experience or a bachelor’s degree and five years of experience. Therefore, the job offer requires candidates to possess at least an advanced degree, as is required for classification of a beneficiary as a professional holding an advanced degree. Accordingly, the Petitioner has established eligibility for the benefit sought.

**ORDER:** The appeal is sustained.

Cite as *Matter of G- Co.*, ID# 606961 (AAO July 26, 2017)