



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

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

MATTER OF M- CORP.

DATE: JUNE 28, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a computer devices and services business, seeks to employ the Beneficiary as an “IT Program Manager II - Corporate Functions IT or other.” 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 he had the five years of post-baccalaureate experience required to establish the equivalent of an advanced degree.¹

On appeal, the Petitioner contends that the Beneficiary has the required five years of progressive post-baccalaureate experience, as 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).² *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 Petitioner does not claim that the Beneficiary possesses a master’s degree.

² 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.

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(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. 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 bachelor of technology in engineering and information systems from the [REDACTED], 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 October 7, 2015.

The Director found that the Beneficiary’s post-baccalaureate experience did not begin to accrue until the [REDACTED] issued his diploma on November 24, 2007. Considering only experience gained from the diploma date onward, the Director found that the Beneficiary possessed 4 years, 5 months, and 13 days of post-degree experience, which was not sufficient to establish the required 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 when he passed the examinations for the degree in June 2006; or alternatively, on August 18, 2006, when the Beneficiary became “eligible for award” of the degree.

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

- The Beneficiary’s diploma, issued by the [REDACTED] on November 24, 2007, which reflects that he passed the final examinations for his degree in June 2006;

- The Beneficiary’s academic transcripts, which indicate that he passed the examinations for all of his degree courses in June 2006;
- Letter issued on June 8, 2016, by the [REDACTED] registrar, which states that, as of June 2006, the Beneficiary had successfully completed the coursework for his bachelor of technology degree and was “eligible for award of Degree of Bachelor of Technology in Information Technology w.e.f. [with effect from] 16.08.2006;”³ and
- Reports analyzing the Beneficiary’s academic credentials prepared by evaluators from [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.⁴ 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.⁵

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 November 24, 2007. 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.⁶

³ The August 16, 2006, date appears to correlate to the date the Beneficiary’s final examinations’ results were published on his final statement of marks.

⁴ 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 June 14, 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).

⁵ 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).

⁶ 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 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 10 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, the letter from the registrar states only that the Beneficiary was "eligible" for the award of his degree as of August 16, 2006.⁷ 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 November 24, 2007. 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 June 2006 date on which he completed his final examinations or on August 16, 2006, the effective date of the Beneficiary's eligibility for the degree according to the 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 June 2006. The Beneficiary's statement of marks simply confirms that he passed the final examinations for his degree in June 2006. 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 November 24, 2007.⁸

III. CONCLUSION

The Petitioner has not established that the Beneficiary completed all substantive requirements to earn his degree and that the university approved his degree at any time prior to November 24, 2007. 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 visa petition's priority date. Therefore, the Petitioner has not established that the Beneficiary meets the requirements for EB-2 classification.

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 June 14, 2017).

⁷ On appeal, the Petitioner incorrectly states this date as June 18, 2006.

⁸ Although two of the credentials evaluations submitted by the Petitioner (from [REDACTED] state that, in India, the date on which a student completes the coursework for his or her degree is a better indicator of degree completion than the date on which a diploma is issued, these opinions do not serve as substitutes for the official academic record that the regulation at 8 C.F.R. § 204.5(k)(3)(i) requires to establish the date the Beneficiary's degree was awarded. Accordingly, these evaluations do not establish that the Beneficiary earned his bachelor's degree or that the degree was approved by the University of Calicut in June or August 2006.

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In addition, because the Beneficiary does not possess five years of post-baccalaureate experience as required on the approved labor certification, he does not have the education and experience required by the job offered as of the priority date.⁹

ORDER: The appeal is dismissed.

Matter of M- Corp., ID# 264296 (AAO June 28, 2017)

⁹ 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).