



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

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

MATTER OF N-A-K, INC.

DATE: JUNE 30, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a lessor of nonresidential buildings, seeks to employ the Beneficiary as a legal assistant advisor. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference (EB-2) immigrant classification. *See* Immigration and Nationality Act (the Act) § 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 Texas Service Center denied the petition, concluding that the record did not establish, as required: (1) that the job offer portion of the labor certification requires the minimum of an advanced degree for EB-2 classification; and (2) that the Beneficiary met the terms of the labor certification.

On appeal, the Petitioner submits additional evidence and asserts that the offered position requires an advanced degree and that the Beneficiary satisfied all of the requirements of the offered position as set forth on the labor certification. Upon *de novo* review, we will dismiss the appeal.

#### I. LAW

Employment-based immigration generally follows a three-step process. First, an employer must obtain an approved 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 may file an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the 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.

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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."

## II. ANALYSIS

### A. Whether the Offered Position is for an Advanced Degree Professional

For EB-2 classification, “the *job offer* portion of the labor certification . . . must demonstrate that the job requires a professional holding an advanced degree or the equivalent.” 8 C.F.R. § 204.5(k)(4)(i) (emphasis added). The regulation at 8 C.F.R. § 204.5(k)(2) defines “advanced degree” 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. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Therefore, if the labor certification allows for less than an advanced degree, the position will not qualify for EB-2 classification.

The required education, training, experience, and skills for the proffered position are set forth at Part H of the labor certification. In this case, Part H states that the offered position has the following minimum requirements:

- H.4. Education: Bachelor’s degree in legal studies
- H.6. Experience in the job offered: 36 months.
- H.8. Is there an alternate combination of education and experience that is acceptable? No.
- H.9. Is a foreign educational equivalent acceptable? Yes.
- H.10. Is experience in an alternate occupation acceptable? No.
- H.14. Specific skills or other requirements:
  1. Five-plus years of experience in agency and nonprofit world, primarily in advocacy work.
  2. Extensive knowledge of social media platforms and analytic tools, including specific examples that show the success of candidates’ knowledge.
  3. Experience managing staff and working on multiples accounts.
  4. Ability to communicate clearly and effectively, both verbally and in writing, with varying levels of staff, clients, the media and others.
  5. Ability to work in a fast pace environment and meet tight deadlines.
  6. Experience in project budgeting.
  7. Excellent computer skills including Word, Excel, PowerPoint and strong internet research skills.
  8. Fluency in English, Greek and Russian.

The Director held that the requirements of Parts H.4 and H.6, indicating minimum requirements of a bachelor's degree and 36 months of experience, demonstrate that the job offer portion of the labor certification does not require at least a master's degree or a bachelor's degree followed by five years of progressive experience.

On appeal, the Petitioner states that the statement in Parts H.4 and H.6 requiring a bachelor's degree and 36 months of experience is an oversight and that the actual minimum requirement is stated in Part H.14, which states that "five-plus years of experience in agency and nonprofit world, primarily in advocacy work," is required.

In order to determine what a job opportunity requires, we must examine "the language of the labor certification job requirements." *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine the certified job offer exactly as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). Our interpretation of the job's requirements must involve reading and applying the plain language of the alien employment certification application form. *Id.* at 834.

Here, the plain meaning of the terms of the labor certification is that it allows for a bachelor's degree and 36 months of experience in the job offered. Part H.14 states that five-plus years of experience is required but it does not state anything about requiring a bachelor's degree, and it does not state that this requirement overrides the terms stated in Part H.6. We look at the labor certification as a whole. The regulations are clear that the job offer portion of the labor certification must require, as a minimum, a bachelor's degree and five years of experience. 8 C.F.R. § 204.5(k)(4). Here, the labor certification allows for less than a bachelor's degree and five years of experience. Therefore, the position offered does not qualify for classification as an advanced degree professional position.

#### B. Whether the Beneficiary Meets the Labor Certification Requirements

For EB-2 classification, the Petitioner must establish that the Beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

The labor certification in this case requires 36 months of experience in the offered position of legal assistant advisor. The record contains a letter from the partner of [REDACTED] in [REDACTED] Greece, stating that the Beneficiary was employed as a law associate from 2/12/2007 through 11/2/2012 and from 9/1/2012 through 8/5/2013. However, these dates overlap each other and the labor certification only states that the Beneficiary worked there from 9/1/2012 to 8/5/2013. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) (inconsistencies in the record must be resolved by independent objective evidence).

Therefore, the Petitioner has not submitted evidence sufficient to establish that the Beneficiary possesses 36 months of experience in the offered position of legal assistant advisor.

### III. CONCLUSION

The job offer portion of the labor certification does not require an advanced degree and the Petitioner has not established that the Beneficiary possessed the required experience for the offered position as set forth on the labor certification.

**ORDER:** The appeal is dismissed.

Cite as *Matter of N-A-K, Inc.*, ID# 513590 (AAO June 30, 2017)