



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

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

MATTER OF C-, INC.

DATE: MAR. 23, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a chemical products manufacturer, seeks to employ the Beneficiary as a manager of global applications development. 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 (the 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 residence.

The Director, Texas Service Center, denied the petition. The Director found that the evidence of record did not establish that the Beneficiary had 72 months of progressive work experience, as required by the labor certification, to be eligible for the benefit sought.

The matter is now before us on appeal. The Petitioner submits a brief and additional documentation, and asserts that the Beneficiary's qualifying work experience is now established.

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

I. LAW

Under section 203(b)(2) of the Act immigrant classification may be granted to members of the professions holding advanced degrees or their equivalent whose services are sought by an employer in the United States. The regulation at 8 C.F.R. § 204.5(k)(2) defines "advanced degree" in pertinent part as follows:

*Advanced degree* means any 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. . . .

The regulation at 8 C.F.R. § 204.5(k)(4)(i) provides, in pertinent part, as follows:

Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor . . . The job offer portion of the individual

labor certification . . . must demonstrate that the job requires a professional holding an advanced degree or the equivalent.

In addition, to be eligible for approval, a beneficiary must have all of 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 Dec. 158 (Act. Reg'l Comm'r 1977). The priority date of the petition is the date the underlying labor certification was accepted for processing by the Department of Labor (DOL). See 8 C.F.R. § 204.5(d).

Thus, a petition for an advanced degree professional must establish that the beneficiary is a member of the professions holding an advanced degree and that the job offered requires a professional with an advanced degree. An "advanced degree" is either (1) a U.S. academic or professional degree or a foreign equivalent degree above a baccalaureate, or (2) a U.S. baccalaureate or a foreign equivalent degree followed by at least 5 years of progressive experience in the specialty. In addition, the beneficiary must meet the specific requirements of the labor certification

## II. ANALYSIS

The Form I-140, Immigrant Petition for Alien Worker, is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), which was filed with the DOL on December 15, 2014, (the priority date). In section H of the labor certification the Petitioner specified the following with respect to the education, training, and experience required to qualify for the job offered:

- |       |   |   |
|-------|---|---|
| 4.    | Education: Minimum level required:  | Bachelor's degree   |
| 4-B.  | Major Field of Study:   | Computer Science, Electronics Engineering, Systems Engineering, or Management |
| 5.    | Is training required in the job opportunity?  | No  |
| 6.    | Is experience in the job offered required?  | No  |
| 7.    | Is an alternate field of study acceptable?  | No  |
| 8.    | Is an alternate combination of education and experience acceptable?   | No  |
| 9.    | Is a foreign educational equivalent acceptable?   | Yes   |
| 10.   | Is experience in an alternate occupation acceptable?  | Yes   |
| 10-A. | How long?   | 72 months   |
| 10-B. | Job titles of alternate occupations   | Any software engineer / programmer /analyst position                          |
| 14.   | Specific skills or other requirements:  |   |
|       | Experience in H.10 must include 6 years working with Oracle applications, of which 2 years must include working with Oracle Portal 10g, PL/SQL, Oracle Forms, Oracle Reports, Oracle Workflow and all of the following Oracle |   |

modules: OPM, OM, INV, PO, Oracle Financials (GL, AP, AR, FA), OLM, OTA, CRM, CSS, Application Object Library.

The Petitioner asserts that the Beneficiary is eligible for classification as an advanced degree professional based on the combination of his bachelor of technology degree in the field of electrical and electronics engineering from [REDACTED] received on November 14, 2003, and more than 5 years of progressive post-baccalaureate experience.

We find that the Beneficiary's degree from [REDACTED] is a foreign equivalent degree to a U.S. baccalaureate and that the field of study comports with the requirements of the labor certification. The only issue on appeal, therefore, is whether the Beneficiary has the requisite years of experience to qualify for the proffered position and for classification as an advanced degree professional.

On the labor certification, the Beneficiary claims the following experience prior to starting work with the Petitioner:

- June 4, 2003, to December 15, 2005, software engineer with [REDACTED] in [REDACTED] India.
- December 19, 2005, to June 23, 2006, software engineer with [REDACTED] in [REDACTED] India.
- June 26, 2006, to April 4, 2008, programmer analyst with [REDACTED] ([REDACTED] in [REDACTED] India.
- April 11, 2008, to January 31, 2010, programmer analyst with [REDACTED] in [REDACTED] New Jersey.

In support of the claimed experience, the Petitioner submitted a series of letters from individuals who claim to have worked with the Beneficiary in the listed positions, including:

- A letter from [REDACTED] stating that the Beneficiary was employed full-time by [REDACTED] in [REDACTED] India, as a software engineer from June 4, 2003, to December 15, 2005;
- A letter from [REDACTED] stating that the Beneficiary was employed full-time by [REDACTED] in [REDACTED] India, as a software engineer from December 19, 2005, to June 23, 2006.
- Letters from [REDACTED] and [REDACTED] each stating that the Beneficiary was employed full-time by [REDACTED] in [REDACTED] India, as a programmer analyst from June 26, 2006, to April 6, 2008.
- A letter from [REDACTED] stating that the Beneficiary was employed full-time by [REDACTED] in [REDACTED] New Jersey, as a programmer analyst from April 11, 2008, to January 31, 2010.
- A letter from [REDACTED] CEO of [REDACTED] certifying that the Beneficiary was employed by [REDACTED] as a programmer analyst from June 26, 2006, to January 31, 2010.

The Petitioner also submitted the initial page of two employment agreements, the first between the Beneficiary and [REDACTED] dated June 26, 2006, stating that the Beneficiary was to be employed (in an unnamed position) effective immediately, and the second between the Beneficiary and [REDACTED] dated April 1, 2008, stating that the Beneficiary was to be employed as an Oracle applications consultant effective April 11, 2008.

The regulation at 8 C.F.R. § 204.5(g)(1) sets forth the evidentiary requirements with respect to qualifying experience:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

The Director denied the petition, finding that the evidence submitted was insufficient to establish that the Beneficiary had the experience required by the terms of the labor certification or for classification as an advanced degree professional.

On appeal, the Petitioner asserts that it is unable to obtain letters from the Beneficiary's former employers because three of the companies – [REDACTED] and [REDACTED] – are no longer active and the Beneficiary's supervisor at the fourth company – [REDACTED] – is no longer employed by the company. The Petitioner states that no records are available for [REDACTED] and concludes that the company no longer exists. As for [REDACTED] the Petitioner submits information from two internet websites indicating that the company was incorporated in 2003, held its last annual general meeting in 2006, and is now registered as dormant. Regarding [REDACTED] the Petitioner submits an excerpt from the website of [REDACTED] indicating that the company filed for Chapter 11 bankruptcy on [REDACTED] 2010, at the U.S. Bankruptcy Court in the District of New Jersey ([REDACTED]).

In lieu of any new evidence about the Beneficiary from former employers, the Petitioner submits additional documentation from or about the individuals who claim to have worked with the Beneficiary at [REDACTED] and [REDACTED]. The Petitioner cites these materials as added evidence that these individuals were colleagues of the Beneficiary at those companies and can credibly attest to his prior employment. The evidence includes copies of documents confirming the Beneficiary's claimed co-workers employment with the companies in question ([REDACTED] with [REDACTED] and [REDACTED] with [REDACTED] and [REDACTED] with [REDACTED]).

According to the Petitioner, the documentation above in conjunction with that previously submitted shows that the Beneficiary had more than 6 years of qualifying employment and thereby meets the requirement of the labor certification and for the requested classification. We are not persuaded.

While the regulation at 8 C.F.R. § 204.5(g)(1) does direct us to consider other types of evidence if documentation from a prior employer is unavailable, the Petitioner has not demonstrated that evidence from one of the Beneficiary's employers, [REDACTED] is in fact unavailable. The Petitioner claims that the Beneficiary's former supervisor no longer works for [REDACTED] but that fact would not preclude the Beneficiary from inquiring directly with the company and obtaining written verification of his alleged employment there from December 2005 to June 2006. Absent any evidence that the Beneficiary made such an inquiry, we do not find the evidence submitted by the Petitioner sufficient to establish that the Beneficiary gained 6 months of qualifying experience with [REDACTED]

The only evidence of the Beneficiary's employment at [REDACTED] from June 2003 to December 2005 is the aforementioned letter from [REDACTED] who does not identify what position he had with the company or how he knows about the Beneficiary's employment there. We find that this letter, absent further details or corroborating documentation, is not persuasive evidence that the Beneficiary gained 2 years and 6 months of qualifying experience with [REDACTED]

As for the Beneficiary's employment with [REDACTED] and/or [REDACTED] the information provided in the letter from the CEO of [REDACTED] that was submitted with the original petition conflicts with the other evidence in the record pertaining to [REDACTED] and [REDACTED]. The letter from CEO [REDACTED] dated September 2, 2010, stated that the Beneficiary "was an employee of [REDACTED]" from June 26, 2006, to January 31, 2010. No mention was made of any employment with [REDACTED] from June 26, 2006, to April 6, 2008, as claimed by the Beneficiary and alleged in other documentation. Furthermore, [REDACTED] listed the job duties of the Beneficiary's programmer analyst position at [REDACTED] as follows:

- Responsible for the design and development.
- Responsible for the timelines and quality of the team member's deliverables.
- Responsible for initial development phase of Oracle Forms.
- Worked on Oracle Inventory module and the API's in the Inventory module.
- Developed the PL/SQL code to run the API and developed form.
- Lead a team and was responsible for the timeliness and quality of the team member's deliverables.
- Developed RICE Components (Reports, Interfaces, Conversions, and Extensions) in the domain of Oracle Applications E-Business Suite.

These job duties appear to be considerably different from those described in the labor certification and in the letters from the individuals who claim to have worked with the Beneficiary at [REDACTED] and [REDACTED] and at [REDACTED] and [REDACTED]. The job duties of the Beneficiary's positions at [REDACTED] and [REDACTED] are described in the labor certification and by the four individuals above in identical language that reads as follows:

In the position of Programmer Analyst,<sup>1</sup> [REDACTED] worked with Oracle applications, including working with Oracle Portal 10G and all of the following Oracle modules/custom platforms: OPM, OM, INV, PO, Oracle Financials (GL, AP, AR, FA), OLM, OTA, CRM, CSS, Oracle Workflow, and Oracle Application Object Library; performed development and support activities, including the development of code conversations, new reports, and the customization of standard Oracle reports; developed new database packages, including performing Brio (Hyperion) report enhancements and bug fixes; and customized Oracle forms using Logical Apps.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Petitioner has provided no explanation for the inconsistent documentation described above. The record contains conflicting evidence with regard to where and for whom the Beneficiary worked in the time frame of June 2006 to January 2010, and what duties he performed for his employer(s). Based on the evidence, we conclude that the Petitioner has not established that the Beneficiary gained any qualifying experience from June 2006 to January 2010.

For the reasons described above, we determine that the Petitioner has not established that the Beneficiary has the years of progressive, post-baccalaureate experience required by the labor certification to qualify for the job offered or for classification as an advanced degree professional.

### III. CONCLUSION

The Petitioner has not established that the Beneficiary has the requisite years of experience to qualify for the job offered under the terms of the labor certification. Nor has the Petitioner established that the Beneficiary is eligible for classification as an advanced degree professional under applicable regulations because the record does not show that the Beneficiary has 5 years of progressive experience in the specialty to go along with his foreign equivalent degree to a U.S. baccalaureate.

**ORDER:** The appeal is dismissed.

Cite as *Matter of C-, Inc.*, ID# 135942 (AAO Mar. 23, 2017)

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<sup>1</sup> The [REDACTED] letter referred to the Beneficiary's position as a Software Engineer.