



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

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

MATTER OF [REDACTED]

DATE: MAY 12, 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 Service Engineer 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. A bachelor's degree alone does not qualify as an "advanced degree," but a bachelor's and an additional five years of post-baccalaureate progressive experience will suffice for EB-2 classification purposes.

The Director of the Nebraska Service Center found that, based on the issuance date of the Beneficiary's bachelor's degree diploma, the Beneficiary could not show, as required, a minimum of five years of post-baccalaureate experience to establish that he possesses the equivalent of an advanced degree.

On appeal, the Petitioner contends that it has established that the Beneficiary has the required five years of progressive post-baccalaureate experience, as the Beneficiary earned his degree before his diploma was formally issued.

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

I. LAW

Employment-based immigration is generally a three-step process. First, an employer must obtain an approved ETA Form 9089, Application for Permanent Employment Certification (labor certification) from the U.S. Department of Labor (DOL).¹ *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

¹ 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.

employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* 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 must 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.

For an advanced degree professional position, the underlying labor certification must provide that the job requires an advanced degree or its equivalent. *See* 8 C.F.R. § 204.5(k)(4)(i). In pertinent part, U.S. Department of Homeland Security regulations define the term “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.” 8 C.F.R. § 204.5(k)(2) (emphasis added). To be eligible for this EB-2 classification solely on the basis of a foreign degree equivalent of a U.S. bachelor’s degree, a beneficiary must also possess five years of qualifying post-baccalaureate experience. 8 C.F.R. § 204.5(k)(3).

II. ANALYSIS

The Beneficiary possesses a bachelor of technology in electrical and electronics engineering degree from [REDACTED] in India. The record establishes that the Beneficiary’s degree is equivalent to a U.S. bachelor’s degree and that his post-degree experience qualifies as progressive experience. The only question is when [REDACTED] conferred the Beneficiary’s “degree,” and when he began to accrue qualifying experience.

Several dates are critical to this case. The visa petition’s priority date is September 29, 2015. [REDACTED] issued a provisional certificate to the Beneficiary on June 15, 2004, but did not provide him with a diploma until March 22, 2010. The record establishes that the Beneficiary has over six and a half years of related experience gained between August 3, 2007, and March 7, 2014. However, the Director found that the Beneficiary only accrued approximately 3 years and 11 months of qualifying experience between his diploma date and the priority date of the visa petition. The Director accordingly concluded that the Beneficiary fell short of the five-year post-baccalaureate experience requirement and denied the petition.

On appeal, the Petitioner maintains that the Beneficiary does have the requisite five years of post-degree experience if we recognize his “degree” as having been conferred as of the date of his provisional certificate.

The statute and regulations governing the EB-2 classification speak in terms of “degrees,” not diplomas. So, from the outset, it is clear that we cannot limit our analysis in this case to the date on which a university confers a formal diploma. Applicable EB-2 regulations reflect this distinction. 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). An “official academic record” is not limited to a formal diploma.² In fact, in the very next provision – relating to EB-2 exceptional ability petitions – the initial evidence rule expressly distinguishes between degree and diploma: “[a]n official academic record showing that the alien has a *degree, diploma, or similar award* from a college, university” 8 C.F.R. § 204.5(k)(3)(ii)(A) (emphasis added).³

Accordingly, we must conduct a case-specific analysis to determine whether, at the time a provisional certificate is issued, a beneficiary has completed all substantive requirements to earn the degree and the university has approved the degree. We must consider the individual nature of each university’s or college’s requirements for each program of study and each student’s completion of those requirements. A petitioner bears the burden to establish that a beneficiary’s provisional certificate reflects that, at the time the certificate was issued, all of the substantive requirements for the degree were met and that the degree was approved by the responsible university body.⁴

Here, the record demonstrates that, as of the issuance of the provisional certificate on June 15, 2004, the Beneficiary had completed all substantive requirements of the degree and that [REDACTED] had approved the degree. The record contains the following documents contemporaneous with relevant events: a copy of the Beneficiary’s provisional certificate, dated June 15, 2004, which states that he “has passed the Bachelor of Technology examination of this University held in April 2004;” copies of the Beneficiary’s “Memorandum of Marks” for the years he attended [REDACTED] which reflect that he passed all courses; and a copy of the Beneficiary’s bachelor of technology in electrical and electronics engineering diploma, issued on March 22, 2010. In addition, the Petitioner submitted a statement from the controller of examinations at [REDACTED] who states that the university awarded the Beneficiary the provisional certificate on June 15, 2004, “as he passed all required examinations and completed all degree requirements at that time.” The controller of examinations further indicates that [REDACTED] does not issue provisional certificates to its students until all degree requirements have been completed and all “dues” have been cleared. The controller further explains that a provisional certificate can only be issued after a student has been approved to graduate by the university.

² 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 Apr. 4, 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).

³ While this provision helps clarify that the terms degree and diploma are not equivalent, we note generally that, in contrast to the advanced degree category, the EB-2 exceptional ability category is not grounded entirely in an academic award and thus its initial evidence rule is more expansive than that of the advanced degree category.

⁴ Along with any other proffered evidence, a petitioner must also submit a copy of a beneficiary’s statement of marks or transcript to demonstrate years of study, and coursework completed, along with a copy of the provisional certificate. 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).

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Finally, we have considered information available from the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE),⁵ and find it to support the Petitioner's claim and evidence. On the matter of provisional certificates issued by Indian universities, EDGE states:

The Provisional Degree Certificate is evidence of completion of all requirements for the degree in question, the name of the degree and the date upon which it was approved by the responsible university governing body, and is comparable to an official US academic transcript with a degree statement certifying completion of all requirements for the degree, the name of the degree and the date upon which it was approved by the academic senate at universities in the United States.⁶

We also note that EDGE reports that some students never receive their "final Degree Certificate," but instead rely on their provisional degree certificate as evidence of degree completion. *Id.*

III. CONCLUSION

The Beneficiary's provisional certificate, together with his memorandum of marks, demonstrates that the Beneficiary completed all substantive requirements of the degree and that the university approved the degree, as of the date the provisional certificate was issued. We therefore find the Beneficiary to have earned the foreign equivalent degree to a U.S. bachelor's degree as of June 15, 2004. Applying the date of the provisional certificate, we also find the Beneficiary to have at least five years of qualifying post-baccalaureate employment experience as of the priority date. Therefore, the Petitioner has established that the Beneficiary meets the academic and experience requirements of the labor certification and for EB-2 classification.

ORDER: The appeal is sustained.

Matter of [REDACTED], ID# 268467 (AAO May 12, 2017)

⁵ AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher educational professionals who represent approximately 2,600 institutions in more than 40 countries. <http://www4.aacrao.org/centennial/about.htm> (last visited Apr. 4, 2017). According to its registration page, EDGE is "a web-based resource for the evaluation of foreign educational credentials." <http://edge.aacrao.org/info/php> (last visited Apr. 4, 2017).

⁶ See *India: Provisional Degree Certificate*, AACRAO, <http://edge.aacrao.org/country/credential/provisional-degree-certificate> (last visited Apr. 4, 2017).