



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

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

MATTER OF T-L-, INC.

DATE: MAY 18, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an environmental/product certification company, seeks to employ the Beneficiary as a chemist. It requests classification of the Beneficiary as an advanced degree professional or as an alien of exceptional ability under the second preference immigrant classification. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). These employment-based “EB-2” immigrant classifications make immigrant visas available to foreign nationals with an advanced degree or with a degree of expertise significantly above that normally encountered in the sciences, arts, or business.

The Director of the Nebraska Service Center denied the petition. The Director found that the Petitioner made no representations that the Beneficiary has exceptional ability and that the evidence submitted by the Petitioner did not establish that the Beneficiary has a U.S. baccalaureate degree or a foreign equivalent degree, the minimum educational requirement for classification as an EB-2 advanced degree professional.

On appeal, the Petitioner asserts that the Beneficiary satisfies the criteria for classification as an alien of exceptional ability, the other EB-2 category, and submits a brief and additional evidence in support of this assertion.

Upon *de novo* review, we will withdraw the Director’s decision and remand the case to the Director for further consideration and the issuance of a new decision.

## 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 a labor certification, DOL certifies that insufficient U.S. workers are able, willing, qualified, and available for an offered position and that a foreign national’s employment in the position will not hurt the wages and

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<sup>1</sup> The date the labor certification is filed is called the “priority date.” A beneficiary must be eligible for the requested classification as of that date.

working conditions of U.S. workers in similar jobs. *See* 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 (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, 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.

Section 203(b)(2) of the Act provides that employment-based immigrant visas may be allotted:

to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

## II. ANALYSIS

On its Form I-140, Immigrant Petition for Alien Worker, the Petitioner specified in box 1.d. of Part 2 (Petition Type) that the petition is for “[a] member of the professions holding an advanced degree or an alien of exceptional ability (who is **NOT** seeking a National Interest Waiver).” The Form I-140 does not require the Petitioner to choose between the two categories of EB-2 classification, and the Petitioner did not indicate elsewhere on the Form I-140 or in any other materials submitted with the petition whether it was requesting classification of the Beneficiary as an advanced degree professional or as an alien of exceptional ability.

The Director treated the petition as one seeking advanced degree professional classification for the Beneficiary, and denied the petition based solely on the criteria for that category of EB-2 classification. As explained by the Director, since “no representations have been made that the beneficiary has exceptional ability” he did not consider this alternate EB-2 category. While this statement is true, it does not alter the fact that the Form I-140 does not direct the Petitioner to distinguish which category of EB-2 classification it seeks for the Beneficiary. The Petitioner did not state that it was seeking EB-2 classification under one category, but not the other, when it filed the petition.

On appeal the Petitioner asserts that the evidence submitted with the initial petition indicates its intent to request classification of the Beneficiary as an alien of exceptional ability. It asserts that the Director should have adjudicated the petition as such or requested additional clarifying information if the record was not sufficient to make a determination. We agree with the Petitioner that the Director should have considered the petition under the exceptional ability category.

## III. CONCLUSION

Accordingly, we will remand this case to the Director for consideration of whether the Beneficiary qualifies for EB-2 classification as an alien of exceptional ability.

*Matter of T-L-, Inc.*

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of T-L-, Inc.*, ID# 448312 (AAO May 18, 2017)