



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

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

MATTER OF J-C-&C-

DATE: MAY 23, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a commercial banking institution, seeks to employ the Beneficiary as an associate applications developer. 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 “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 degree plus five years of post-baccalaureate progressive experience will suffice for EB-2 classification purposes.

The Director of the Nebraska Service Center denied the petition on multiple grounds. The Director found that, based on the issuance date of the Beneficiary’s bachelor’s degree diploma, the Beneficiary did not have either a bachelor’s degree or five years of post-baccalaureate experience as of the petition’s priority date, as required to establish that he possessed the equivalent of an advanced degree. The Director also found that the Beneficiary was ineligible for the benefit sought at the time the petition was filed.

On appeal the Petitioner contends that the date of the Beneficiary’s bachelor’s degree should be considered March 2002, when he had completed his coursework and final examination and thereby fulfilled the requirements for the degree, not the later date when the diploma itself was issued.

Upon *de novo* review, we will withdraw the Director’s decision and remand the case 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).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

¹ The date the labor certification is filed is the “priority date.” A beneficiary must be eligible as of that date for the immigration benefit sought.

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. 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.

For this advanced degree professional position, the 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, 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. See 8 C.F.R. § 204.5(k)(3).

II. ANALYSIS

The Petitioner’s Form I-140, Immigrant Petition for Alien Worker, was accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), which had been filed with the Department of Labor (DOL) and certified by the DOL. Section H of the labor certification specifies that the minimum educational requirement to qualify for the job of associate applications developer is a bachelor’s degree in computer science, engineering, or a related technical field, or a foreign educational equivalent. In addition, five years of experience is required in the job offered or a related occupation.

The Beneficiary states on the labor certification that he possesses a bachelor of engineering degree in electrical and electronics engineering from [REDACTED] in India. The record establishes that the bachelor of engineering degree is equivalent to a U.S. bachelor’s degree in one of the fields required by the labor certification. The Beneficiary’s degree combined with five years of progressive post-baccalaureate experience, if established, would qualify him for EB-2 classification. At issue in this proceeding is *when* the Beneficiary received his “degree” from [REDACTED]. More specifically, the question is whether the “degree” dates from when the Beneficiary actually received the formal *diploma*, or earlier when he completed all of the requirements for the degree and received a *provisional degree certificate*.

Several dates are critical to this case. The Beneficiary’s priority date (when the labor certification was filed) is June 9, 2015. The Beneficiary completed the coursework and final examination for a bachelor of engineering degree in March 2002, and was issued a provisional degree certificate by [REDACTED] (identified as an affiliate of [REDACTED]) on January 22, 2005. However, the Beneficiary did not receive a formal diploma from [REDACTED] until

March 18, 2016, which was after petition's priority date. The Director found that March 18, 2016, was the date of the Beneficiary's degree, and concluded that the Beneficiary had neither a bachelor's degree nor any qualifying post-baccalaureate experience as of the priority date, and was therefore ineligible for the requested classification.

On appeal the Petitioner maintains that the Beneficiary had the requisite bachelor's degree and more than five years of post-baccalaureate experience before the priority date of June 9, 2015, if we recognize his "degree" as dating from March 2002, when all of the degree requirements were fulfilled. The Petitioner asserts that the Beneficiary's qualifying experience began on June 9, 2003, with his first "post-baccalaureate" job as a software engineer. Likewise, if the Beneficiary's degree were considered to date from January 22, 2005, the date of the provisional degree certificate, the qualifying post-baccalaureate experience allegedly completed by the Beneficiary would have exceeded five years before the priority date of June 9, 2015.

The statute and regulations governing the EB-2 classification speak in terms of "degrees," not diplomas. So it is clear that we cannot limit our analysis to the date on which a university confers a formal diploma. Applicable EB-2 regulations reflect this distinction. For these EB-2 "bachelor plus five" petitions, the "initial evidence" rule requires submission of an "official academic record" showing the 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, certificate, 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 degree certificate is issued, the individual 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 will bear the burden to establish that a beneficiary's provisional degree certificate reflects that, at the time the certificate was issued, all of the substantive

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 April 28, 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.

requirements for the degree were met and the degree was in fact approved by the responsible university body.⁴

In this case the record contains the following documents pertaining to the Beneficiary's bachelor of engineering (B.E.) degree:

1. Copies of the Beneficiary's statements of marks from [REDACTED] in [REDACTED] India, listing the courses taken by the Beneficiary in the 7th and 8th semesters of his B.E. program.
2. A copy of the Bachelor of Engineering Provisional Degree Certificate from [REDACTED] dated January 22, 2005.
3. A copy of a Bachelor of Engineering degree certificate from [REDACTED] dated March 18, 2016.
4. A letter from the principal of [REDACTED] dated March 19, 2016, certifying that the Beneficiary was a full-time student in the years 1995-2000 and that he "has successfully completed Bachelor of Engineering Degree (Electrical and Electronics Engineering) in the examination held during the month of March 2002 as prescribed by [REDACTED]."

We cannot determine the date of the Beneficiary's bachelor's degree, or whether the provisional certificate is evidence that the Beneficiary completed all substantive requirements to earn the degree and the university has approved the degree, because the Petitioner has not documented or explained the relationship between [REDACTED] (which issued the provisional certificate) and the [REDACTED] (which issued the formal diploma). The only document that references a connection between the two institutions is the 2005 provisional degree certificate which contains a parenthetical phrase identifying [REDACTED] as an affiliate of [REDACTED] but close examination of the document shows that another university was originally listed on the document as the affiliated university. The record includes an excerpt from the "Official Website of Government of [REDACTED]" which lists the computer colleges in [REDACTED] and identifies [REDACTED] computer application activity as affiliated with [REDACTED]. The Beneficiary's degree, however, was in the field of electrical and electronics engineering, which is not identified on the website as a field of study for which [REDACTED] has an affiliation with [REDACTED]. In fact, [REDACTED] is currently identified as the affiliated institution of [REDACTED]. See [REDACTED]

[REDACTED] (last visited April 27, 2017). It is incumbent upon an applicant to resolve any

⁴ Along with any other proffered evidence, petitioners 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).

inconsistencies in the record by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, copies of the Beneficiary's statements of marks have been submitted for only two of the eight semesters in the B.E. program. The regulation at 8 C.F.R. § 204.5(k)(3)(i) requires that an "official academic record" be submitted to show that the Beneficiary has the requisite degree for classification as an advanced degree professional. A complete academic record has not been furnished in this case, since the record lacks six semesters worth of the Beneficiary's statements of marks. In any further proceedings the missing statements of marks, or copies thereof, should be submitted.

The record also does not establish that the Beneficiary has the experience claimed on the labor certification. The evidentiary requirements with respect to establishing the Beneficiary's qualifying experience are set forth in the regulation at 8 C.F.R. § 204.5(g)(1), which provides as follows:

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.

While some of the letters in the record appear to meet the substantive requirements above, three do not. In particular, the letters from [REDACTED] and [REDACTED] are insufficient to establish that the Beneficiary gained the claimed qualifying experience with those three companies, as they do not provide a specific description of the duties performed.

Furthermore, one of the jobs listed on the labor certification was with [REDACTED] in [REDACTED] Japan, from July 2007 to January 2009. While a letter from the Beneficiary's former manager who is no longer employed by the company verified the Beneficiary's employment with [REDACTED] a letter from the current managing director and head of human resources verified that the Beneficiary was employed during the applicable time period by [REDACTED]. These two companies do not appear to be one and the same. As previously stated, it is incumbent upon applicant to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. at 591-92.

III. CONCLUSION

Due to the evidentiary inconsistencies and deficiencies concerning the Beneficiary's academic record and work experience, we will remand this case to the Director for further consideration. The Director shall provide the Petitioner the opportunity to submit additional evidence on these and any other relevant issues before issuing a new decision.

Matter of J-C-&C-

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 J-C-&C-*, ID# 81021 (AAO May 23, 2017)