



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

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

MATTER OF M-A-, INC.

DATE: NOV. 7, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an advertising agency, seeks to employ the Beneficiary as an economist. 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.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary has the five years of experience required to qualify for the offered position. The Director subsequently denied the Petitioner’s motion, affirming the ground of denial.

On appeal, the Petitioner states that the Beneficiary has at least five years of progressive experience in the job offered to qualify for proffered position.

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

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains 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 files 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 applies 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

At issue in this case is whether the Beneficiary possesses the five years of progressive, post-baccalaureate experience in the job offered of economist, as required by the terms of the labor certification. A beneficiary must have all 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 158 (Acting Reg'l Comm'r 1977). In evaluating a beneficiary's qualifications for an offered position, USCIS must examine the job offer portion of a labor certification to determine the position's minimum requirements. USCIS may neither ignore a term of the labor certification, nor impose additional requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (stating that the "DOL bears the authority for setting the content of the labor certification").

In this case, the Petitioner describes the duties of the offered position, an economist for an advertising agency, as:

Will be responsible for managing and improving economic analysis and forecasting models of the market for advertising and marketing business. Including demand analysis, workforce economics. Will assist in all areas related to measuring the demand and supply, constructing models of the markets for specific services, model documentation, and annual reports of model updates. Will identify and offer business opportunities to new customers [sic]. Will provide advice and consultation to new customers on economic matters in the acquisition of our products and services. Study and analysis of documentation of prospect clients. Will study economic and statistical data in the advertising and public relations industry. Will develop economic guidelines, compile, and analyze and report data to explain forecast market trends.

On the labor certification, the Petitioner states that the Beneficiary has over ten years of progressive experience as an economist for [REDACTED], an "economist firm," from February 1, 2006, to present. The Petitioner also explains that this employment with the "economist firm" reflects the Beneficiary's self-employment. In support of a beneficiary's claimed qualifying experience, a petitioner must submit letters from employers. 8 C.F.R. § 204.5(g)(1); 8 C.F.R. § 204.5(1)(3)(ii)(A). If required evidence is unavailable, a petitioner must demonstrate unavailability before USCIS will accept alternative proof. 8 C.F.R. § 103.2(b)(2)(i).

In an attempt to corroborate the Beneficiary's self-employment experience, the Petitioner submitted a translation of a letter from the Beneficiary's accountant regarding the duties the Beneficiary performed as an economist and financial advisor during his self-employment from 2006 through 2014.<sup>2</sup> This letter states that the Beneficiary has "earned gross income product for his activity as Economic Advisor to Businesses, lease of his own properties and interest gained for deposits in his

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<sup>2</sup> The translation states the experience began in 2009, while the original lists 2006. We find this likely to be a typographical error and will therefore use the year noted in the original.

personal bank accounts.” The rest of the letter provides duties performed by the Beneficiary as an economist and financial advisor. However, it is unclear how the Beneficiary’s accountant would have acquired knowledge of the duties performed by the Beneficiary during this time, and the letter does not describe for whom who the Beneficiary performed these duties. Although there appears to be some overlap between the duties in the letter and those of the offered position, the letter also discusses a number of duties encompassing other occupations including real estate development and investing and financial advising. Absent information on the proportion of time the Beneficiary spent performing the duties of an economist versus the time spent performing unrelated duties, we cannot find that the Beneficiary’s experience constitutes experience in the job offered. Moreover, the letter does not state that the Beneficiary gained experience in other main duties of the proffered position, specifically those that relate to the advertising, public relations, and marketing business. As such, the letter from the Petitioner’s accountant is not sufficient to establish that he has the required experience.

On appeal, the Petitioner submits additional letters from colleagues discussing the Beneficiary’s self-employment. However, as will be discussed further below, these additional letters do not demonstrate that the Beneficiary has the required five years of experience in the job offered of economist.

A letter from [REDACTED] a property consultant, states that from 2006 to 2014, the Beneficiary “has developed and participated in the activity of real estate in the city of [REDACTED] as a consultant, administrator and analyst of opportunities of real estate properties.” [REDACTED] goes on to state that the Beneficiary provided “study of financial support of clients taking up properties for rent, giving clients security at the moment of making lease agreements,” and “executed projects of modification and medium and small adaptations in his own properties and from other parties with the ends of increasing the commercial and face value.” [REDACTED] also writes that the Beneficiary “developed a feasibility study in property investments, calculation the return in capital and the viability within them. Has developed market studies and commercial offerings to large, medium and small companies with the end of making property decisions highlighting the benefits and risks of each property and impact zone.” Although the letter mentions his involvement in some of the duties of the offered position, such as developing market studies, the activities discussed are largely those of a real estate investor and developer. It is unclear what amount of the Beneficiary’s experience constituted experience as an economist as opposed to a real estate developer. The letter therefore does not support the contention that the Beneficiary’s self-employment could be considered experience in the job offered, that of an economist for an advertising agency.

The Petitioner also submits a letter from [REDACTED] a manager of [REDACTED] that states that from 2006 to 2014 the Beneficiary “has expanded in the real estate [market] as an investor, administrator and business analyst” and that he has “executed projects of modification and medium and small adaptations in his own properties and from other parties with the ends of increasing the commercial and face value.” [REDACTED] states that the Beneficiary “developed a feasibility study in property investments, [calculating] the return in capital

and the viability within them.” She states that he has “developed market studies and commercial offerings to large, medium and small companies with the end of making property decisions highlighting the benefits and risks of each property and impact zone.” While we acknowledge that some of this experience relates to economic studies for small, medium, and large companies, it is unclear how many companies the Beneficiary advised and how much of his time was spent in developing real estate. This letter, like the letter from [REDACTED] indicates that the Beneficiary gained experience during this time as a real estate developer and investor, even carrying out projects of modification and adaptations to his own properties to increase the commercial value, rather than as an economist.

The letter from [REDACTED] the manager of the [REDACTED] in [REDACTED] likewise does not support the contention that the Beneficiary’s experience was in the job offered. Rather, [REDACTED] states that the Beneficiary “has expanded in the real estate market as an investor, administrator and business analyst” from 2006 through 2014. He states that he has offered financial services to the Beneficiary and the Beneficiary’s clients “in the development of real estate.” This letter also tends to indicate that the Beneficiary’s principal position from 2006 through 2014 was as a real estate developer.

A letter from [REDACTED] owner and legal representative of the company [REDACTED] states that the Beneficiary “was hired and gave his services as a specialized economist in strategic management during the years 2008-2010 for the development, application and managing the strategic plan of the company.” The chart included in this letter states that the Beneficiary performed this work from 2008 through 2009. [REDACTED] states that “strategic management” consisted of phases including, “recognizing, recollection and analysis of information of the company,” in performing a “technical study of the areas and internal processes of the company,” and, among other things, the final delivery of a strategic plan for 2010 to 2015. However, the letter does not discuss the specific duties performed by the Beneficiary and it is unclear whether this constituted full-time employment for this entire period of time, as the evidence in the record indicates that the Beneficiary was also engaged in developing and investing in real estate from 2008 through 2009. Absent additional information on the duties and time spent on the job, we cannot the Beneficiary’s employment as a specialized economist to be qualifying experience in the job offered.

Given the Beneficiary’s involvement as a real estate developer/investor and financial advisor, in addition to his claimed work as a self-employed economist, we cannot find that the Beneficiary’s self-employment constitutes the required five years of experience in the job offered as an economist.

On appeal, the Petitioner asserts that the Beneficiary has additional experience that may be considered, namely his experience as an external consultant for small and medium businesses from January 2004 until September 2010 and as an owner and manager of his own business, [REDACTED] from September 2005 to May 2006. However, for the reasons discussed below, we do not find this additional experience to qualify as progressive post-baccalaureate experience in the job offered.

1. Consultant from 2004 to 2010

To substantiate the Beneficiary's claimed experience as a consultant, the Petitioner submitted a letter from [REDACTED] who states that the Beneficiary "collaborated in the creation and promotion of the company [REDACTED] from February 2004 to November 2006 and that he had a contract for "management and legal representation for [REDACTED] from July 2005 to September 2010, was in charge of expansion strategies for gas and transport from January to March 2006, and provided "market study, detail engineering documentation for the municipality of [REDACTED] from August 2006 to June 2007. However, the record does not indicate, nor does the Petitioner explain how the Beneficiary's management and legal representation of [REDACTED] and his collaboration in the creation and promotion of [REDACTED] constitutes experience as an economist. Therefore, we find that the record does not establish that this constitutes progressive experience in the job offered. While it appears the Beneficiary's time providing a market study and expansion strategies for [REDACTED] from January to March 2006 and from August 2006 to June 2007, could possibly constitute experience as an economist, the Beneficiary's duties were not specified and it is unclear if he gained this experience full-time. Moreover, as noted above, the Beneficiary was also self-employed as a real estate developer during this time, and absent additional information, we cannot find this to be qualifying experience.

On appeal, the Petitioner also submitted the Beneficiary's individual tax documentation for 2004 to 2013, showing that he declared his income to the government; but this evidence does not address the Beneficiary's occupation during the time period nor does it state who he worked for or the type of work performed.

2. Owner, [REDACTED] from July 2005 to May 2006

The letter from [REDACTED] states that the Beneficiary was an investor in the [REDACTED] from July 2005 to May 2006. He states that the Beneficiary "was involved in the planning, study and formation of the company, as a stockholder, as well as his contribution with his knowledge and professional preparation." He also states that the Beneficiary's specific activities included: the "design of the corporate image and business planning," the "assembly, operation and structure of the organization," and the "design and application of commercial politics as well as financial administration." The Beneficiary's resume states that he was the owner and manager of [REDACTED] from September 2005 to May 2006. We conclude that, although it appears that the Beneficiary could have utilized aspects of his background in economics in this position, the Beneficiary's overall position as an owner, manager, and investor in [REDACTED] does not constitute experience in the job offered.

In view of the foregoing discussion, the Beneficiary's employment experience as a consultant, owner and manager of a restaurant, and as a real estate developer and investor, while claiming to provide economic studies and strategies to companies at various times for varied durations, is not sufficient to

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establish that he possesses five years of progressive experience in the job offered of economist, as required by the labor certification.

### III. CONCLUSION

In summary, the Petitioner has not established that the Beneficiary possesses the five years of progressive, post-baccalaureate experience in the job offered required to qualify for the proffered position.

**ORDER:** The appeal is dismissed.

Cite as *Matter of M-A-, Inc.*, ID# 601588 (AAO Nov. 7, 2017)